NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

RUSSELL LAWAYNE MONTAGUE
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 20-60058
Consolidated With Case No. 20-60061

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1) Whether the district court ordered an unreasonably long 114-month prison sentence.

2) Whether the district court erred by finding Mr. Montague guilty of two of the four alleged supervised release violations. The two violations at issue are: violation one, committing a crime by violating a protective order; and violation two, committing a crime by possessing a controlled substance.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

This case involves a supervised release revocation proceeding. The case arises out of two separate convictions in two separate cases in the United States District Courts. The first is case number 3:04cr26 in the Southern District of Mississippi, in which the district court convicted Mr. Montague of the following:

count 2: Theft of a firearm in violation of 18 U.S.C. § 924;

count 4: Receipt of an unregistered firearm in violation of 18 U.S.C. § 5861;

count 5: felon in possession of a firearm in violation of 18 U.S.C. § 922; and

count 6: Use of a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924.

The court ordered 120 months in prison on each of counts 2, 4 and 5 to run concurrently, and 60 months in prison on count 6, to run consecutively to the sentences imposed on counts 2, 4 and 5, for a total of 180 months in prison. It also ordered three years supervised release on each count to run concurrently. The court entered a Judgment in case number 3:04cr26 on March 4, 2005.

The second underlying case is Southern District of Mississippi case number 3:19cr231, in which the district court in the Middle District of Alabama convicted Mr. Montague of escape in violation of 18 U.S.C. 751. The court ordered eight months in prison to run concurrently with the sentence imposed in case number 3:04cr26, followed by three years supervised release to run concurrently with the

supervised release imposed in case number 3:04cr26. The Middle District of Alabama entered a Judgment or about July 18, 2011. Then the court transferred the case to the Southern District of Mississippi. The Southern District of Mississippi assigned the transferred action case number 3:19cr231.

After Mr. Montague's release from prison, the prosecution filed petitions in both cases to revoke his supervised release, alleging four violations of conditions of supervised release. The specifics of the four alleged violations are set forth and analyzed in subsequent sections of this Brief.

After conducting three revocation hearings, the court found Mr. Montague guilty of all four alleged supervised release violations. On January 21, 2020, the court entered Revocation Judgments sentencing him to a total of 114 months in prison. The Revocation Judgments are attached hereto as composite Appendix 1.

Mr. Montague appealed the Judgments to the United States Court of Appeals for the Fifth Circuit. Because there were two underlying Revocation Judgments, the Fifth Circuit assigned two case numbers – No. 20-60058 and No. 20-60061. However, the Court consolidated the two cases for appeal purposes.

On September 30, 2020, the Fifth Circuit entered an Order affirming the district court's rulings. It entered a Judgment on the same day. The Fifth Circuit's Order and Judgment are attached hereto as composite Appendix 2.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on September 30, 2020. This Petition for Writ of Certiorari is filed within 150 days after entry of the Fifth Circuit's Order as required by Rule 13.1 of the Supreme Court Rules, which was amended by this Court's COVID-19 related Order dated March 19, 2020. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. STATUTE INVOLVED

The provisions of 18 U.S.C. § 3553(a) are at issue. In relevant part, this statute states:

> (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--
> * * * * *
> (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;
> * * * * *
> (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.

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a Revocation Judgment entered in federal court because Mr. Montague purportedly violated conditions of supervised release. Regarding the underlying criminal convictions that this revocation proceeding is based upon, the courts of first instance were the United States District Court for the Southern District of Mississippi and the United States District Court for the Middle District of Alabama. These courts had jurisdiction over the case under 18 U.S.C. § 3231 because the underlying criminal charges levied against Mr. Montague arose from the laws of the United States of America.

B. Statement of material facts.

1. The alleged supervised release violations.

The prosecution alleged four violations of supervised release in this consolidated case. The district court found him guilty of all four.

