

No. _____

In the Supreme Court of the United States

ERIC TREANTOS,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the United States
Court of Appeals for the First Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Does the First Circuit Court of Appeals' decision in petitioner's case conflict with this Court's decisions in Booker v. United States, 543 U.S. 220 (2005) and Gall v. United States, 552 U.S. 38 (200?) which held, *inter alia*, that criminal sentences must be procedurally reasonable?

CITATION

United States v. Eric Treantos, No. 18-1543 (1st Cir. July 23, 2020) (Judgment), A true copy, attached, at Appendix A. ("App. ___").

JURISDICTION

The Court of Appeals had jurisdiction of this case under 18 U.S.C. § 1291. On July 23, 2020, it affirmed the judgment of the district court in all respects. Judgment entered on the same date.

PETITION FOR WRIT OF CERTIORI

Eric Treantos (petitioner, defendant, Mr. Treantos) respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in this proceeding on July 23, 2020 because it directly conflicts with this Court's decision in Gall v. United States, 552 U.S. 38, 51, 128 S. Ct. 586 (2007)(appellate court "must first insure that the district court committed no significant procedural error, ...such as failing to consider the § 3553(a) factors..").

STATEMENT OF THE CASE

Statement of Facts

In September, 2015 Mr. Treantos was indicted as the result of an undercover investigation into a free, file-sharing internet website known to contain images of child pornography.¹ He had uploaded images of a nine year old girl, the daughter of his girlfriend. As the girl was wearing only a bathing suit, or somewhat suggestive summer clothes in the images, they were not child pornography. But they were images which could evoke a prurient interest in

¹ Substantially all the facts recited in this statement of facts are taken from the case record and are contained in "Defendant's Opposition to Government's Motion for Summary Affirmance Pursuant to L.R.27(c)", Appendix C.

some people. Eric, however, also downloaded from the site hundreds of photographic images and thousands of videos which did contain child pornography.

Law enforcement investigating the website traced Eric's activity on the site to the house in New Hampshire where he lived with his girlfriend and her daughter. Officers from the federal Department of Homeland Security Investigations ("HSI") visited the house shortly thereafter. Eric, a long-distance truck driver by trade, was traveling on a multi-day assignment for a delivery in the Midwestern part of the country. He had taken his computer and cell phone with him. Agents obtained his cell number from the girlfriend and called him. They explained the investigative results to him but learned that, on a tip from a family member, he had thrown his laptop computer into a dumpster several hundred miles away earlier on the trip. Regardless, he both agreed to turn around and try to retrieve it and that he would not erase any images from his cell phone. Over the next two days Eric remained in frequent phone contact with the agents apprising them of his progress. He was able to retrieve the laptop from the dumpster. As instructed, he stopped at a law enforcement station en route and turned the items over to them for transfer to the HSI agents. When he arrived home to New Hampshire he was arrested without resistance by HSI. He was, however, very afraid and remorseful. He plaintively asked the officers: "Is there help for someone like me?"

Mr. Treantos was promptly arrested and shortly thereafter charged in a three count indictment alleging production of child pornography (Count One), distribution of child pornography (Count Two), and possession of child pornography (Count Three). He pled not guilty at arraignment but eventually pled guilty to Counts Two and Three. Count One was dismissed by the government after sentencing.

He was eventually sentenced to 210 months in prison to run concurrently on both counts of conviction.

On appeal to the First Circuit Court of Appeals he asserted that his sentence was procedurally unreasonable in violation of this Court's decisions in Booker v. United States, 543 U.S., 125 S. Ct. 738 (2005), Gall v. United States, 552 U.S. 38, 51, 128 S. Ct. 586 (2007) and progeny. See Judgment, Appendix A ("App. A") p. 1.

ARGUMENT

I. THE FIRST CIRCUIT'S DECISION IS CONTRARY TO THIS COURT'S DECISION IN GALL V. UNITED STATES , THAT A SENTENCE MUST BE PROCEDURALLY REASONABLE UNDER THE SENTENCING GUIDELINES.

A. Under Gall Both District and Courts of Appeal Must Consider the "Nature and Circumstances of the Offense and the Characteristics of the Defendant."

Neither the district court nor the court of appeals gave any real consideration to the extraordinary circumstances of either Eric's extremely abusive and neglectful childhood or his voluntary and extensive cooperation in turning over the massive inculpatory evidence used to obtain his conviction. But for that assistance it appears extremely doubtful that his sentencing guidelines would have approached the final calculation subjecting him to a sentence up to 210 months in prison. Trial counsel laid out defendant's immediate cooperation with the authorities:

"from very early on he sought to take responsibility for this. He, as the Court knows, retrieved his laptop for the police and gave it to them which they used as evidence against him. He sat down and gave voluntary Mirandized statements. He allowed them to take over his online persona so that they could go after other people who do these activities.

