

IN THE
Supreme Court of the United States

JOSHUA WRIGHT,
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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QUESTION PRESENTED

Where the court failed to address Petitioner's mitigating arguments and failed to justify its sentence, whether the 151-month sentence is procedurally and substantively reasonable.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINION BELOW.....	1
LIST OF PRIOR PROCEEDINGS	1
JURISDICTION.....	1
STATUTORY PROVISION INVOLVED	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION.....	10
CONCLUSION.....	14
APPENDIX A: Opinion of the U.S. Court of Appeals for the Fourth Circuit (July 9, 2020).....	1a

TABLE OF AUTHORITIES

CASES

<i>Chavez-Meza v. United States</i> , 138 S. Ct. 1959 (2018)	13
<i>Gall v. United States</i> , 552 U.S. 38 (2007)	10, 13
<i>Rita v. United States</i> , 551 U.S. 338 (2007)	10, 13
<i>United States v. Adkins</i> , 937 F.3d 947 (4th Cir. 1991)	13
<i>United States v. Moreland</i> , 437 F.3d 424 (4th Cir. 2006)	13

STATUTORY PROVISIONS

18 U.S.C. § 3553(a)	<i>passim</i>
28 U.S.C. § 1254(1)	1

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Petitioner Joshua Wright respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's unpublished opinion is available at 811 F. App'x 859 (4th Cir. 2020); *see also infra*, Pet. App. 1a.

LIST OF PRIOR PROCEEDINGS

- (1) *United States v. Joshua Wright*, District Court No. 7:18-CR-173-FL, Eastern District of North Carolina (final judgment entered Aug. 28, 2019).
- (2) *United States v. Joshua Wright*, United States Court of Appeals for the Fourth Circuit, No. 19-4640 (decision issued July 9, 2020).

JURISDICTION

The Fourth Circuit issued its opinion on July 9, 2020. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 3553(a) of Title 18 of the United States Code sets forth the factors the district court must consider when sentencing a defendant and states that the “court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing.

STATEMENT OF THE CASE

A. District Court Proceedings

When Petitioner was born, his parents were separated and pursuing a divorce. Growing up, his father paid child support but was “not emotionally involved” in Petitioner’s life. (Fourth Circuit Joint Appendix 75, hereinafter “J.A.”). Petitioner was raised by his mother and oldest sister, Rayana Wright, who was thirteen years his senior. Looking back, his sister recalls that Petitioner blamed himself for their parents’ divorce, and that he “carried those feelings throughout his life.” (J.A. 83). Despite their best efforts to give Petitioner “love and encouragement and to be there for each other,” Petitioner “needed [his] dad in [his] li[fe] to teach [him] how to be a man.” (J.A. 83).

Unfortunately, like many other young men who grow up without a father or father figure, Petitioner “look[ed] for love and acceptance in the wrong places” and joined the Folk Nation gang. (J.A. 83). He then dropped out of school and amassed a string of state criminal convictions between the ages of eighteen and twenty-three. His felony convictions included common law robbery, interfering with an electronic monitoring device, and possession and sale of heroin and cocaine. He was also

convicted of several misdemeanor offenses, including carrying a concealed weapon, resisting a public officer, hit and run/failing to stop for property damage, and no operator's license. (J.A. 71-74). Upon release, he performed poorly on supervision. As his sister notes, Petitioner "made poor choices" that "cost him his freedom because he was loyal to those who never had his best interest at heart." (J.A. 83).

The instant case arose after police officers in Wilmington, North Carolina, used a confidential informant to purchase 0.34 grams of heroin from Petitioner, who was acting as a go-between for another individual, Veshon Shaw. Shaw dropped Petitioner off at the location of the drug sale and picked him up after the transaction was completed. At the time of the sale, Petitioner was twenty-four years old. He was also on probation and wearing a GPS monitor at the time. There was no evidence that Petitioner possessed a weapon. For his participation in the incident, he was federally indicted and pled guilty to one count of distributing a quantity of heroin. (J.A. 69). During the course of the federal case, Petitioner chose not to pursue a substantial assistance motion from the government, which would have required him to name and testify against gang members.

Following the plea, the probation officer prepared a presentence investigation report in the case. (J.A. 67-81). The probation officer determined that Petitioner was accountable for 0.34 grams of heroin. With such a small quantity of drugs, the base offense level was only 12. (J.A. 78 ¶ 50). The offense involved no specific characteristics, nor any victim-related adjustments. There were no adjustments for Petitioner's role in the offense, nor was there an adjustment for obstruction of

justice. The adjusted offense level, therefore, remained at 12. (J.A. 78 ¶ 55). But because of his prior convictions, the probation officer determined that Petitioner was a career offender. The career offender designation raised the offense level by twenty levels, from 12 to 32. (J.A. 78 ¶ 56). With the three-level reduction for acceptance of responsibility, Petitioner's total offense level was 29. (J.A. 78 ¶ 59). This total offense level, combined with a criminal history category of VI, produced a guideline imprisonment range of 151 to 188 months—more than six times the highest sentence he had ever received in state court. (J.A. 61 ¶ 61). Absent the career offender enhancement, his guideline range would have been 24 to 30 months. (J.A. 37). Neither side objected to the presentence report. (J.A. 81).