The first alleged violation, which Mr. Montague contests on appeal, is that he committed another crime. The alleged crime is described as follows:

> On July 2, 2019, in the Chancery Court of Madison County Mississippi, an order of contempt and incarceration was entered on the defendant following his failure to report to the court as instructed, violations of a protective order against his wife and her children, and threats of harassment and extortion. He was sentenced to serve 180 days in the Madison County Jail.

The second allegation again alleges that Mr. Montague committed another crime. The alleged crime in the second allegation is that "[o]n August 19, 2019, the defendant was arrested by the Biloxi Police Department and charged with Possession of a Controlled Substance and Possession of Marijuana." Mr. Montague contests this allegation on appeal.

The third alleged violation is the Mr. Montague used a controlled substance. The Petition states, "[o]n August 19, 2019, the defendant admitted to using methamphetamine and marijuana." This violation is not at issue on appeal.

The fourth and final alleged violation is that Mr. Montague failed to report to his probation officer. Regarding this allegation, the Petition states:

> The defendant failed to report as instructed on July 11, 2019, July 15, 2019, and July 16, 2019. Additionally, the defendant was instructed by this office to report to court in Madison County on June 28, 2019 to answer to the allegations of violating a protective order. The defendant failed to appear in court.

Mr. Montague does not agree with all of the failure to report allegations. However, the overall violation for failing to report to his probation officer is not at issue on appeal because on one occasion, through his own admitted fault, he did not report.

2. Facts about the alleged possession of a controlled substance.

One of the alleged supervised release violations at issue on appeal is violating the law, based on an arrest by the Biloxi, Mississippi Police Department

on August 19, 2019, for possession of a controlled substances. Defense counsel advised Mr. Montague to remain silent on this allegation because state court charges are still pending.

During the day on August 19, Mr. Montague was around a pregnant lady who had what he believed to be methamphetamine ("meth"). He told the lady not to do meth while she was pregnant, and took the substance from her. Mr. Montague opted not to throw the substance away because children were around. Instead, he put it in his pocket to ensure that the kids would not get it and harm themselves.

Later that same night, Mr. Montague was enjoying a night at the Treasure Bay Casino in Biloxi. After gaming for a while, he went to rest in his truck, which was in the casino parking lot. At around one in the morning, a Biloxi police officer noticed Mr. Montague in the truck with the door partially opened. The officer awakened Mr. Montague, who appeared to be lucid.

A check of Mr. Montague's identification revealed that he had an outstanding warrant. Officers searched him incident to the arrest and found the white powder folded up in the piece of paper that Mr. Montague put in his pocket earlier in the day. The officers also found what they believed to be marijuana in the truck. The officers never field sobriety tested Mr. Montague and they never conducted a sobriety test at the police station.

The two substances field tested positive for methamphetamine and marijuana, but they were never lab tested. The officers charged Mr. Montague with misdemeanor possession of 0.1 gram of methamphetamine and 6.55 grams of marijuana. Officer Mayes, who testified at the revocation hearing, did not know the status of the charge.

3. Facts about the alleged violation of a protective order.

Ms. Rachel Nesbit is Mr. Montague's former wife. The protective order at issue, which was entered by the Madison County, Mississippi Chancery Court, prohibited Mr. Montague for contacting or coming within one mile of Ms. Nesbit and her current husband, Bryan Nesbit. It also prohibited Mr. Montague from contacting his two children that Mr. Montague and Ms. Nesbit had together when they were married – S.N. (daughter) and R.N. (son).[1]

Mr. Montague's son and daughter mean a lot to him. To fully understand this issue, we must recognize the efforts Mr. Montague made to have a relationship with them.

The district court originally sentenced Mr. Montague on February 23, 2005, when his children were very young. The first time he saw his children after that day was many years later at the subject revocation hearing. But Mr. Montague

[1] The undersigned believes that Mr. Montague's children are still minors. Therefore their initials are used in this Brief.

made efforts to connect with the children over the years. He reached out to them on social media. He sent them letters and cards, and tried to call them. However, Ms. Nesbit never gave the letters and cards to them. Also, Mr. Montague and his mother gave the kids gifts, but Ms. Nesbit inexplicably gave the gifts to Goodwill.

