

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GARY LAMONT ROBINSON,
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

- I. Whether the Fourth Circuit's decision is in conflict with the Court's decision in *Gall v. United States*, 552 U.S. 38 (2007), because the Fourth Circuit affirmed the judgment despite the district court's failure to make an individualized assessment on the record of the reasons for the sentence.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, who was the Defendant-Appellant below, is Gary Lamont Robinson. Respondent, who was the Plaintiff-Appellee below, is the United States of America.

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CITATION OF PRIOR OPINION

The United States Court of Appeals for the Fourth Circuit decided this case by unpublished opinion issued 4 November 2020, in which it affirmed the judgment of the trial court. A copy of the Fourth Circuit's opinion is included in the Appendix to this petition.

JURISDICTIONAL STATEMENT

This petition seeks review of an opinion affirming Mr. Robinson's sentence following a guilty plea to one count of aiding and abetting the possession with intent to distribute a quantity of a mixture and substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a) (Count 4); and one count of using and carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (Count 5). The petition is being filed within the time permitted by the Rules of this Court, as extended by the Court's Order entered 19 March 2020. *See* S. Ct. R. 13. This Court has jurisdiction to review the Fourth Circuit's opinion pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Investigation, arrest, and indictment

Beginning in April 2015, officers from the Wilmington, North Carolina Police Department conducted controlled purchases from Defendant Gary Lamont Robinson. J.A. 141. On 29 April 2015, officers arrested Mr. Robinson after making a controlled purchase of six bags of heroin. J.A. 142. Mr. Robinson was released,

and on 9 June 2015, officers made another controlled purchase using a cooperating defendant, this time yielding three bags of heroin. J.A. 142.

On 16 September 2015, officers were conducting a controlled purchase from another subject, Gregory Wayne Howard, when Mr. Howard told a confidential informant that he had to go to another location to obtain heroin. J.A. 142. Mr. Howard drove to another location, got into a car being driven by Mr. Robinson, and returned to the informant with ten bags of heroin. J.A. 142. Officers arrested Mr. Robinson and searched his vehicle, locating a stolen firearm. J.A. 142. Through a search of Mr. Robinson's person, officers found a firearm holster, twenty-five bags of heroin, 1.04 grams of marijuana, and 1.93 grams of crack cocaine. J.A. 142. Mr. Robinson made a statement to law enforcement officers, acknowledging that he had stolen the firearm. J.A. 142. Mr. Robinson was arrested and released. J.A. 139.

On 21 April 2017, officers conducted a traffic stop of Mr. Robinson, seizing sixty bags of heroin, cash, and two hotel room keys. J.A. 142. On the same day, the officers executed a search warrant at a hotel where Mr. Robinson was staying. J.A. 142. In Mr. Robinson's room, the officers found a loaded firearm and 150 bags of heroin. J.A. 142-43. Mr. Robinson was arrested and charged in North Carolina state court with drug and firearm charges. J.A. 143.

Mr. Robinson was federally indicted on 31 January 2018. *See* J.A. 13-16. He was charged with nine counts, including two counts of knowingly and intentionally distributing a quantity of a mixture and substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a) (Counts 1 and 2); one count of aiding and

abetting the distribution of a quantity of a mixture and substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a) (Count 3); one count of aiding and abetting the possession with intent to distribute a quantity of a mixture and substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a) (Count 4); one count of possession with the intent to distribute a quantity of a mixture and substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a) (Count 7); two counts of using and carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (Counts 5 and 8); and two counts of possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1), 924 (Counts 6 and 9). J.A. 13-16.

Arraignment and related proceedings

Prior to his scheduled arraignment, Mr. Robinson filed a motion for psychiatric examination. J.A. 5. As a result, a psychiatric report was filed with the court, and the court set the case for a competency hearing and arraignment. *See* J.A. 5. On the morning of 21 February 2019, Mr. Robinson appeared in court for arraignment and pleaded not guilty to each of the nine counts in the indictment. J.A. 19-22. That afternoon, Mr. Robinson returned to court for a competency hearing. *See* J.A. 6, 22. Mr. Robinson's counsel informed the court that she had reviewed the report from Mr. Robinson's evaluation, and that Mr. Robinson had no objection to the report. J.A. 22-23. The court indicated that it would adopt the finding in the report that Mr. Robinson was competent to proceed with his case, and

would find Mr. Robinson competent. J.A. 23.

The Assistant United States Attorney then advised the court that Mr. Robinson had signed a plea agreement that morning, and the parties were prepared to proceed with arraignment for Mr. Robinson to change his plea to guilty. J.A. 23-24. Mr. Robinson confirmed that he wanted to change his plea. J.A. 24. The district court conducted an arraignment, advising Mr. Robinson of his rights and reviewing with Mr. Robinson the terms of the plea agreement. J.A. 24-27. Pursuant to the plea agreement, Mr. Robinson pleaded guilty to Counts 4 and 5 of the indictment. J.A. 27. The district court accepted the plea agreement and set the case for sentencing. J.A. 29-30.

