

No. _____

In the
Supreme Court of the United States

Brittany Shanice Williams,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether 18 U.S.C. § 3583(g) comports with the Fifth and Sixth Amendments?

PARTIES TO THE PROCEEDING

Petitioner is Brittany Shanice Williams, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Brittany Shanice Williams seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The published opinion of the Court of Appeals is reported at *United States v. Williams*, 808 F. App'x 274 (5th Cir. June 9, 2020) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and revocation of sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on June 9, 2020. On March 19, 2020, the Court extended the 90-day deadline to file a petition for certiorari to 150 days. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT STATUTES AND CONSTITUTIONAL PROVISIONS

18 U.S.C. §3583(g) states:

(g) Mandatory Revocation for Possession of Controlled Substance or Firearm or for Refusal To Comply With Drug Testing.—If the defendant—

- (1) possesses a controlled substance in violation of the condition set forth in subsection (d);
- (2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;
- (3) refuses to comply with drug testing imposed as a condition of supervised release; or
- (4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

LIST OF RELATED PROCEEDINGS

1. *United States v. Brittany Shanice Williams*, 4:15-CR-239-P-5. United States District Court, Northern District of Texas. Judgment entered January 6, 2017.

2. *United States v. Brittany Shanice Williams*, 4:15-CR-239-P-5. United States District Court, Northern District of Texas, motion to revoke term of supervised release filed on November 13, 2019. Judgment revoking supervised release and imposing a 10-month term of imprisonment and a two-year term of supervised release was entered on November 14, 2019.

3. *United States v. Brittany Shanice Williams*, CA No. 19-11251, United States Court of Appeals for the Fifth Circuit. Opinion and judgment affirming the sentence entered June 9, 2020.

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

In 2017, Petitioner Brittany Shanice Williams received a sentence of 10 months for conspiracy to make, possess, and utter forged and counterfeit securities, together with a two-year term of supervised release, under 18 U.S.C § 371. *See* (Record in the Court of Appeals, at 49–50).

Ms. Williams began serving her term of supervised release on November 24, 2017. (Record in the Court of Appeals, at 57). On April 25, 2019, a probation officer filed a Petition for Offender Under Supervision (“Petition”) alleging, *inter alia*, that Ms. Williams violated her conditions of supervised release by possessing an illegal controlled substance, failing to refrain from the unlawful use of controlled substances, and failing to report for periodic drug tests required by her probation officer. (Record in the Court of Appeals, at 57–58). Specifically, the Petition alleged that (1) Ms. Williams submitted five urine specimens between August 20, 2019, and October 7, 2019, that tested positive for marijuana; (2) she admitted to using marijuana on two occasions in August of 2019; and (3) she failed to report for random drug testing on four occasions in October of 2019. (Record in the Court of Appeals, at 58).

The petition concluded that Ms. Williams’s statutory maximum term of imprisonment was two years, with a maximum term of supervised release of three years, less any revocation sentence. (Record in the Court of Appeals, at 61). Ms. Williams’s violation was Grade C, which combined with her Criminal History Category of II to result in a policy statement range of imprisonment of four to ten

months. (Record in the Court of Appeals, at 61). Citing 18 U.S.C. § 3853(g)(1), (g)(3), and (g)(4), the Petition concluded that the court must impose a term of imprisonment because Ms. Williams faced “[m]andatory revocation for possession of a controlled substance, refusing to comply with drug testing, and more than 3 positive drug tests over the course of 1 year.” (Record in the Court of Appeals, at 61).

Early in her revocation hearing, Ms. Williams and her counsel signaled Ms. Williams’s intention to admit the truth of the Petition’s allegations. (Record in the Court of Appeals, at 94–95). But before Ms. Williams actually made her admission, (Record in the Court of Appeals, at 97), the court informed Ms. Williams that it would revoke her supervision if she admitted to the Petition’s allegations:

THE COURT: . . . If you admit that everything the motion says is true, then I’ll make a finding on the record here that everything the motion says is true, and I’ll also find that you violated your conditions of supervised release in each of the respects that this motion says you have.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And I’ll also make a finding and express my conclusion that your term and conditions of supervised release should be revoked, and I’ll order them revoked.

(Record in the Court of Appeals, at 95).

Then, after Ms. Williams formally admitted that the allegations were true, the court did precisely what it had already stated that it had predetermined to do:

THE COURT: Okay, I’ll accept that admission.

I find that the defendant—I find that everything alleged in the motion is true. I find that the defendant violated her terms and conditions of supervised release in each of the respects alleged in the motion, and I conclude that her term and conditions of supervised release should be revoked and I hereby order them revoked.

(Record in the Court of Appeals, at 97).

The court imposed a 10-month term of imprisonment, as well as an additional term of 24 months of supervised release. (Record in the Court of Appeals, at 102).

B. Appellate Proceedings

On appeal, Petitioner argued that the district court erred in applying the mandatory revocation provisions of 18 U.S.C. §3583(g), because those provisions violated the Fifth and Sixth Amendments under the rationale of *United States v. Haymond*, __U.S.__, 139 S.Ct. 2369 (2019).