Ms. Nesbit never told her children that Mr. Montague was in prison. Instead, she lied to them and said Mr. Montague lived out of state. To cap it off, Ms. Nesbit had Mr. Montague's parental rights terminated while he was in jail and unable to appear in court to contest the issue.

Regarding the termination of parental rights proceeding, Mr. Montague received the summons in 2010 while he was in jail. He asked an FBI agent to take him to court to contest the issue, but the agent refused. So Mr. Montague wrote an eight-page letter to the Chancery Court arguing his position. The Madison County Chancery Court ended up terminating Mr. Montague's parental rights. Then six years later in 2016, Ms. Nesbit sent Mr. Montague a letter stating that his parental rights had been terminated.

The Bureau of Prisons released Mr. Montague to a halfway house in 2016. He attempted to write and call his family. Ms. Nesbit was unhappy with Mr. Montague's attempts to contact his own children, so she initiated a proceeding in the Madison County Chancery Court for a protective order against him.

Mr. Montague appeared at court for the protective order hearing and voluntarily signed the order. But he signed the order because Ms. Nesbit's attorney, Mr. Hollomon, indicated that Mr. Montague would be able to see his kids after he had "a little time to get [himself] together." Regarding seeing his kids, Mr. Hollomon also stated, "about a year, when you get your stuff going, you know, maybe you – because the thing was you don't have nothing to offer them." Based on these assurances, Mr. Montague signed the protective order, believing that it lasted for only one year. The protective Order is dated April 25, 2017.

After the court entered the protective order, someone sent Ms. Nesbit a message from Mr. Montague's Facebook account, but Mr. Montague vehemently denied that he sent the message. He testified that Hope Allen, his girlfriend at the time, sent the message.

The writer of the message threatened to expose negative aspects of Ms. Nesbit's past to her children and the public. The prosecution alleged that the following statement indicated extortion: "If you don't want them to know your story or me…BRING YOUR CHECKBOOK". Again, Mr. Montague denied sending the message, and testified that his girlfriend at the time, Hope Allen, sent the message.

After receiving the message, Ms. Nesbit initiated the contempt of protective order proceeding. The initial hearing was set on June 13, 2019, in the Madison

County Chancery Court. Mr. Montague appeared for the hearing, but the court rescheduled it for June 28, 2019.

On June 28, Mr. Montague had a flat tire while traveling to court in Madison County, Mississippi, from his home in Hattiesburg, Mississippi. He contacted his federal probation officer, Amanda Pierce, and informed her about the flat and that he did not make it to Madison County for the contempt hearing.

Without Mr. Montague's presence at the hearing, the Chancery Court found him in contempt of the protective order. It sentenced him to serve 180 days in the Madison County Jail. So over and above the lengthy 114-month sentence ordered by the district court in this revocation proceeding, Mr. Montague must serve six months in jail on the contempt issue.

4. Ms. Nesbit's credibility, or lack thereof.

The primary evidence about the protective order violation came from Ms. Nesbit. But as defense counsel pointed out at the revocation hearing, her credibility is questionable.

For example, when Ms. Nesbit sought to terminate Mr. Montague's parental rights, court documents filed in Chancery Court alleged that he "fail[ed] to see or speak to the Children in over seven (7) years, including the period between February 1, 2003 and December, 2003, prior to his incarceration[.]" But as proven through photographic evidence at the revocation hearing, that was not true. He had

seen his children after February, 2003, as Ms. Nesbit had to admit after viewing the photos.

The Termination of Parental Rights also alleged that Mr. Montague did not write to his kids after February 6, 2009. After seeing documentary evidence to the contrary at the revocation hearing, Ms. Nesbit had to admit that was yet another untruth regarding her quest to terminate Mr. Montague's right to see his children.

