

No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 2020

ELIAS JUNIOR RODRIGUEZ,
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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QUESTIONS PRESENTED

1. DOES A COURT VIOLATE THIS COURT'S HOLDING IN *GALL v. UNITED STATES*, 552 U.S. 38 (2007) BY FAILING TO ADEQUATELY EXPLAIN TO WHAT EXTENT THE COURT'S BELOW-GUIDELINES SENTENCE WAS BASED ON A DOWNWARD VARIANCE, OR A GOVERNMENT'S MOTION UNDER U.S.S.G. § 5K1.1?

LIST OF PARTIES

All parties to this case appear in the caption of cases on the cover page.

TABLE OF CONTENTS

QUESTIONS PRESENTED	ii
LIST OF PARTIES	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION.....	1
U.S. SUPREME COURT DECISION INVOLVED	2
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
REASONS FOR GRANTING THE WRIT	4
CONCLUSION.....	7

INDEX TO APPENDIX

APPENDIX A: Fourth Circuit Court of Appeals Order filed on November 4, 2020, Affirming Petitioner's Sentence

TABLE OF AUTHORITIES

CASES

<i>Gall v. United States</i> , 552 U.S. 38 (2007)	2
---	---

STATUTES

18 U.S.C. § 3553(a)	5
21 U.S.C. § 841(a)(1)	2
28 U.S.C. § 1254.....	1
U.S.S.G. § 5K1.1	2

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The Petitioner, Elias Junior Rodriguez, respectfully requests that a writ of certiorari issue to review the Opinion of the United States Court of Appeals for the Fourth Circuit issued on November 4, 2020, affirming Petitioner's sentence.

OPINIONS BELOW

A Panel of the Fourth Circuit Court of Appeals affirmed Petitioner's sentence by Opinion filed November 4, 2020, a copy of which appears as Appendix A.

JURISDICTION

This petition is filed within 90 days of the decision of the Court of Appeals and is therefore timely. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

U.S. SUPREME COURT DECISION INVOLVED

It must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as a mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence--including an explanation for any deviation from the Guidelines range.

Gall v. United States, 552 U.S. 38, 51 (2007).

STATEMENT OF THE CASE

On October 29, 2018, a grand jury sitting in the Middle District of North Carolina returned a fifteen-count indictment in which Petitioner and six other co-defendants were charged with conspiracy to distribute 500 grams or more of a mixture and substance containing a detectible amount of methamphetamine along with other substantive offenses. Petitioner was charged in Count 15 with a single count of possession with intent to distribute 50 grams or more of a mixture and substance containing a detectible amount of methamphetamine in violation of 21 U.S.C. § 841(a)(1). On March 8, 2019, Petitioner pled guilty to Count 15 pursuant to a written plea agreement. The presentence investigative report, in final form, was filed on June 7, 2019. The presentence report identified a basis for a downward variance and suggested the court vary downward to a sentence of 120 months. On June 20, 2019, the government filed a sealed motion in which it recommended that the court reduce Petitioner's sentence by 40 percent from the sentence the court "would otherwise have imposed within the advisory sentencing guideline range." The government filed this motion under U.S.S.G. § 5K1.1. At sentencing, Petitioner

requested the court to apply the downward variance as recommended by the probation officer, and then apply the motion pursuant to the government's recommendation. The court rejected this and imposed a sentence of 120 months imprisonment to be followed by five years of supervised release. The remaining count of the indictment was dismissed. Petitioner filed a timely notice of appeal on August 9, 2019.

STATEMENT OF THE FACTS

On August 12, 2016, Petitioner was driving a car that was pulled over by detectives from the Surry County Sheriff's Office. A small amount of marijuana was located in the vehicle. Petitioner was detained. Petitioner was overheard discussing his concern that the law was going to his residence. A search warrant was then obtained and executed at Petitioner's residence. Pursuant to the search warrant, the Surry County Sheriff's deputies recovered 248.92 grams of methamphetamine; in addition, multiple firearms were found in the residence. Following his arrest, Petitioner waived his *Miranda* rights and made an uncounseled statement to investigators indicating that he had been selling one-half to one kilogram of methamphetamine per week for approximately one year. While Petitioner was only found in possession of 248.92 grams of methamphetamine, his base level offense was calculated on his statement. This made Petitioner accountable for 26 kilograms of methamphetamine. Accordingly, Petitioner's base offense level was drastically increased by his uncounseled statement to law enforcement. The probation officer preparing Petitioner's presentence investigative report cited this as a basis for a

downward variance. The probation officer expressed concern that Petitioner's guideline range was significantly increased based on his willingness to speak with law enforcement prior to having had counsel appointed in his case. The probation officer noted that Petitioner's candor resulted in an enhancement in drug amounts in his guideline calculation, as compared to the actual amount of controlled substances found at his residence.