At sentencing, counsel for Petitioner maintained that a sentence of ten years was more than sufficient to achieve the purposes of sentencing, particularly given the small quantity of narcotics involved in the offense and the severity of the career offender enhancement. Counsel contended that the career offender guideline range was “not proportional to the offense,” which, he reminded the court, involved “less than half-a-gram” of heroin. (J.A. 37). But for the career offender enhancement, counsel pointed out that the guideline range would be 24 to 30 months. As such, counsel noted that “[t]he career offender guideline range in this case is a 530% increase from the noncareer offender guideline.” (J.A. 37).

The court responded that Petitioner “committed a common-law robbery at the age of 18 and got the benefit of dismissal of the robbery with a dangerous weapon charge.” (J.A. 37). The court further observed: “And he couldn't follow supervision.

He cut off his ankle bracelet. He tested positive for marijuana. And then he's carrying a concealed weapon at the age of 18." (J.A. 37). Counsel clarified for the court that the concealed weapon and robbery convictions were connected. The court replied, "Okay. Then he's got [at] 19, possession of heroin, and he gets dismissed from possession with intent to manufacture, sell or deliver heroin and possession of drug paraphernalia." (J.A. 38).

The court continued: "He's interfering with his electronic monitoring device yet again. That's again. He has hit-and-run, resisting a public officer. Then he's back with felony possession with the intent to sell or deliver heroin. And then, again, selling heroin, possession with the intent to sell, conspiracy. And then possession of cocaine. So, he's only 25, but that's all he's been doing for seven years." (J.A. 38).

Counsel acknowledged Petitioner had "history here between the ages of 18 and 24" and that he was a "repeat customer" in the criminal justice system. (J.A. 39). Nonetheless, counsel asserted, the career offender guideline range was overly punitive and did "not fit in this case," given Petitioner's youth and the offense conduct. (J.A. 39). The magnitude of the career offender increase, counsel noted, meant that the requested sentence of 120 months represented only "a 20% variance from the bottom of the guideline range" that had been "inflated 530%." (J.A. 39). Counsel pointed out that "[j]ust because the career offender guideline says 151 to 188 doesn't make it reasonable." (J.A. 39).

Next, counsel addressed the strong support Petitioner enjoyed from family and friends, as evidenced in part by the character letters submitted to the court from

Petitioner's sister, grandmother, pastor, former teacher, youth counselor, and a family friend. (J.A. 83-89). One such letter, from the mother of Petitioner's best friend growing up, spoke of "times when Josh and her son would talk about what they wanted to be and how they would make it big when they grew up." (J.A. 40). Counsel said that "those dreams, those hopes, those aspirations weren't about selling drugs or running the streets or being a gang member or being a career offender at age 25 in a federal courtroom." (J.A. 41). He continued: "I don't think, in his wildest dreams, Josh ever imagined he would be in the situation he finds himself. Twenty-five years old, career offender." (J.A. 41).

Throughout his argument, counsel emphasized Petitioner's youth and the fact that his offense history occurred between the ages of 18 to 25, at a time when he "had lost his way." (J.A. 41). He further argued that the offense conduct—being the "middleman in this low-level drug deal"—supported a lower sentence. (J.A. 41). In light of these considerations, counsel argued that a sentence of ten years in prison would be more than sufficient to achieve the purposes of sentencing.

Petitioner addressed the court directly and apologized for his actions. He said that growing up, he felt "kind of lost out there" and "really didn't know what to do." (J.A. 43). As a result, he "looked up to some people that weren't good and were doing some things that [he] thought was the right thing to do, but, really, it wasn't." (J.A. 43). These actions, he admitted, "got [him] here today, away from [his] daughter, away from [his] family, away from [his] loved ones that really care about [him]." (J.A. 43). He regretted the time he wasted "running the streets, selling drugs,"

which could have been spent with his family, and he expressed fear that he might not see his mother and grandmother again. Petitioner said that the previous year spent in federal custody pending resolution of his case “really showed [him] what was really important” and he “just wanted to apologize.” (J.A. 44).