The court of appeals affirmed. *See* [Appx. A, at 2]. It rejected the constitutional argument with the following commentary:

Williams argues that § 3583(g) is unconstitutional in light of *United States v. Haymond*, 139 S. Ct. 2369, 2380 (2019), because it does not require a jury determination of guilt beyond a reasonable doubt. As she concedes, review of this unpreserved issue is for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). Accordingly, she must show (1) a forfeited error, (2) that is “clear or obvious, rather than subject to reasonable dispute,” and (3) that affected her substantial rights. *Id.* If she does that, this court has the discretion to correct the error and should do so “only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* (internal quotation marks, citation, and alteration omitted).

The Supreme Court’s decision in *Haymond* addressed the constitutionality of § 3583(k), and the plurality opinion specifically declined to “express a view on the mandatory revocation provision for certain drug and gun violations in § 3583(g).” *Haymond*, 139 S. Ct at 2382 n.7 (plurality opinion). The application of § 3583(g) was not plain error. *See United States v. Badgett*, 957 F.3d 536 (5th Cir. 2020).

[Appx. A, at p.2].

REASONS FOR GRANTING THE PETITION

This Court should hold the instant Petition pending any plenary grant of certiorari addressing the question presented, which was reserved by the plurality in *United States v. Haymond*, __U.S.__, 139 S.Ct. 2369 (2019).

The Fifth and Sixth Amendments to the United States Constitution require that any fact that increases the defendant's maximum or minimum range of punishment must be proven to a jury beyond a reasonable doubt. *See Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Alleyne v. United States*, 570 U.S. 99 (2013). Section 3583(g)(1) of Title 18 compels the district court to impose a term of imprisonment when a defendant on supervised release possesses illegal drugs. A straightforward application of *Alleyne*, therefore, would tend to show that the fact of such illegal possession must be proven to a jury beyond a reasonable doubt. Alternatively, a reviewing court might conclude that Congress would have preferred to sever and excise the mandatory revocation provision to compelling a full-blown jury trial for every allegation of drug possession. *See United States v. Booker*, 543 U.S. 220 (2005).

Nonetheless, at least five Justices in *United States v. Haymond*, __U.S.__, 139 S.Ct. 2369 (2019), concluded that some revocation proceedings fall outside the simple rules of *Apprendi* and *Alleyne*. *See Haymond*, 139 S.Ct. at 2385 (Breyer, J., concurring); *id.* at 2391 (Alito, J., dissenting). Under the view propounded by Justice Breyer's concurrence, facts determined in a revocation proceedings should instead be compared more globally to a "traditional element." *See id.* at 2385-2386 (Breyer, J., concurring). This analysis considers whether the fact in question sets forth an

independent criminal offense, whether it triggers a mandatory minimum, and the length of the mandatory minimum. *See id.* at 2385-2386 (Breyer, J., concurring).

A four Justice plurality expressly reserved the question at issue in this case: whether 18 U.S.C. 3583(g) violates the Fifth and Sixth Amendment, cautioning:

Just as we have no occasion to decide whether § 3583(k) implicates *Apprendi* by raising the ceiling of permissible punishments beyond those authorized by the jury's verdict, see n. 4, *supra*, we do not pass judgment one way or the other on § 3583(e)'s consistency with *Apprendi*. Nor do we express a view on the mandatory revocation provision for certain drug and gun violations in § 3583(g), which requires courts to impose “a term of imprisonment” of unspecified length.

Id. (Gorsuch, J.)(plurality op.), 139 S. Ct. at 2382. Such reservations have previously foreshadowed grants of certiorari on the reserved issue, often promptly. ***Compare*** *Blakely v. Washington*, 542 U.S. 296, 305, n.9 (2004)(“The Federal Guidelines are not before us, and we express no opinion on them.”) ***with*** *United States v. Booker*, 543 U.S. 220 (2005)(rendering a holding on this question); ***compare*** *Voisine v. United States*, 136 S. Ct. 2272, 2280, n.4 (2016)(Like *Leocal*, our decision today concerning § 921(a)(33)(A)'s scope does not resolve whether § 16 includes reckless behavior.”) ***with*** *Borden v. United States*, No. 19-5410, 140 S.Ct. 1262 (March 2, 2020)(granting certiorari to decide this question in the context of 18 U.S.C. 924(e), which contains a clause similarly worded to 18 U.S.C. 16); ***see also*** *Voisine*, 136 S. Ct. at 2277 (“...we expressly left open whether a reckless assault also qualifies as a “use” of force—so that a misdemeanor conviction for such conduct would trigger § 922(g)(9)'s firearms ban. ...The two cases before us now raise that issue.”)(internal citations omitted)(citing *United States v. Castleman*, 572 U.S. 157 (2014)).

In the event that the Court chooses to address this issue while the instant case remains on direct appeal, the outcome may be affected. Although the error was not preserved in district court, which compels review for plain error only, *see* Fed. R. Crim. P. 52(b), the “plain-ness” of error may be established by change of precedent on before the judgment is final. *See Henderson v. United atates*, 568 U.S. 266 (2013). Accordingly, Petitioner requests that the Court hold her petition pending any case that presents the issue reserved in *Haymond*, and then grant the petition, vacate the judgment below, and remand for reconsideration. *See Lawrence on behalf of Lawrence v. Chater*, 516 U.S. 163 (1996).

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 5th day of November, 2020.

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