
NO. _____

IN THE
SUPREME COURT
OF THE
UNITED STATES

2020-2021 TERM

HARVEY BASS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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QUESTIONS PRESENTED

I.

WHETHER CERTIORARI REVIEW SHOULD BE GRANTED
WHERE THE ELEVENTH CIRCUIT AFFIRMED BASS'
SENTENCE WHERE BASS' SENTENCE WAS UNREASONABLE
IN LIGHT OF THE STATUTORY SENTENCING FACTORS
LISTED IN 18 U.S.C. §3553(A)-(F) AND PRINCIPLES APPLIED
BY THE ADVISORY FEDERAL SENTENCING GUIDELINES.

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The Petitioner, HARVEY BASS (hereinafter “BASS”), by and through his undersigned counsel, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in the proceedings on September 18, 2020.

OPINION OF THE COURT BELOW

The Court of Appeals for the Eleventh Circuit entered an unpublished Order affirming BASS' sentence on September 18, 2020. *Appendix 1.*

JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals affirming the judgment and sentence of the United States District Court was entered on September 18, 2020. The Eleventh Circuit Court of Appeals entered its order denying BASS' Petition for Rehearing and Petition for Rehearing *En Banc* on November 4, 2020. *Appendix 2.* The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. §1254 and Rule 10.1, Rules of the Supreme Court. This Petition for Writ of Certiorari is filed pursuant to Rule 13.1, Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION, AMENDMENT V

The Fifth Amendment to the Constitution provides, in relevant part that: "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 deprived of life, liberty, or property, without due process of law...."

UNITED STATES CONSTITUTION, AMENDMENT VI

The Sixth Amendment to the Constitution provides in relevant part that: “In all criminal prosecutions, the accused shall enjoy the right ... 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.”

STATEMENT OF THE CASE

On November 21, 2011, in the Middle District of Florida, a federal indictment was issued charging BASS and six other co-defendants with knowingly and willfully conspiring to possess with the intent to distribute 1000 kilograms or more of marijuana in violation of 21 U.S.C. §841(a)(1) and 21 U.S.C. §841(b)(1)(A)(vii). (DE:5).

BASS entered into a plea agreement on November 2, 2012 and same was accepted by the Court at the Change of Plea Hearing on November 13, 2012. BASS pled guilty to the charges in the indictment. (DE:245; 247; 285).

BASS’ sentencing hearing was held on March 29, 2013 (DE:283). BASS was sentenced to 120 months incarceration followed by five (5) years of supervised release and a total assessment of \$100.00. BASS’ request to be housed in a facility close to his family and to be enrolled in the 500 hour intensive drug treatment program was granted. (DE:283:12-16; 270-1).

On March 29, 2013, an Amended Judgment was entered reducing BASS' sentence from 120 months to 84 months, followed by five (5) years of supervised release and an assessment of \$100.00. In addition, BASS' request to be housed near his family and be enrolled in the 500 hour intensive drug treatment program was again granted. (DE:300),

On April 4, 2019, an arrest warrant was executed as to BASS for violating the terms of his supervised release. (DE:384)

On April 15, 2019 an Order of Detention Pending Final Revocation Hearing was entered. (DE:388). On October 22, 2019, a Final Revocation Hearing regarding the Petition for violation of BASS' supervised release was held. BASS admitted to the violations and as a result of his admissions, BASS' supervised release was revoked and he was sentenced to a term of 37 months due to the violation alleged in the Petition. Said sentence was to be served consecutive to his sentence that was imposed in the Federal Case, Case No.:8:17-cr-623-T-33CPT in the Middle District of Florida. Supervised release was not reimposed following his sentence. (DE:418:20-21).

Based upon the District Court's ruling a Judgment for Revocation of Probation or Supervised Release was entered on October 22 2019. (DE:412). As a result of the sentence imposed, BASS filed his Notice of Appeal on October 23, 2019 and he is currently incarcerated. (DE:413).

BASS' Final Revocation Hearing was held on October 22, 2019. (DE:418).

At the hearing, it was pointed out that BASS admitted to the violation of his supervised release, that BASS provided substantial assistance in connection with the State Case and the Federal Case filed under Case No.:8:17-cr-623-T-33CPT in the Middle District of Florida. Based on said substantial assistance, BASS sought a sentence within the guideline to run concurrently with the sentence he was currently serving in Federal Case, Case No.:8:17-cr-623-T-33CPT in the Middle District of Florida. The government was seeking the sentence to run consecutively with the above-referenced sentence. (DE:418:4,7).