When he finished speaking, the court asked Petitioner, “[W]hat are you going to do to earn a living when you get out of prison?” (J.A. 44). Petitioner replied that he wanted to learn how to cook and was also interested in carpentry. He intended to “get better skills, learn different things, carpentry skills, things like that” while incarcerated so that upon release he could “help [his] family” and “do[] the right thing, not doing it the wrong way, and stand away from those people that [he knew were] not there for [him].” Those people, Petitioner realized, did not “care about” him. (J.A. 44).

The court replied: “You’re right, they don’t care about you. And you need to not be around them. But you do have people who do care about you. And you’re lucky. And I’m glad you have the insight that you’re expressing out loud in this court. That gives me some hopefulness.” (J.A. 44). The court then asked the government for its position.

Counsel for the United States argued that Petitioner deserved a higher sentence because he had declined to cooperate with the government and provide substantial assistance by naming or testifying against fellow gang members. (J.A. 45-46). The government said that “what [Petitioner] is asking [the court] to do is, in essence, not asking him to cooperate. Give him a downward variance without having to do the

things like exposing himself to cooperation.” (J.A. 46). The court said nothing about the impropriety of this argument. Instead, the court responded: “Well, I think what [defense counsel] is saying . . . [is] you’ve got to sentence individually, and this is a unique case.” (J.A. 46). The government also emphasized Petitioner’s criminal record, noting that he had “been in and out of the system,” having been convicted of a felony “on four separate occasions.” (J.A. 47). When Petitioner was placed on probation, the government said, “he violated that probation in every way you can violate it,” including by absconding, cutting off his ankle bracelet, and by committing new drug offenses. (J.A. 47). Likewise, Petitioner violated the term of his post-release supervision and was cited for infractions while incarcerated. Thus, the government argued, “this defendant cannot even conform his conduct in a correctional facility.” (J.A. 48). The government maintained that Petitioner had been given “opportunity and opportunity” to correct his behavior, but that prior stints in state prison had not “slow[ed] [him] down.” (J.A. 48). This “life of lawlessness,” the government asserted, warranted a sentence of 170 months, on the high end of the guideline range. (J.A. 48-49). This sentence was “appropriate in this case for someone who has been in and out of prison from the time he was 18, has poisoned, has robbed . . .” (J.A. 49). Finally, the government pointed to Petitioner’s tattoo “of a gun on his arm one hand and money and dollars in the other.” Counsel said, “that sums up his life and his actions.” As such, the government argued that a 170-month sentence was necessary “to keep this community safe.” (J.A. 49).

Upon consideration of the case, the district court imposed a sentence of 151 months. The court said that Petitioner was a “dangerous person, and there’s a need to protect the public.” (J.A. 50). The court further found that the “nature of the offense is very, very serious. Drugs, heroin, have killed people, destroyed families and undermined communities.” (J.A. 50). And, the court added, Petitioner had no “respect for authority, as demonstrated by [his] performance, while in jail, while under supervision, and [as] evidenced by [his] criminal record.” (J.A. 50). Instead, the court said that he was a “hardened criminal” who had “spent over 25% of [his] life preying on others.” (J.A. 50). “I’m compelled to conclude,” the court announced, “that a sentence of 151 months is a sentence that’s appropriate in this case. That’s a sentence sufficient, but not greater than necessary.” (J.A. 50). The court also sentenced him to a term of three years of supervised release. In imposing its sentence, the court did not address Petitioner’s arguments about the overly punitive effect of the career offender guideline, his youth, or the minor role Petitioner played in the offense conduct. The court entered its judgment on August 28, 2019. (J.A. 6; 57-64). Petitioner timely appealed to the United States Court of Appeals for the Fourth Circuit. (J.A. 65).

B. Court of Appeals Proceedings

On appeal to the Fourth Circuit, Petitioner argued that his sentence was procedurally and substantively unreasonable. The Fourth Circuit rejected this argument and affirmed the judgment of the district court. This petition followed.

THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

Petitioner argued to the Fourth Circuit that the sentence he received is procedurally and substantively unreasonable. The Court of Appeals rejected Petitioner's argument and affirmed the district court. Thus, the federal claim was properly presented and reviewed below and is appropriate for this Court's consideration.

REASONS FOR GRANTING THE PETITION

To withstand appellate review, a sentence must be both procedurally and substantively reasonable. *Gall v. United States*, 552 U.S. 38, 50 (2007). Procedural reasonableness requires the sentencing court to "adequately explain the chosen sentence." *Id.*; see also *Rita v. United States*, 551 U. S., 338, 356 (2007) ("The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority"). And to be substantively reasonable, the chosen sentence must account for the "totality of the circumstances." *Gall*, 552 U.S. at 51.

