

No. _____

In The
Supreme Court of the United States

ALFORNIA JASON WALL, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page:
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW.....	1
JURISDICTIONAL STATEMENT.....	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	1
A. Procedural History.....	1
B. Facts	3
REASONS CERTIORARI SHOULD BE GRANTED	5
I. The Court Should Grant Certiorari to Give Guidance to Lower Courts on the Effect of Running Consecutively a Federal and State Recidivism Enhanced Sentence	5
CONCLUSION.....	9
APPENDIX:	
Opinion	
U.S. Court of Appeals For the Fourth Circuit filed August 18, 2020.....	App. A
Judgment	
U.S. Court of Appeals For the Fourth Circuit filed August 18, 2020.....	App. B

TABLE OF AUTHORITIES

Page(s):

Cases:

<u>Gall v. United States</u> , 552 U.S. 38 (2007)	5
<u>Rita v. United States</u> , 551 U.S. 338 (2007)	6
<u>United States v. Abu Ali</u> , 528 F.3d 210 (4th Cir. 2008)	6

Statutes:

18 U.S.C. § 1854	8
18 U.S.C. § 1951	1
18 U.S.C. § 1951(a)	2
18 U.S.C. § 3553(a)	5, 6
28 U.S.C. § 1254	1
28 U.S.C. § 2101	1

Constitutional Provision:

U.S. Const. amend V	1
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Sentencing Guidelines:

U.S.S.G. § 4B1.1	4
U.S.S.G. § 5K1.1	4

OPINIONS BELOW

The order appealed from is the Judgment located at the CM/ECF Docket of the Fourth Circuit in United States v. Wall, Case No. 19-4580, Docket Entry No. 36-1, entered on August 18, 2020. A copy of the judgment and *per curiam* unpublished opinion of the Fourth Circuit are attached as Exhibits A and B.

JURISDICTIONAL STATEMENT

This petition for writ of certiorari is from a final judgment by the Fourth Circuit Court of Appeals on August 18, 2020 in a direct appeal of a sentence imposed against Petitioner Alfordia Wall, Jr. in the United States District Court in the Middle District of North Carolina for a criminal violation of 18 U.S.C. § 1951. Accordingly, this Court has jurisdiction over this petition for writ of certiorari and the matter referenced herein pursuant to 28 U.S.C. § 1254 and 28 U.S.C. § 2101.

CONSTITUTIONAL PROVISIONS INVOLVED

"No person shall be . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend V.

STATEMENT OF THE CASE

A. Procedural History

On July 30, 2018, a federal grand jury for the Middle District of North Carolina returned a single-count indictment against Mr. Wall. [J.A. at 12-13.]¹ That indictment charged him with interfering with commerce on or about November 2,

¹ Record citations are to the Joint Appendix currently on file with the Fourth Circuit Court of Appeal in Case No. 19-4580.

2017 in Davidson County, NC, by robbing The Fish House Social Club of \$997.00 from the possession of an employee of the said business against her will by means of actual and threatened force, violence, and fear of injury, to her person; in violation of 18 U.S.C. § 1951(a). [J.A. at 12-13.]

On December 14, 2018, Mr. Wall pled guilty to the indictment pursuant to a plea agreement. At that hearing, however, the trial court requested that the parties brief whether the defendants' position on the facts of this case would meet the elements of 18 U.S.C. § 1951(a). [J.A. at 21-60.]

On December 31, 2018, the undersigned submitted Defendant's Statement of Alternate Factual Basis and Supplemental Memorandum. [J.A. at 122-35.] On January 23, 2019, the Government filed an Amended Factual Basis acquiescing to the Defendant's factual position. [J.A. at 61-64.] On January 24, 2019, the trial court accepted Mr. Wall's guilty plea. [J.A. at 65-71.]

On July 15, 2019, Mr. Wall was sentenced to a period of 90 months consecutive to the undischarged North Carolina state term of imprisonment imposed in Case Nos. 17 CRS 90686, 17 CRS90685, and 18 CRS24141. A written Judgment was filed on July 24, 2019. [J.A. at 107-13.]

On August 8, 2019, the undersigned filed a Notice of Appeal on behalf of Mr. Wall. [J.A. 114-15.] Also on August 8, 2019, the undersigned filed a motion to extend time for filing the appeal. [J.A. at 116-19.] On August 12, 2019, the trial court granted this motion. [J.A. at 120-21.]

The appeal was briefed on the merits and on August 18, 2020, the Fourth Circuit Court of Appeals entered a judgment and an unpublished *per curiam* opinion affirming the sentence and judgment of the Middle District of North Carolina below. See Exs. A, B.