Another issue that casts doubt on Ms. Nesbit's credibility is her prior conviction for writing a bad check. Ms. Nesbit admitted that she pled guilty, under oath, to the charge. But then at the revocation hearing she alleged that it was Mr. Montague, and not her, that wrote the bad check. So the bottom line is this – Ms. Nesbit either lied under oath when she pled guilty to the bad check charge, or she lied under oath at the revocation hearing when she accused Mr. Montague of writing the bad check. Either way, she lied under oath at some point.

5. Facts about sentencing.

The district court found Mr. Montague guilty of all four alleged violations. Mr. Montague had a total of five underlying counts of conviction – four in case number 3:02cr26 and one in case number 3:19cr231. This means that the court had authority to order five separate revocation sentences – one for each underlying count of conviction, to run either concurrently or consecutively.

The United States Sentencing Guidelines ("Guidelines") range for the four underlying counts of conviction in case number 3:02cr26 was 21 to 24 months in prison per count, with a statutory maximum per count of 24 months. The Guidelines range for the one underlying count of conviction in case number 3:19cr231 was 12 to 18 months in prison, with a statutory maximum of 24 months. We must remember that the Madison County Chancery court had already ordered Mr. Montague to serve six months in prison on the contempt of protective order charge.

With little explanation, the court ordered the Guidelines maximum sentence for each underlying count of conviction. That is, it ordered 24 months in prison for each of the four underlying counts in case number 3:02cr26, and 18 months in prison on the one underlying count in case number 3:19cr231. It ordered the sentences to run consecutively, for a total of 114 months in prison.[2] The defense objected to the sentence as both procedurally and substantively unreasonable. The court implicitly overruled the objection. This appeal followed.

[2] The court also ordered a total of 18 months supervised release following the 114-month prison term, but the supervised release term is not at issue on appeal.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, "[r]eview on writ of certiorari is not a matter of right, but of judicial discretion." This case presents a sentencing issue that the Court should exercise its discretion to review. The district court ordered unreasonable long revocation sentences, all to be served consecutively. Certiorari should be granted to correct this error.

The undersigned notes that Mr. Montague is insistent that supervised release revocation sentences cannot be run consecutively when the underlying terms of supervised release were ordered to be served concurrently. In required candor to the Court, the undersigned can find no law to support that argument. However, if the Court deems the issue worthy of review for any reason, that provides another reason to grant certiorari.

B. The district court ordered a substantively unreasonable 114-month prison sentence.

"A [revocation] sentence is substantively unreasonable if it (1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Winding*, 817 F.3d 910, 914 (5th Cir. 2016) (citation omitted; bracketed text in original). Ms. Montague's sentence is substantively unreasonable under the third test. That

is, the district court erred by failing to properly balance and analyze the sentencing factors under 18 U.S.C. § 3553(a). In fact, the only mention of § 3553 was, "[t]he court has also reviewed all of the appropriate factors to be considered in imposing a sentence pursuant to 18 U.S.C. Section 3553(a)".

This Court considers "the totality of the circumstances" when it analyzes substantive reasonableness. *United States v. Gerezano-Rosales*, 692 F.3d 393, 398 (5th Cir. 2012) (citations omitted). The starting point for the totality of the circumstances analysis is 18 U.S.C. § 3553, titled "Imposition of a sentence." Under § 3553(a), "[t]he court shall impose a sentence sufficient, but not greater than necessary" to meet the ends of justice. Section 3553(a) requires judges to consider a number of factors when they determine appropriate punishments for offenses.[3] The primary factors are:

- "the nature and circumstances of the offense" (§ 3553(a)(1));
- "the history and characteristics of the defendant" (*id.*);
- "to afford adequate deterrence to criminal conduct" (§ 3553(a)(2)(B));
- "to protect the public from further crimes of the defendant" (§ 3553(a)(2)(C));

[3] The § 3553(a) factors that a court can consider when imposing a supervised release revocation sentence are limited by 18 U.S.C. § 3582(e). Under § 3582(e), the only § 3553(a) factors that a court can consider during a revocation proceeding are "the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)[.]"