BASS' counsel advised the District Court that BASS was sentenced to 120 months incarceration for the above-reference case and that he provided substantial assistance in that case and should receive some benefit for same. (DE:418:4).

BASS admitted that he violated his supervised release and the District Court confirmed that he was seeking to have his sentence run concurrent and not consecutive to the sentence he was currently serving in the Federal Case, Case No.:8:17-cr-623-T-33CPT. (DE:418:4-6). The District Court accepted his admission and sentenced BASS to 37 months incarceration with the sentence to run consecutive to the sentence BASS is serving in the Federal Case, Case No.:8:17-cr-623-T-33CPT in the Middle District of Florida. The District Court concluded "I've reviewed petition for revocation of supervised release, and the parties have made statements

on their behalf or waived the opportunity to do so. Therefore, the defendant's supervised release is revoked, and he's committed to the custody of the Bureau of Prisons. And my sentence is just what I said before: You're on supervised release for dealing drugs and you pled guilty to more drug offenses, so . . . 37, that's the bottom of the guidelines, 37. Term of imprisonment imposed by this judgment shall run consecutive with the defendant's term of imprisonment already imposed in the Tampa case previously mentioned. Upon release, you shall be discharged from further jurisdiction . . . I've considered the factors in 18 USC 3553(a) and the advisory sentence and guidelines and policy statements issued by the U.S. Sentencing Commission." (DE:418:20-21). Based on the above sentence, BASS timely filed his Notice of Appeal on October 23, 2019 and he is currently incarcerated. (DE:413).

The Eleventh Circuit Court of Appeals affirmed BASS' sentence on September 18, 2020. The Eleventh Circuit Court of Appeals entered its Order denying BASS' Petition for Rehearing and Petition for Rehearing *En Banc* on November 4, 2020.

BASS' Sentence Should Not Have Been Affirmed By The Eleventh Circuit Where BASS' Sentence Was Unreasonable In Light Of The Statutory Sentencing Factors Listed In 18 U.S.C. §3553(A)-(F) And Principles Applied By The Advisory Federal Sentencing Guidelines.

BASS' sentence was unreasonable in light of the sentencing factors listed in 18 U.S.C. §3553(a)-(f) and the totality of the circumstances, to wit: he admitted his violation and gave substantial assistance in both the State and Federal Court. Moreover, the sentence was not minimally sufficient, but greater than necessary to comply with the purposes of sentencing under 18 U.S.C. §3553(a). Therefore, the District Court did in fact err in sentencing BASS as it did, and because of this, the Eleventh Circuit should not have affirmed BASS' sentence. Based on the above, BASS' Petition for Writ of Certiorari must be granted.

REASONS FOR GRANTING THE PETITION

I.

CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT AFFIRMED BASS' SENTENCE WHERE BASS' SENTENCE WAS UNREASONABLE IN LIGHT OF THE STATUTORY SENTENCING FACTORS LISTED IN 18 U.S.C. §3553(A)-(F) AND PRINCIPLES APPLIED BY THE ADVISORY FEDERAL SENTENCING GUIDELINES.

The Appellate Court reviews a sentence imposed upon revocation of supervised release for reasonableness. *See United States v. Sweeting*, 437 F.3d 1105 (11th Cir. 2006).

The Sentencing Reform Act requires the Court to consider the “history and characteristics” of the defendant. In reviewing BASS’ history, it is quite obvious that sentencing him to 37 months with said sentence running consecutively to the sentence imposed in the Federal Case, Case No.:8:17-cr-623-T-33CPT in the Middle District of Florida is clearly not providing him “with needed education or vocational training, medical care, or other correctional treatment in the most effective manner.” BASS accepted responsibility as to the violation and advised the District Court of his admission to said violation. In addition, BASS’ counsel advised the District Court that BASS provided substantial assistance in the Federal Case, Case No.:8:17-cr-623-T-33CPT in the Middle District of Florida and the State Case in Tampa (DE:418:1-6).

Furthermore, BASS is still addicted to drugs and therefore incarcerating him did not help him with said addiction. In *United States v. Brown*, 224 F.3d 1237 (11th Cir.2000), this Court held that “a court may consider a defendant's rehabilitative needs when imposing a specific incarcerative term following revocation of supervised release.” *United States v. Brown*, 224 F.3d at 1240. 18 U.S.C. §3583(e) which specifically addresses revocation of supervised release and the factors enumerated in 18 U.S.C. §3553(a) (which §3583(e) requires a court to consider) supports a “clear legislative mandate that a court must consider a defendant's need for correctional treatment when determining whether to revoke

supervised release and sentence a defendant to prison.” *United States v. Brown*, 224 F.3d at 1241.