In addition, the court also had before it a motion filed by the government pursuant to U.S.S.G. § 5K1.1 recommending a 40 percent reduction from the sentence that the court "would otherwise have imposed within the advisory sentencing guideline range." At the sentencing hearing, however, the court made the following statement regarding how it arrived at a 120-month sentence.

I do not disagree with the 120 months. That is an awfully low range or an awfully low amount for somebody in an advisory range as you have, but I do think that is appropriate, considering the assistance you gave, considering how you grew up, considering your own substance abuse problems and criminal history. So I will, combination of 5K1.1 and a downward variance, impose a sentence of 120 months, which I do find is the lowest I can go and address those 3553(a) factors.

(J.A. 110-11) (emphasis supplied).

Petitioner received a sentence of 120 months imprisonment at his sentencing hearing.

REASONS FOR GRANTING THE WRIT

The District Court committed procedural error when it failed to specify at the sentencing hearing how the court was applying a downward departure under U.S.S.G. § 5K1.1 while simultaneously making a downward variance from the

advisory guideline range. This error resulted in a failure to adequately explain its decision to impose a sentence of 120 months imprisonment and, therefore, the sentence must be vacated.

This Court specified in *Gall, supra*, that a district court should begin all sentencing proceedings by first calculating the applicable guideline range. *Id.* After giving the parties an opportunity to be heard, the district court should then consider all of the appropriate factors under 18 U.S.C. § 3553(a). In doing so, the court is not required to presume that the guideline range is reasonable. The court should make an individualized assessment and, if it determines that an outside-the-guidelines range sentence is warranted, it must then consider the extent of deviation to ensure that the justification is sufficiently compelling to support the degree of variance. After settling on an appropriate sentence, the court must “adequately explain the chosen sentence to allow meaningful appellate review and to promote the perception of fair sentencing.” *Id.* at 51.

On appeal, the appellate court reviews the sentence for an abuse of discretion.

It must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence--including an explanation for any deviation from the Guidelines range.

Id. at 51.

In the instant case, in order for the district court to comply with this Court’s holding in *Gall*, it was necessary for the court to specify how it arrived at the 120-

month sentence. In Petitioner's presentence report, the probation officer noted that pursuant to 18 U.S.C. § 3553(a), a downward variance was warranted given that Petitioner's guideline range had drastically increased based primarily on his willingness to cooperate with law enforcement and provide truthful answers regarding his involvement in selling methamphetamine. The probation officer went further and specifically recommended a downward variance to a sentence of 120 months. The Government then also filed a motion for a downward departure under U.S.S.G. § 5K1.1.

While the court did impose a significantly below guidelines sentence, Petitioner does not know whether the court arrived at that sentence based on the probation officer's recommendation for a downward variance or based on the government's recommendation under U.S.S.G. § 5K1.1. While the court's stated reason indicates that it was a combination of the two, without specifying specifically how the court arrived at its sentence, Petitioner is left to wonder whether he was actually given any credit for his conduct resulting in the government's motion. Likewise, Petitioner is left to wonder whether the probation officer's suggestion for a downward variance was the predominant basis for which the court arrived at its sentence. This Court's precedent clearly requires the district court to "adequately explain the chosen sentence." Here, the court failed to comply with this Court's directives.

On appeal, the Fourth Circuit Court of Appeals upheld the district court's explanation of the sentence. The court specifically found, "[W]e find no fault with the

sentencing procedures of the district court.” (Appendix p. 3). Specifically, with regard to the district court’s failure to specify to what extent the court had arrived at Petitioner’s sentence based on the probation department’s recommendation vis-à-vis the Government’s motion under U.S.S.G. § 5K1.1, the Fourth Circuit panel concluded:

We conclude that the district court met its obligation to “provide a rationale tailored to the particular case at hand and adequate to permit a meaningful appellate review.

Appendix at p. 3 (citations omitted).

Petitioner asks this Court to grant a writ of certiorari to determine whether the Fourth Circuit’s ruling in this case is in accordance with this Court’s prior precedent in *Gall v. United States, supra*.

CONCLUSION

For reasons stated above, Petitioner asks this Court to grant its petition for writ of certiorari to the Fourth Circuit Court of Appeals for review of the holding in this case.

Respectfully submitted this the 28th day of January 2021.

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