- "to provide a defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner" (§ 3553(a)(2)(D));
- "the applicable guidelines or policy statements issued by the Sentencing Commission" (§ 3553(a)(4)(B)); and
- "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct" (§ 3553(a)(6)).

Each of these factors is considered below. In the following analyses of the § 3553(a) factors, we assume that Mr. Montague is guilty of all four of the alleged violations, even though the defense is contesting two of the four. Mr. Montague's argument on the two contested violations is presented later in the Brief. If the Court finds that he is not guilty of one or both of the contested violations, then that provides more justification for ruling that the 114-month sentence is unreasonable.

1. The nature and circumstances of the offense indicate that the 114-month sentence is substantively unreasonable.

Section 3553(a)(1) requires the court to consider "the nature and circumstances of the offense[.]" This is the most important factor to consider in Mr. Montague's reasonableness analysis. The district court spent the majority of the time at the revocation herrings focusing on Mr. Montague's alleged violation of the protective order. The protective order prohibited him from contacting his

former wife, Ms. Nesbit, and the two children that Mr. Montague had with her. To understand why the alleged violation of the protective order does not warrant a 114-month sentence, we must consider events leading up the protective order.

The court sent Mr. Montague to prison when the two children that he and Ms. Nesbit had together were very young. The first time he saw his children after leaving for prison was many years later at the subject revocation hearing. But Mr. Montague made efforts to connect with the children over the years. He reached out to them on social media. He sent them letters and cards, and tried to call them. However, Ms. Nesbit never gave the letters and cards to them. In fact, Ms. Nesbit lied to the kids and said Mr. Montague lived in another state, rather than telling them that he was in prison. Also, Mr. Montague and his mother gave the kids gifts, but Ms. Nesbit inexplicably gave those gifts to Goodwill.

Like most parents, Mr. Montague's children mean a lot to him. Much to Mr. Montague's dismay, Ms. Nesbit had his parental rights terminated while he was in jail and unable to appear in court to contest the issue. He received the summons on the termination of parental rights proceeding in 2010 while he was in jail. Mr. Montague asked an FBI agent to take him to court to contest the issue, but the agent refused. In an attempt to protect his parental rights, Mr. Montague wrote an eight-page letter to the Chancery Court arguing his position. The Madison County Chancery Court ended up terminating Mr. Montague's parental rights anyway.

The Bureau of Prisons released Mr. Montague to a halfway house in 2016. Like most parents would do, he attempted to write and call his family. Because Ms. Nesbit was unhappy with Mr. Montague's attempts to contact his own children, she initiated the subject proceeding in the Madison County Chancery Court for a protective order against him.

Mr. Montague appeared at court for the protective order hearing and voluntarily signed the order because Ms. Nesbit's attorney, Mr. Hollomon, indicated that Mr. Montague would be able to see his kids after he had "a little time to get [himself] together." Regarding seeing his kids, Mr. Hollomon also stated, "about a year, when you get your stuff going, you know, maybe you – because the thing was you don't have nothing to offer them." Mr. Montague signed the protective order based on these assurances, believing that the terms of the order lasted for only one year. The protective Order is dated April 25, 2017.

After the court entered the protective order, someone sent Ms. Nesbit a message from Mr. Montague's Facebook account, but Mr. Montague vehemently denied that he sent the message. He testified that Hope Allen, his girlfriend at the time, sent the message. The writer of the message threatened to expose negative aspects of Ms. Nesbit's past to her children and the public.

After receiving the message, Ms. Nesbit initiated the contempt of protective order proceeding. The initial hearing was set on June 13, 2019, in the Madison

County Chancery Court. Mr. Montague appeared for the hearing, but the court rescheduled it for June 28, 2019. On June 28, Mr. Montague had a flat tire while traveling to court in Madison County, Mississippi, from his home in Hattiesburg, Mississippi. He contacted Ms. Pierce, his probation officer, and informed her about the flat and that he did not make it to Madison County for the contempt hearing.

