

No. _____

In the
Supreme Court of the United States

Kelli Renee Bullard,

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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QUESTION PRESENTED

Did the district court impose a substantively unreasonable sentence of 60 months imprisonment—the statutory maximum—when it did so with a blind eye to Ms. Bullard’s efforts to transform her life?

PARTIES TO THE PROCEEDING

Petitioner is Kelli Renee Bullard, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the United States District Court for the Northern District of Texas and the United States Court of Appeals for the Fifth Circuit:

- *United States v. Bullard*, 819 F. App'x 286 (5th Cir. 2020)
- *United States v. Bullard*, No. 4:19-cr-221-A-1 (N.D. Tex. Jan. 10, 2020)

No other proceedings in state or federal trial or appellate courts, or in this Court, are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Kelli Renee Bullard seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The district court's judgment and sentence is attached as Appendix A. The published opinion of the Court of Appeals is reported at *United States v. Bullard*, 819 F. App'x 286 (5th Cir. 2020). It is reprinted in Appendix B to this Petition.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on September 4, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RULES, STATUTES , AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 3553(a) of Title 18 reads as follows:

(a) Factors To Be Considered in Imposing a Sentence.—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; and

(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 sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(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.

Section 3742 of Title 18 provides in relevant part:

(f) Decision and Disposition.—If the court of appeals determines that—

(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate.

STATEMENT OF THE CASE

A. Introduction

Based on an investigation, initiated in 2013, into potential federal student loan fraud, authorities determined that Kelli Renee Bullard, Appellant, had carried out a scheme, from 2010 to 2015, to fraudulently obtain loans and grants from the U.S. Department of Education. (ROA.204).

The government charged Ms. Bullard, by Information, with one count of Student Financial Aid Fraud, in violation of 20 U.S.C. § 1097(a). (ROA.8-9). On August 30, 2019, she pleaded guilty to the one-count Information. (ROA.117). The Presentence Investigation Report (PSR) was prepared, which identified an advisory sentencing range of 51 to 63 months based on a total offense level of 17 and a criminal history category of VI. (ROA.221). U.S. Probation then issued two addenda to the PSR, ultimately removing a 3-level reduction for acceptance of responsibility based on a positive urinalysis test in December 2019. (ROA.249). This yielded a new advisory sentencing range of 70 to 87 months imprisonment. (ROA.251).

On January 6, 2020, the district court entered an order stating that it “tentatively has concluded” that a sentence “above the top of the advisory guideline imprisonment range would be appropriate in order for the factors the court is to take into account in sentencing under 18 U.S.C. § 3553(a) to be properly considered.” (ROA.41). Meanwhile, Ms. Bullard entered into a non-binding plea agreement with the government, agreeing to pay \$262,339 in restitution (ROA.192-97), and counsel for Ms. Bullard filed a motion for downward variance and requested a sentence of

imprisonment of 36 months or less. (ROA.153). Counsel based the requested downward variance, in large part, on the enormous efforts that Ms. Bullard had put forth in the two years leading up to the sentencing hearing to turn her life around. (*See* ROA.153-55).

At the sentencing hearing, after listing Ms. Bullard's prior charges and convictions, the district court accepted the plea agreement and imposed a 60-month statutory-maximum sentence, followed by 3 years of supervised release. (ROA.174-75). Defense counsel objected to the reasonableness of the sentence under the 3553(a) factors. (ROA.178). This Fifth Circuit affirmed.

REASONS FOR GRANTING THE PETITION

The district court justified a statutory maximum sentence based on the perceived seriousness of the instant offense and Ms. Bullard's criminal history. (ROA.170-74). When the district court imposed its 60 month sentence, it did so in spite of overwhelming evidence of Ms. Bullard's personal growth and rehabilitation. (ROA.153-70). This Court should vacate and reverse for resentencing under a proper balancing of the appropriate factors.

The district court imposed an unreasonable sentence upon Ms. Bullard.

Circuit courts exist, in part, to correct mistakes of substantive reasonableness when they occur. *Rita v. United States*, 551 U.S. 338, 354 (2007). Moreover, appellate review of a sentencing decision for "reasonableness" is proper regardless of whether the sentence is within or outside of the guidelines range. *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008).