So, here's someone who, to a large degree, realized the jig was up and kind of gave in to it in a large degree which, as I see it on his behalf,

was one big cry for help.”

App. “C”, p. 1.

In spite of the evidence of such extraordinary and voluntary co-operation the trial court completely ignored it in its statement of the rationale for the sentence of 210 months in prison, the high end of the calculated sentencing range of 144 to 210 months.

“I have read the letters you submitted. I have read Mr. Keating’s Report. I’m not persuaded that the defendant does not pose a substantial serious risk to children, and I’m going to sentence at the top end of the guideline range. I don’t see a basis for – I agree with Mr. Huftalen, I don’t see a basis for a non-guideline sentence downward. I don’t see a departure basis or variant basis. And I gather from Mr. Huftalen’s presentation that the charges and the exposure could have been much, much worse in this case had it been charged differently. But I think that the overriding interest here, the controlling interest here is protection of the public and I suppose to an extent general deterrence.”

Sentencing Tr. 11-12; Appendix 56-57.

The judge did not say anything about Eric’s extraordinary cooperation in producing the evidence used to convict him. That was error that should not go uncorrected.

Conclusion

For the reasons stated above, the defendant, Eric Treantos, respectfully prays that his petition for certiorari be granted.

Respectfully submitted,

ERIC TREANTOS,

By his attorney,

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APPENDIX A

JUDGMENT

United States v. Treantos

No. 18-1543

United States Court of Appeals For the First Circuit

No. 18-1543

UNITED STATES,

Appellee,

v.

ERIC TREANTOS,

Defendant - Appellant.

Before

Torruella, Kayatta and Barron,
Circuit Judges.

JUDGMENT

Entered: July 23, 2020

Defendant appeals his 210-month sentence for distribution and possession of child pornography, arguing that the district court committed procedural error by failing to properly consider certain mitigating sentencing factors set out in 18 U.S.C. § 3553(a). The government has moved for summary affirmance of the district court's decision. Defendant has filed an opposition, which he has moved to be filed under seal. We have carefully reviewed the parties' briefs and the record below and **GRANT** both the government's motion for summary disposition and defendant's motion to file his opposition under seal. However, we **ORDER** defendant to show cause within seven days as to why the provisionally sealed motion to file under seal should not be unsealed. See Local Rule 11.0(c)(2).

By the Court:

Maria R. Hamilton, Clerk

cc:

Raymond Elwood Gillespie
Eric Treantos
Seth R. Aframe
Arnold H. Huftalen

APPENDIX B

United States Motion for Summary Affirmance

United States v. Treantos

No. 18-1543

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES' MOTION FOR SUMMARY AFFIRMANCE

Defendant Eric Treantos was indicted for manufacturing, distributing and possessing child pornography. The defendant ultimately pleaded guilty to the distribution and possession charges and the government dismissed the manufacturing charge. The guideline range for the defendant was 168 to 210 months of imprisonment. The district court imposed a 210-month sentence, a within-in guideline sentence. The defendant argues on appeal that the sentence imposed was procedurally unreasonable because the district court did not adequately address the mitigating factors that the defendant presented in support of a lower sentence.

According to the presentence report, the relevant facts were as follows. The defendant maintained a large collection of child pornography consisting of over 1,700 images and 650 videos. The

majority of the defendant's child pornography collection involved prepubescent girls. The defendant also was involved in trading images over the internet. One of the videos in the defendant's possession was an original image. In a confession, the defendant admitting that he obtained this video of a 15 year-old girl masturbating by communicating with the girl over the internet. The defendant also admitted to distributing this image to others. The defendant further admitted to engaging in sexual conduct with an underage female with whom he had a familial relationship. S. App. 64-67.

The defendant suffered significant sexual trauma as a young child based on abuse inflicted by the defendant's biological father. The defendant had been diagnosed with bipolar disorder and attention deficit hyperactivity disorder. The defendant underwent a psychological and sexual evaluation as part of the sentencing process. The report concluded that the defendant exhibits "deviant sexual interest in prepubescent boys and girls." S. App. at 35.

At sentencing, the defendant argued for a 144-month sentence. In support of that sentence, the defendant relied on the following considerations. He (1) took responsibility for his misconduct early on in

the investigation; (2) suffered severe sexual abuse during childhood; and (3) had no prior criminal history.