The Chancery Court found Mr. Montague in contempt of the protective order, without his presence at the hearing. It sentenced him to serve 180 days in the Madison County Jail, which means that over and above the 114-month sentence ordered by the district court in this revocation proceeding, Mr. Montague must serve six months in jail on the contempt issue.

So the bottom line is this – if this Court rules that Mr. Montague violated the protective order, then that violation does not warrant a 114-month prison term. Mr. Montague's parental rights were heartlessly taken from him while he was in prison, and unable to attend the proceeding to protect his rights. The actions taken by Mr. Montague were merely efforts to establish relationships with his two kids. Those types of actions do not warrant a 114-month sentence.

We also must consider Ms. Nesbit's character. She was the primary witness against Mr. Montague during the subject revocation proceeding as well as in the Mississippi Chancery Court proceedings. She lied in Chancery Court by stating

that Mr. Montague did not attempt to see or speak to his children between February 1, 2003, and December, 2004. He had seen his children after February, 2003, as Ms. Nesbit had to admit after viewing photo evidence.

She also lied in Chancery Court about Mr. Montague's attempts to write to his children. The Termination of Parental Rights filed in Chancery Court alleged that Mr. Montague did not write to his kids after February 6, 2009. After the defense showed her documentary evidence to the contrary at the revocation hearing, Ms. Nesbit had to admit that was not true.

Ms. Nesbit's conviction for writing a bad check is another fact that casts doubt on her credibility. Ms. Nesbit admitted that she pled guilty, under oath, to the charge. Then at the subject revocation hearing, she alleged that it was Mr. Montague, and not her, that wrote the bad check. Under this fact scenario, Ms. Nesbit either lied under oath when she pled guilty to the bad check charge, or she lied under oath at the revocation hearing when she accused Mr. Montague of writing the bad check. So it is undeniable she lied under oath at some point.

The remaining three violations are a misdemeanor charge for drug possession, one-time use of drugs and failing to report to the probation officer. Facts supporting these types of violations certainly do not warrant a 114-month prison sentence.

When we consider the total picture of Mr. Montague's attempts to connect with his children, including Ms. Nesbit's acts of deception that contributed to Mr. Montague's mindset, the 114-month prison sentence is unreasonable long.

2. Mr. Montague's history and characteristics do not support a 114-month sentence.

"[T]he history and characteristics of the defendant" are considered under § 3553(a)(1). Mr. Montague has spent the majority of the last 15 to 18 years in prison. His primary alleged transgression since then is centered around attempts to establish relationships with his two children. These facts do not weigh in favor of a lengthy 114-month prison term.

3. The following three factors indicate that the 114-month prison term is unreasonably long:
(a) adequate deterrence to criminal conduct under § 3553(a)(2)(B);
(b) protection of the public from further crimes of the defendant under § 3553(a)(2)(C); and
(c) the need for other correctional treatment under § 3553(a)(2)(D).[4]

Regarding deterrence and protection of the public in relation to the allegations against Mr. Montague for drug use and possession, he admits that he has a problem and asked the Court to sentence him to a treatment facility. His recognition of the problem and willingness to get help serve the purposes of deterrence and protection of the public, as well as the need for correctional

[4] Deterrence, protection of the public and the need for treatment for addictions are all interrelated and are considered together.

treatment. *See United States v. Walker*, 252 F.Supp.3d 1269, 1306 (D. Utah 2017) (holding that incarcerating an addicted person "would be counterproductive to sustaining [the defendant's] extensive rehabilitation and would deprive the community of [the defendant's] productivity and contributions.").

In relation to violating the protective order, given the facts described in detail above, a 114-month sentence is unreasonably long to serve the purposes of deterrence and protection of the public.