In reviewing a challenge to the substantive reasonableness of a sentence, the sentence unreasonably fails to reflect the statutory sentencing factors when: (1) the court does not account for a factor that should have received significant weight; (2) the court gives significant weight to an irrelevant or improper factor; or (3) the court makes a clear error of judgment in balancing the sentencing factors. *United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013) (quoting *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006)). Here, the district court imposed a substantively unreasonable sentence when it did not account for Ms. Bullard's extraordinary—and

largely successful—efforts at self-transformation leading up to the sentencing hearing.

The district court's statutory-maximum sentence was based on the district court's perception of the seriousness of the instant offense and Ms. Bullard's criminal history. Yet over the two years preceding the sentencing hearing, Ms. Bullard made a decision to live a good life and to be a good citizen. This included: (1) working three jobs; (2) satisfying her parole requirements; (3) regaining custody of her children; (4) divorcing her toxic and abusive husband; (5) and making a firm commitment to herself to reform. (ROA.168-69).

Of Ms. Bullard's history and characteristics—which played a central role in defense counsel's mitigation presentation—the district court only appeared to consider how Ms. Bullard would be able to care for her children while in prison and, even then, did so callously:

I realize that the defendant will have something of a problem because of the situation of her children. The defense counsel has indicated that a 36-month term of imprisonment would be acceptable. That, of course, would create the same kinds of problems related to her children that a 5-year term of imprisonment would create, so apparently she has in mind that there is some way she can deal with that problem.

(ROA.174-75).

There were several other aspects of Ms. Bullard's history and characteristics that warranted significant weight yet were effectively ignored by the district court at sentencing. The most encompassing and illustrative aspect is Ms. Bullard's effort to turn her life around in the two-year period prior to sentencing. She finally decided to

face herself in the mirror and atone for her criminal past. At the sentencing hearing, defense counsel, Ms. Bullard's father, a friend, and even her state parole officer (through a letter) and employer (also by letter) described how hard Ms. Bullard had worked—including working multiple jobs—to provide for her children. (ROA.153-70).

As defense counsel explained:

Our position is that this offense happened four years ago. When this happened four years ago, Ms. Bullard went through even more ordeals in her life, was finally released, got her life back together, and this came back and she didn't run away from it.

And for the past more than two years, Ms. Bullard has proven that she is actually living the type of life that everyone in this courtroom would want someone who has been released from some type of incarceration to achieve. We have full rehabilitation, and, once reintegrated into society, having a productive life.

We are asking this Court to approach this case in an individualized manner, recognizing that Ms. Bullard, for the past almost two years, has been an exemplary citizen. She has done everything that she needs -- that has had to be done.

(ROA.153). Her father, in his testimony, also touched on her transformation over this period of time:

But, I couldn't be prouder of my daughter in the last few years for the accomplishments and for the -- the fact that everything that she's been through. The fact that she has come forward and had more than enough time to do what a lot would, and that would be run. She's never made an attempt to run. She's been where she's supposed to be when she's supposed to be.

She's took on a really tough role. She's worked two jobs to maintain housing for her and her children. She went through a lot to get her children back in a short period of

time. There wasn't anything that they could put forth that she did not succeed 100 percent. No matter what it was, no matter when they would call and say, you've got to report at the last moment, she was there. She never once avoided or run from responsibility, never once.

(ROA.164). Moreover, as discussed by witness Gail Phillips and by Ms. Bullard in her allocution, Ms. Bullard was able to turn her life around despite the trauma of her oldest daughter suffering abuse at the hands of her ex-husband. (ROA.166-68). This trauma, coupled with the day-to-day needs of all of her children, strongly suggested a much lower sentence than the one the district court imposed. (ROA.166-68). Yet these facts and circumstances appeared to have no impact on the district court's sentence.

Under the totality of the circumstances, a 60-months sentence was unreasonable. Justice does not require Ms. Bullard to suffer such a sentence here.

CONCLUSION

Petitioner requests that this Court grant her Petition for Writ of Certiorari and allow her to proceed with briefing on the merits and oral argument.

Respectfully submitted,

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