This petition follows.

B. Facts

The facts of the criminal conduct underlying the appeal and this *Petition for Writ of Certiorari* are found in the Pre-Sentence Report attached to Volume II of the Joint Appendix in the appeal below. According to the PSR:

3. On November 2, 2017, at approximately 5:07 a.m., the Davidson County Sheriff's Office (DCSO), Lexington, NC, received a telephone call reporting a robbery at The Fish House Social Club, located at 1569 National Highway, Thomasville, NC.

4. Upon the arrival of law enforcement officers, an employee, A.S., reported that a customer, subsequently identified as the defendant, Alfordia Jason Wall, Jr., followed her to the back corner of the business. A.S. reported that the defendant positioned himself so that she could not leave that confined area. According to A.S., the defendant then produced a small pistol with a silver colored barrel, which he pointed at her stomach. Defendant Wall repeatedly demanded that A.S. give him the money from the pouch A.S. carried in the course of her duties at the business. Alfordia Wall, who is approximately 6' 7", and much larger than A.S., made the demands with a threatening tone of voice and demeanor, which frightened her. Defendant Wall ripped the cash out her hand and told her not to move. A.S. reported Defendant Wall then told her to take him to the office where more money was stored. A.S. informed the defendant she did not have access to that since the other employee left. Defendant Wall then left the business on foot. The total amount of United States currency that was stolen was \$997.00.

5. A.S. immediately went to the office and advised another employee, E.G., of the robbery. D.S. was working security at the front door and observed the defendant exit the business. D.S. reported almost immediately after the defendant's exit, E.G. came and advised him of the robbery. D.S. ran outside to the parking lot but could no longer see the Defendant Wall.

6. Investigators reviewed the video surveillance footage from the cameras installed at the Fish House. An employee identified the suspect as Alforia Jason Wall, Jr. and reported that she was 100% certain of the identification. DCSO deputies confirmed the identification by viewing photographs of Defendant Wall that were posted publicly on his Facebook page. No customers who were present at the time of the robbery reported seeing a firearm. Additionally, no firearm was recovered during the course of the investigation.

[J.A. at 138-39.] Mr. Wall also denied that he used a firearm, but did admit that he physically intimidated and forcefully grabbed business assets from D.S. [J.A. at 122-35.]

The Pre-Sentence Report in this case identified Mr. Wall as a career offender. [J.A. at 140.] As shown in paragraphs 20, 31 and 34 of the Presentence Report, the finding of the career offender enhancement under U.S.S.G. § 4B1.1 was based on two convictions for violations of the North Carolina Felony Common Law Robbery. The first of these convictions was dated on January 3, 2001, in which Mr. Wall was sentenced to 15 to 18 months imprisonment, and the second of these convictions is dated November 28, 2005. [J.A. at 140, 145-46.] The instant offense was committed November 2, 2017. [J.A. at 12.]

The undersigned, on behalf of Mr. Wall, objected to the career offender designation. [J.A. at 171-75.] In addition, the undersigned on Mr. Wall's behalf requested that the Court run his sentence concurrent with his undischarged state time. [J.A. at 181-84.] The trial court, however, upheld the career offender designation for Mr. Wall and ordered that his sentence be run consecutive to his undischarged state sentences. After granting the Government's motion pursuant to U.S.S.G. § 5K1.1, the trial court sentenced Mr. Wall to the 90 month term of imprisonment. [J.A. at 185-89.]

REASONS CERTIORARI SHOULD BE GRANTED

I. The Court Should Grant Certiorari to Give Guidance to Lower Courts on the Effect of Running Consecutively a Federal and State Recidivism Enhanced Sentence.

When determining a sentence, the District Court must calculate the appropriate advisory guidelines range and consider it in conjunction with the factors set forth in 18 U.S.C. § 3553(a). Gall v. United States, 552 U.S. 38, 49 (2007). Appellate review of a sentence, "whether inside, just outside, or significantly outside the [g]uidelines range," is for abuse of discretion. Id. at 41. An Appellate Court must first "ensure that the district court committed no significant procedural error." Id. at 51. If the Court of Appeals finds the sentence procedurally reasonable, it can then "consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." Id.