4. The applicable guidelines or policy statements issued by the Sentencing Commission under § 3553(a)(4)(B).

"[T]he Guidelines Manual states that 'the revoking court should not sentence the defendant with an aim to punish the offense that constitutes the supervised release violation' but that 'the district court is instead punishing the defendant's breach of the court's trust.'" *United States v. Pinner*, 655 Fed. App'x 205, 207 (5th Cir. 2016) (citation omitted). In summary, the purpose of a revocation sentence is to account for a defendant's breach of the court's trust, rather than punish the defendant for his or her specific conduct. Under this concept, ordering a 114-month sentence was unreasonably long.

5. The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct under § 3553(a)(4)(B).

Based on the undersigned's over 13 years of experience in federal court, few supervised release revocation sentences approach the range of 114-months in

prison. This supports a conclusion that Mr. Montague's treatment is disparate in relation to similarly situated defendants.

6. Conclusion: § 3553(a) analysis.

As stated above, this Court considers "the totality of the circumstances" when it analyzes substantive reasonableness. *Gerezano-Rosales*, 692 398 (citations omitted). Balancing the sentencing factors, with particular weight on the facts and circumstances surrounding the allegation for violating the protective order, weighs in favor of ruling that the 114-month supervised release revocation sentence is unreasonably long. This is true because Mr. Montague's primary alleged transgression is based on attempts to establish relationships with his children. Those types of actions do not warrant an almost ten-year sentence.

C. The district court erred by finding Mr. Montague guilty of: violation one, committing a crime by violating a protective order; and violation two, committing a crime by possessing a controlled substance.

1. Introduction.

Mr. Montague insists that the district court erred by finding him guilty of violating the protective order and committing a crime by possessing a controlled substance. These two issues are presented to this Court to test Mr. Montague's theory of innocence.

2. The district court erred by finding that Mr. Montague committed a crime by violating the protective order.

The primary reason that the district court found Mr. Montague guilty of violating the protective order was that he purportedly sent a Facebook message to Ms. Nesbit requesting money in return for leaving her alone. Mr. Montague denied that he sent the message. He testified that Hope Allen, his girlfriend at the time, sent the message. Under this fact scenario, Mr. Montague argues that the district court erred by finding him guilty of this violation.

3. The district court erred by finding that Mr. Montague committed a crime by possessing a controlled substance.

The second alleged supervised release violation is that Mr. Montague committed another crime. The alleged crime is that "[o]n August 19, 2019, the defendant was arrested by the Biloxi Police Department and charged with Possession of a Controlled Substance and Possession of Marijuana."

The two substances at issue field-tested positive for methamphetamine and marijuana, but they were never lab tested. Further, Biloxi Police Officer Mayes did not know the status of the charge in the legal system. Under this fact scenario, Mr. Montague argues that the district court erred by finding him guilty of this violation.

VI. CONCLUSION

Based on the arguments presented above, Mr. Montague asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted February 25, 2021, by:

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NO. _____

IN THE
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OF AMERICA

RUSSELL LAWAYNE MONTAGUE
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 20-60058
Consolidated With Case No. 20-60061

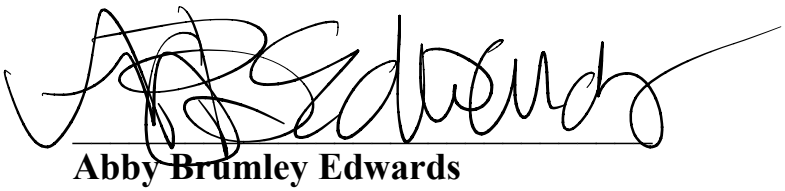
CERTIFICATE OF SERVICE

I, Abby Brumely Edwards, appointed under the Criminal Justice Act, certify that today, February 25, 2021, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. 772998351538, addressed to:

The Honorable Elizabeth Prelogar
Acting Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.

Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.



Abby Brumley Edwards
Assistant Federal Public Defender