Furthermore, the fact that BASS admitted to said violation sheds a positive light on his “history and characteristics” because of his willingness to cooperate. It also reflects positively on his character. *See, United States v. Fernandez*, 443 F.3d 19 (2nd Cir. 2006). Because of all of the above, the Eleventh Circuit should have considered his argument and found that his sentence was both procedurally and substantially unreasonable. In a nutshell, BASS contends that he was denied his right to due process of law and a reasonable sentence pursuant to the dictates of *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005); *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586 (2007); and *Kimbrough v. United States*, 552 U.S. 85, 128 S.Ct. 558 (2007). BASS’ sentence, in its entirety, was violative of the Section 3553(a) requirements. Given the totality of the circumstances, BASS’ sentence was unreasonable and therefore, BASS received a sentence that was “greater than necessary” causing him not to receive just punishment. *United States v. Livesay*, 525 F.3d 1081 (11th Cir. 2008). *See generally, United States v. Irey*, 612 F.3d 1160 (11th Cir. 2010).

The sentence entered by the District Court was “grossly disproportionate to the offense committed.” *United States v. Flanders*, 752 F.3d 1317 (11th Cir. 2014). BASS’ sentence did not provide just punishment considering the fact that BASS

admitted to the violation and still has an addiction problem. These factors clearly supported a finding that his sentence was unreasonable. *Koon v. United States*, 518 U.S. 81, 116 S.Ct. 2035 (1996); *United States v. Livesay*, 525 F.3d 1081 (11th Cir. 2008). BASS argues that the District Court dwelled too much on the fact that he violated his supervised release and failed to take into account the fact that he admitted said violation and the fact that he provided substantial assistance in the new case against him, both in the Federal and State Case. Therefore, because the District Court focused on only one factor and not all of the factors, the District Court failed to properly consider the factors of U.S.S.G. §3553(a) as the District Court is suppose too.

Although the District Court may have discretion in deciding the weight of said factors, said discretion is not unbridled and the District Court must assure that a just and reasonable sentence is given. *United States v. Livesay*, 525 F.3d 1081 (11th Cir. 2008); *see also United States v. Garcia*, 693 F.2d 412 (5th Cir. 1982). That is not the case at hand. It is quite clear that such factors to wit: that BASS admitted to violating supervised release and the fact that he cooperated with the government supported the District Court entering the sentence sought by BASS' counsel, to wit: for BASS' sentence to run concurrent with the sentence imposed and being served by BASS in the Federal Case, Case No.:8:17-cr-623-T-33CPT in the Middle District of Florida. Therefore, BASS' sentence should have been vacated by the Eleventh

Circuit Court of Appeals; but because the Eleventh Circuit Court of Appeals affirmed BASS' sentence imposed by the District Court, BASS' Petition for Writ of Certiorari must be granted, in the interest of justice.

In considering all of BASS' arguments, it is clear that BASS has met his burden of demonstrating that the sentence imposed by the District Court and affirmed by the Eleventh Circuit was substantially unreasonable and that the sentence should have been vacated by the Eleventh Circuit. *United States v. Thomas*, 446 F.3d 1348 (11th Cir. 2006); *see also*, *United States v. Saac*, 632 F.3d 1203 (11th Cir. 2011). *See also*, *United States v. Bonilla*, 579 F.3d 1233 (11th Cir. 2009).

CONCLUSION

This Court should explicitly adopt BASS' position based upon law and equity. The upholding of his sentence by the Eleventh Circuit seriously affects the fairness, integrity and public reputation of the judicial proceedings. *See generally*, *United States v. Rodriguez*, 398 F.3d 1291 (11th Cir. 2005); *United States v. Olano*, 507 U.S. 725, 113 S.Ct. 1770 (1993). For all of these reasons and in the interest of justice, the Petitioner, HARVEY BASS, prays that this Court will issue a Writ of Certiorari and reconsider the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 30th day of November, 2020, to the SOLICITOR GENERAL OF THE UNITED STATES, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

By */s/ David J. Joffe*
DAVID J. JOFFE, ESQUIRE