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IN THE
SUPREME COURT OF THE UNITED STATES

SANDRA DOYLE,

PETITIONER,

vs.

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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QUESTIONS PRESENTED

1. Is it a denial of due process to sentence petitioner to additional imprisonment based on a finding that she lied or minimized in her safety-valve interview based on an agent's testimony that, although she answered every question asked, he did not "believe" her because her answers given in an un-counseled post-arrest interview by Government agents were "different.?"
2. Is it a denial of due process to deny petitioner a "safety-valve" reduction and acceptance of responsibility and sentence her to a longer sentence because she denied "other relevant conduct" that was not charged in the Information and that she did not admit?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Sandra Doyle, respectfully petitions for a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit, entered on September 11, 2020.

OPINION BELOW

The unpublished opinion of the United States Court of Appeals for the Fifth Circuit *United States v. Sandra Doyle*, No. 20-10136 (5th Cir., September 11, 2020), is reproduced in the Appendix. (Pet. App. 1a-3a).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Due Process Clause of the Fifth Amendment to the Constitution of the United States which provides that:

“[no] person shall be...deprived of life, liberty, or property without due process of law.”

STATEMENT OF THE CASE

Sandra Doyle ("petitioner") was charged on October 17, 2019 in a one count Information in the Northern District of Texas, Fort Worth Division with Misprision of Felony, in violation of 18 U.S.C. § 4, wherein petitioner, having knowledge of the actual commission of a felony, Possession of Methamphetamine with Intent to Distribute, in violation of 21 U.S.C. § 841 (a)(1) and (b)(1)(C), did conceal the same and did not, as soon as possible, make known the commission of said felony. On October 21, 2019, petitioner pleaded guilty to the offense without a written plea agreement. On February 3, 2020, petitioner was sentenced to 36 months in prison.

The Fifth Circuit affirmed petitioner's sentence in an opinion which concluded that any error in the denial of a "safety-valve" adjustment was harmless because it would not affect the calculation of petitioner's guidelines range (which was incorrect) and that the district court's denial of an acceptance of responsibility reduction was not "without foundation" because the district court explicitly asserted that petitioner had falsely denied relevant conduct that it had determined was true.

REASONS FOR GRANTING THE WRIT

I. The Fifth Circuit Court of Appeals Has Decided an Important Question of Federal Law that Has Not Been, But Should Be Settled by this Court.

This case involves a guilty plea conviction following a plea negotiation process that resulted in the denial of a 2-level "safety-valve" reduction in petitioner's offense level and a related denial of acceptance of responsibility, which resulted in an additional 3 offense

levels. Petitioner was "interviewed" without counsel immediately after her arrest in a coercive atmosphere. Later, she was accused of lying in her "safety-valve" interview, based on a summarized report of that post-arrest interview, written by an agent, who admitted in his testimony at sentencing that the words used were his words, not those of the petitioner. The petitioner had no way to rebut the accusations by the Government of petitioner's statements because the agents did not record the interview in accordance with the Department of Justice policy as required by the Cole Memorandum issued in 2014. *See* U.S. Department of Justice, Justice Manual, 9-13.001, "Electronic Recording of Statements" (2014).

Petitioner pleaded guilty to an Information alleging misprision of felony. Her crime was that she hid methamphetamine of another person from plain view in order to conceal it from the view of anyone coming into the other person's residence, which she was in at the time. In a "safety-valve" interview by DEA agents prior to sentencing, the DEA agent stated that he "believed" she was not truthful about certain information related, not to the crime she was charged with, but to the crime of the man in whose residence she committed the misprision offense.

Fifth Circuit case law provides that a defendant who pleads guilty and who admits the conduct alleged in the indictment or information establishes "significant evidence" of acceptance of responsibility and establishes a presumption that she has "clearly established" acceptance of responsibility, even if she offers "no comment" to questions of "other relevant conduct" or provides answers to questions about "other relevant conduct" which the interrogator does not "believe." *See, e.g., United States v. Patino-*

Cardenas, 85 F.3d 1133, 1138 (5th Cir. 1996).

Petitioner was denied 5 levels of reduction in her total offense level as a result of a contentious safety-valve interview in which she refused to agree with the Government investigator's characterization of certain of her conduct. The district judge found that petitioner "minimized" her conduct, based on the testimony of two investigators at sentencing and sentenced petitioner to the maximum 36 months under the misprision of felony statute. Petitioner was denied due process of law by reason of coercive interrogation techniques at her post-arrest "interview" and the failure to provide a recorded transcript of this interview, in accordance with Department of Justice rules. Without a recording or transcript of the interview she was unable to exercise her rights to defend herself against accusations that she made statements in her post-arrest interview which the government agents said were "different" than what she said at her safety-valve interview. A verbatim transcript of her post-arrest interview, as required by the recording requirement of the Department of Justice, would have allowed her to defend herself against allegations that she "lied" or "minimized" in her safety-valve interview. Petitioner contends that "minimization" is not a sufficient basis for denial of the right to a safety-valve reduction which punishes her with a significantly greater sentence for "other relevant conduct" that is not criminal, because she was not charged with such conduct nor did she admit to such conduct.