Here, the 151-month sentence is neither procedurally nor substantively reasonable. Twenty-four-year-old Petitioner Joshua Wright served as the intermediary in the sale of .34 grams of heroin—less than a fifth of the grams contained in a standard packet of sugar. The offense involved no aggravating factors. Although Petitioner had a substantial criminal history, his career offender designation accounted for this, dramatically increasing his guideline range. At

sentencing, Petitioner argued that a ten-year sentence would be sufficient but not greater than necessary to accomplish the purposes of sentencing, given the relatively minor offense conduct, his youth and the lack of a male role model growing up, and the dramatic effect of the career offender guideline in the case.

At sentencing, the court focused exclusively on Petitioner's prior criminal record and gave scant attention to relevant mitigating factors. The court did so despite the fact that Petitioner's career offender designation resulted in a dramatic increase to the otherwise-applicable guideline range. Thus, the career offender designation already more than accounted for Petitioner's criminal history, leaving the court with little justification for its sentencing rationale. And the court never addressed Petitioner's mitigating arguments. The sentence is therefore procedurally and substantively unreasonable.

A. The sentence is procedurally unreasonable.

Petitioner argued that multiple mitigating factors supported a lower sentence. First and foremost, Petitioner maintained that the career offender guideline was unreasonable as applied to his case. Petitioner argued that the career offender guideline range was "not proportional to the offense," which involved serving as a middleman in "deliver[ing] to an informant .34 grams of heroin—less than half-a-gram." (J.A. 37). The career offender enhancement represented a "530% increase" from the otherwise-applicable guidelines range of 24 to 30 months. (J.A. 37). Given that the "sentence is supposed to be sufficient, but not greater than reasonable,"

Petitioner contended that “the career offender guideline range does not fit in this case.” (J.A. 39). Counsel for Petitioner said:

Your Honor, you can vary downward in this case, and you can accomplish all the goals of sentencing with a sentence below 151 months. If this Court were to vary to just 120 months, a decade of this young man’s life in prison, that would be a 20% variance from the bottom of the guideline range. The guidelines are inflated 530%.

Your Honor, the guidelines became advisory for a reason. Just because the career offender guideline says 151 to 188 doesn’t make it reasonable.

(J.A. 39). Counsel asserted that the degree of enhancement was particularly unreasonable in light of Petitioner’s youth and circumstances: “I don’t think, in his wildest dreams, Josh ever imagined he would be in the situation he finds himself. Twenty-five years old, career offender.” (J.A. 41). Counsel also cited the relatively minor offense conduct, the lack of a male role model, and the strong family support that Petitioner enjoyed as additional mitigating factors supporting a downward variance to 120 months.

In sentencing Petitioner, however, the district court did not respond to counsel’s arguments about the outsized effect of the career offender guideline, Petitioner’s age or the offense conduct, the lack of guidance growing up, or his family support. Instead, the court focused solely on Petitioner’s criminal history, stating that he was “a dangerous person” and a “hardened criminal” who had “spent over 25% of [his] life preying on others.” (J.A. 50). Where, as here, the record shows that the court did not address or consider the defendant’s mitigating arguments prior to sentencing, the sentence is procedurally unreasonable and should be vacated.

Chavez-Meza v. United States, 138 S. Ct. 1959, 1964 (2018); *accord Rita*, 551 U.S. at 341 (noting that appellate courts must set aside sentences they find unreasonable).

B. The sentence is substantively unreasonable.

The 151-month sentence is likewise substantively unreasonable because the court focused exclusively on Petitioner’s criminal history in justifying its sentence, notwithstanding the fact that the career offender enhancement had already elevated the guideline range over 500%--from an imprisonment range of 24-30 months to a staggering 151-188 months, which was more than six times the highest sentence Petitioner had previously served. Application of the career offender guideline is “fraught with potential imprecision” because the guideline “covers a broad range of offenders, encompassing the street-level dealer who handles only small quantities of drugs and the drug kingpin or the recidivist with a history of violence,” such that a downward variance may be warranted in appropriate cases.

United States v. Moreland, 437 F.3d 424, 436 (4th Cir. 2006), *overruled in part on other grounds by Gall v. United States*, 552 U.S. 38 (2007); *accord United States v. Adkins*, 937 F.2d 947, 952 (4th Cir. 1991) (stating that “there is clearly a potential for wide discrepancy in the gravity of past antisocial conduct among career offenders”).

Here, application of the career offender guideline produced an unreasonable imprisonment range, particularly where Petitioner was only twenty-five years old and the offense conduct involved such a small quantity of drugs. *See Moreland*, 437

F.3d at 436 (agreeing that downward variance from career offender guideline was warranted). But the court did not account for the unreasonable impact of the career offender enhancement and appeared to give little weight to relevant mitigating circumstances, such as the relatively minor offense conduct, Petitioner's youth and lack of a male role model growing up, or the strong support of his family.

Because the court's sentence is not justified under the totality of the circumstances, the sentence is substantively unreasonable and should be vacated. For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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