The government responded with a 210-month request. The government acknowledged the defendant's childhood trauma but argued that, absent that fact, it would have sought an upward variance in light of the defendant's abhorrent conduct. The government argued that a long sentence was warranted to separate the defendant from children "for a very long time." Government counsel further commented that the defendant "presents a more troubling person in terms of danger to others in the community than virtually everyone" that government counsel had previously prosecuted, save one other case. App. at 55.

After hearing argument, the district court agreed with the government and imposed a 210-month sentence. In support of that conclusion, the court provided the following explanation:

I have read the letters you submitted. I have read the [psychological and sexual] report. I'm not persuaded that the defendant does not pose a substantial serious risk to children and I'm going to sentence at the top of the guideline range. . . I don't see a basis for a non-guideline sentence downward. I don't see a departure basis or a variant basis. And I gather from [the government's] presentation that the charges and the exposure could have been much, much worse in this case had it been charged differently. But I think that the overriding interest here, the controlling

interest here is protection of the public and I suppose to an extent general deterrence.

App. at 56. The defendant did not object to the district court's explanation of the sentence, preserving only objections to the calculation of the guideline range, which he has not raised on appeal. App. at 59.

The defendant's claim on appeal is that the district court did not adequately explain the sentence by failing to address more specifically the basis on which the defendant sought leniency. When a defendant does not contest to the district court's explanation during the sentencing hearing, review on appeal is limited to plain error. United States v. Ruiz-Huertas, 792 F.3d 223, 227 (1st Cir. 2015). Thus, to obtain relief, the defendant must show that an error occurred, that was clear or obvious and which not only affected the defendant's substantial rights but also seriously impaired the fairness, integrity or public reputation of the judicial proceedings. Id.

"It is settled law . . . that the failure to adequately explain a sentence, in and of itself, is not plain error." Ruiz-Huertas, 792 F.3d at 227. A defendant must also show that, but for the error, the district court would have imposed a different, more favorable sentence." Id.

The defendant has not remotely demonstrated how a more fulsome explanation by the district court would have resulted in a more favorable sentence. The court received written pleadings and heard oral argument on why the defendant's upbringing was a mitigating factor. The court also heard the government argue for a guideline sentence based on the need to protect the public.

After hearing the argument, the district court specifically referenced the psychological and sexual report, which discussed in detail, the defendant's upbringing and the effect of that upbringing on the defendant's conduct. The court nevertheless concluded, after reading the report, that a guideline sentence was appropriate because the defendant was a danger to children.

It is often the case that "a court's reasoning can be inferred by comparing what was argued by the parties . . . with what the judge did." United States v. Jimenez-Beltre, 440 F.3d 514, 519 (1st Cir. 2006) (en banc). So it is here. The district court heard and read about the abuse that the defendant suffered as a child but concluded that the risk of the defendant causing future harm was the paramount consideration such that a guideline sentence was appropriate.

In the end, the defendant's claim is not really an argument about the explanation provided. It is an argument that the district court overvalued the need to protect the public against the unique characteristics of the defendant, i.e., the history of childhood abuse. But sentencing is "more an art than a science." United States v. Clogston, 662 F.3d 588, 593 (1st Cir. 2011). The weighing of the factors that go into a sentence is a task largely within the district court's discretion. Id.

Here, one side argued mitigation from the guideline range based on the defendant's personal circumstances and the other side argued public protection as the reason for a guideline sentence. After hearing both sides make their case, the court sided with the government. "That the sentence court does not attach to certain of the mitigating factors the significance [the defendant] thinks they deserve" is not a basis for overturning the sentence. Clogston, 662 F.3d at 593.

For the reasons stated, the defendant has not demonstrated plain error in the sentencing proceeding. Therefore, the Court should grant the government's motion for summary affirmance.

Dated: May 31, 2019

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading has been served via ECF electronic filing to Raymond E. Gillespie, counsel for the defendant.

/s Seth R. Aframe
Seth R. Aframe
Assistant U.S. Attorney

APPENDIX C

Defendant's Opposition to Government's Motion for Summary

Affirmance Pursuant to L.R. 27(c)

United States v. Treantos

No. 18-1543

Motion to File UNDER SEAL Pending.

Supreme Court of the United States

No. _____

ERIC TREANTOS,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

Certificate of Service

I, Raymond E. Gillespie, attorney for the petitioner, Eric Treantos, hereby certify that I served the foregoing Petition for Writ of Certiorari, on all parties by mailing first class, postage prepaid, one copy each to Seth R. Aframe, Assistant United States Attorney, 53 Pleasant Street, Concord, New Hampshire 03301-3904 and to the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001 on the date indicated below:

Dated: October 21, 2020

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