1. Sentences Based on Erroneous and Material Information or Assumptions Violate Due Process.

Sentences based on erroneous and material information or assumptions violate due

process. *United States v. Tobias*, 662 F.2d 381, 388 (5th Cir. 1981). Mere inclusion in the PSR does not convert facts lacking an adequate evidentiary basis with sufficient indicia of reliability into facts a district court may rely upon at sentencing. *United States v. Harris*, 702 F.3d 226, 230 n.2 (5th Cir. 2010). "If the factual recitation in the PSR lacks sufficient indicia of reliability, then it is error for the district court to consider it at sentencing." *United States v. Zuniga*, 720 F.3d 587, 591 (5th Cir. 2013). It violates due process to sentence petitioner to additional prison time based on incorrect information. The district court cannot impose a sentence based on withholding adjustments to which the defendant is entitled unless the Government has proven any facts necessary to support such denial by a preponderance of the evidence. Questionable or inconclusive evidence standing alone does not meet the preponderance standard. *United States v. Blaylock*, 249 F.3d 1298, 1303 n.1 (11th Cir. 2001).

2. A Defendant's Written Objections to the Allegations in the PSR Require Some Response from the Government in Order to Defeat Claims of Unreliability of the Allegations.

When a defendant makes a specific factual objection to a matter that will affect sentencing, as petitioner did here, the district court must rule on the objection and make "express" or "implied" factual findings that resolve that objection. *See, e.g., United States v. Doe*, 705 F.3d 1134, 1153 (9th Cir. 2013). Without information having "sufficient indicia of reliability to support its probable accuracy," U.S.S.G. § 6A1.3 (a), reliance on a probation officer's unsupported opinion results in a clearly erroneous finding.

Because of the major impact of a finding that being untruthful in a safety-valve interview can have on a federal defendant's sentence, the lack of compliance with the DOJ rule that requires the government to record interviews of defendant's in a case such as this gives the conclusory allegation of a government law enforcement officer undue weight and makes it unlikely that a defendant will be able to overcome a bare allegation in a safety-valve interview and a finding of fact and conclusions of law by the district court in reliance on such findings and conclusions.

The standard of "minimization" makes it much more difficult to overcome the weight of an investigator's conclusions of minimization, which the district court can accept unless the defendant shows that the conclusions are incorrect or that the use of a "minimization" standard is legal error because it is not authorized in the safety-valve statute. A standard requiring a defendant to show that the unsupported allegation that she "minimized" her conduct was untrue and show that her description of her involvement was accurate is a stricter standard for a defendant to meet than the statute allows, and violates due process.

All the evidence against a defendant at a sentencing hearing should meet at least a preponderance of the evidence standard. A standard that requires petitioner to show that she did not minimize, shifts the burden of proof to the defendant to disprove "minimization" or to show that such minimization did not constitute an untruth or lie once an assertion is made by an agent that petitioner's "minimization" constituted a lie . An accusation by an agent, made at a safety-valve interview, allows a mere assertion to acquire the status of "evidence," leaving a defendant no defense other than a mere denial,

which is generally termed "no evidence." The accusation is thereby turned into "evidence" which a defendant normally cannot effectively counter. This is a denial of due process.

If the factual recitations in the PSR do not support the PSR's recommendation, adopting the PSR does not satisfy the requirements of Rule 32(i)(3)(B). *United States v. Flores-Alvarado*, 779 F.3d 250, 256 (4th Cir. 2015); *United States v. Hammond*, 201 F.3d 346, 352 (5th Cir. 1999)(vacating sentence which attributed to defendant losses incurred by third parties because the PSR adopted by the court did not contain the "absolute prerequisite []" factual finding as to the scope of the jointly undertaken criminal activity). "Minimization" is not the same thing as "untruthfulness." If there are no "findings" in the PSR relating to "minimization," the district court's "adoption" of the PSR findings is an adoption of no evidence and ineffective.

It is a procedural error for a district court to premise a sentence upon a clearly erroneous fact. *Gall v. United States*, 552 U.S. 38, 51 (2007). Due process guarantees every defendant a right to be sentenced upon information which is not false or materially incorrect. *United States v. Tavano*, 12 F.3d 301, 305 (1st Cir. 1993).

3. Simple Assertions in the PSR Do Not Meet the Government's Burden to Show that Petitioner Minimized her Conduct as Alleged by an Agent.

Guilt cannot be proven by speculation or assumption of the existence of certain facts. Proof by a preponderance of the evidence is required. Where there is no such evidence, but only speculation or "belief," the sentence cannot stand. Simply asserting in the PSR that petitioner was untruthful in her safety-valve interview based on

the "belief" of a government investigator that petitioner "minimized" her conduct in a conspiracy that she was not a member of, nor charged with, does not establish that fact.

It was error to conclude that petitioner was accountable for "minimizing" her conduct or involvement in connection with his offense, where the statute provided no basis for use of such a standard. Petitioner's "minimization" was unsupported by evidence, was not statutorily authorized and, in effect, punished her for non-criminal conduct, requiring her to meet a burden of proof in "disproving" facts and conclusions of law which were not elements of her charged offense of misprision of felony and not required to meet the safety-valve requirements. A sentencing court's denial of a reduction for acceptance of responsibility and a safety-valve reduction based on petitioner's failure to admit to conduct not charged in the information violated due process.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the petition for writ of certiorari should be granted.

DATED: February 8, 2021

Respectfully submitted,

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