The factors to be considered by the District Court in determining a sentence with respect to substantive reasonableness are set out in 18 U.S.C. § 3553(a). The factors to be considered by the District Court in determining a sentence are set out in 18 U.S.C. § 3553(a). That statute states in relevant part:

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- 1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- 2) the need for the sentence imposed—
 - a. to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - b. to afford adequate deterrence to criminal conduct;
 - c. to protect the public from further crimes of the defendant;

- d. to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- 3) the kinds of sentences available;
- 4) the kinds of sentences and the sentencing range established for – the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines...issued by the Sentencing Commission;
- 5) any pertinent policy statement...issued by the Sentencing Commission...;
- 6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- 7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

Many federal circuits, like the Fourth Circuit, have held that "a sentence located within a correctly calculated guidelines range is presumptively reasonable." United States v. Abu Ali, 528 F.3d 210, 261 (4th Cir. 2008). However, "the presumption is not binding." Rita v. United States, 551 U.S. 338, 347 (2007).

In this case, the Presentence Report indicated that the application of the career offender statute raised Mr. Wall's guideline range by twelve offense levels. [J.A. at 140.] This had the practical effect of raising his advisory Sentencing Guideline range from 51 to 63 months to 151 to 188 months, effectively tripling his range. [J.A. at 162.]

Mr. Wall had pled to grabbing business funds out of someone's hand by force because she owed him money. [J.A. at 122-34.] While this is a serious offense, sentence within the career offender guideline range would have been excessive with respect to the seriousness of the offense factor.

Mr. Wall is also currently serving a sentence in the North Carolina Department of Corrections for 66 to 92 months of imprisonment with a projected release date of June

24, 2022. This sentence was based on a conviction for possession of a firearm by felon and a habitual offender status on or around November 22, 2017. [J.A. at 152.] Mr. Wall received this sentence on June 13, 2018. [J.A. at 152.]

In this case, Mr. Wall was sentenced to essentially serve two recidivist enhanced sentences back to back, first in North Carolina and then in the federal system. The combination of a career offender status and a habitual offender status results in an extreme amount of incarceration for Mr. Wall that is simply not proportional to the seriousness of his offense, his overall criminal conduct during the time frame of the offense, or even the seriousness of his overall lifetime criminal activity.

The effect of doubling up the two offender provisions from Mr. Wall's state and federal sentences by running them consecutively resulted in a clearly excessive and substantively unreasonable sentence in Mr. Wall's case, resulting in a total time of imprisonment that was significantly greater than necessary to meet the Section 3553(a) sentencing factors. Respectfully, the trial court declined to use its discretion to avoid this result, and in doing so abused its discretion.

Mr. Wall's state sentence, in and of itself, was already approximately 2 to 3 times longer than any previous sentence he served for conduct which constituted a greater threat to public safety than his 2017 activity. Mr. Wall's current state sentence was already a very significant sentence in terms of deterrence and protecting the public, and the trial court abused its discretion in not giving that factor adequate weight. As a result, the sentence in this case was not substantively reasonable, and should therefore have been vacated.

18 U.S.C. § 1854 sets forth the procedure for the district court to consider when a defendant is currently serving an undischarged term of imprisonment in a state jurisdiction.

(a) IMPOSITION OF CONCURRENT OR CONSECUTIVE TERMS.-If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

(b) FACTORS TO BE CONSIDERED IN IMPOSING CONCURRENT OR CONSECUTIVE TERMS.-The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a).

(c) TREATMENT OF MULTIPLE SENTENCE AS AN AGGREGATE.-Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

18 U.S.C. § 1854.

The undersigned has not been able to find a similar fact situation to this case in controlling precedent, where both a federal and a state relatively steep and drastic recidivism enhancement were applied to a criminal defendant in temporally overlapping but unrelated cases. The Court should grant certiorari to give guidance to lower courts on the effect of running consecutively a federal and state recidivism enhanced sentence.

Here, the trial court, in fashioning a sentence for Mr. Wall, should have given more consideration to the fact that there were two recidivist enhancements involved

in Mr. Wall's situation. Further, the trial judge, in declining to run Mr. Wall's federal sentence concurrently with his state, did not specifically address the recidivist enhancement issue in his remarks as to why he decided to run the sentence consecutively. [J.A. at 102.] Thus, these general remarks do not establish the substantive reasonableness of Mr. Wall's sentence in light of the current state time he has been serving and the nature of this specific offense. Accordingly, the sentence Mr. Wall received in this case was not substantively reasonable.

The Court should vacate this sentence and hold that the district court must specifically address the recidivist aspect of a state sentence that an offender is already serving when sentencing a federal offender in a temporally overlapping case which is not considered to be relevant conduct.

CONCLUSION

For the above stated reasons, Petitioner respectfully requests that the Court grant his petition for writ of certiorari to the Fourth Circuit Court of Appeals, and grant whatsoever other relief may be just and proper.

This the 6th day of November, 2020.

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