Shortly after Mr. Robinson entered his guilty plea, his counsel moved to withdraw. J.A. 6. The court granted the motion and appointed new counsel for Mr. Robinson. J.A. 7.

Through his new counsel, Mr. Robinson moved to withdraw his guilty plea. J.A. 32-37. Mr. Robinson argued that he suffered from mental health complications, took numerous medications, and had been unable to think clearly at the time he signed the plea agreement and pleaded guilty. J.A. 34, 58-59. Mr. Robinson further argued that he was rushed to sign the plea agreement and did not have time to read it. J.A. 35, 57-59. The Government opposed Mr. Robinson's motion to withdraw his guilty plea. J.A. 61-67.

At a hearing on 25 July 2019, the court questioned Mr. Robinson's counsel about whether he believed Mr. Robinson was competent to stand trial, and whether

Mr. Robinson wanted to withdraw his guilty plea and go to trial. J.A. 70-74. The court explained that Mr. Robinson's choices were to be found incompetent and be civilly committed "for the rest of his life, probably," or to be found competent and take the plea agreement or go to trial. J.A. 71-72. The court asked what would happen if the court granted the motion to withdraw and set the case for trial, commenting, "He does not get acquitted." J.A. 73. Mr. Robinson's counsel told the court that he did not know whether Mr. Robinson was competent, but that he was operating on the prior competency finding. J.A. 73-74.

The court recited the findings of the competency evaluation and said, "[T]hat's why he was competent to stand trial. And if he wants to withdraw his plea, that's fine with me. I'll have a trial." J.A. 75-76. Mr. Robinson's counsel responded, "That's what he wants to do, your Honor." J.A. 75. The court indicated that it would grant the motion, J.A. 76-77, and entered a written order memorializing its findings and conclusion that Mr. Robinson's motion to withdraw his guilty plea would be allowed, J.A. 78-80.

The court reset the case for arraignment on 30 July 2019. J.A. 8. At the arraignment, the court advised Mr. Robinson of the sentence he was facing if he pleaded not guilty and proceeded to trial. J.A. 82-84. When the court said it would arraign Mr. Robinson for entry of his not guilty plea, Mr. Robinson addressed the court and described the reasons he withdrew his guilty plea and the subsequent plea negotiations. J.A. 84-87. Mr. Robinson's counsel then told the court that he would like to have Mr. Robinson reevaluated for competency. J.A. 88-90. The

Assistant United States Attorney objected to having another competency evaluation. J.A. 91. The court stated that it would enter a written order on the competency issue. J.A. 91-92.

On 1 August 2019, the court entered a written order denying Mr. Robinson's oral motion to reopen his competency hearing. J.A. 94. The court reset the case for arraignment on 9 August 2019. J.A. 94.

At another arraignment on 9 August 2019, Mr. Robinson's counsel advised the court that Mr. Robinson wanted to "reinstate the plea agreement that he had before." J.A. 96. The court asked Mr. Robinson, "You want to plead guilty to Counts IV and V like you did before?" Mr. Robinson responded, "Yes sir. Yes sir." J.A. 96. The court asked Mr. Robinson's counsel if he withdrew his objections to the previous arraignment, and Mr. Robinson's counsel responded, "I do, Your Honor." J.A. 97.

The court then conducted the following plea colloquy:

THE COURT: Okay. How do you plead to Count IV, possession with intent to distribute heroin and aiding and abetting in that, guilty or not guilty?

THE DEFENDANT: Guilty, sir.

THE COURT: And Count V, possession of a firearm during a drug trafficking crime, guilty or not guilty?

THE DEFENDANT: Guilty, sir.

J.A. 97. Although a presentence report had already been prepared and the court invited the parties to proceed with sentencing, Mr. Robinson's counsel requested time to object to the report. J.A. 8, 96-97. The court set the case for sentencing in September 2019. J.A. 97.

Sentencing and judgment

The Probation Office prepared a presentence investigation report. J.A. 139-55. According to the presentence investigation report, Mr. Robinson was born in Wilmington, North Carolina. J.A. 149. His mother suffered from substance abuse problems throughout her life, and Mr. Robinson was exposed to violence in his neighborhood and at home. J.A. 140. He witnessed his father sexually and physically abuse his mother, and his father also physically abused him. J.A. 149. Mr. Robinson was sexually abused by a cousin at age 9, resulting in charges against the cousin. J.A. 149. Mr. Robinson was eventually placed in foster care. J.A. 149.

The presentence investigation revealed that Mr. Robinson had been assaulted, stabbed, and shot on multiple occasions. J.A. 149. He was once beaten with a baseball bat until he almost lost consciousness. J.A. 149. Mr. Robinson began using drugs, including PCP and cocaine, by age 13. J.A. 150. He later became addicted to opioids, stimulants, cocaine, marijuana, and hallucinogens. *See* J.A. 150. Around age 19 or 20, Mr. Robinson was diagnosed with post-traumatic stress disorder. *See* J.A. 149. Mr. Robinson was also diagnosed with schizophrenia and bipolar disorder, and later, persistent depressive disorder, antisocial personality disorder, and substance abuse disorder. J.A. 149-50.

Mr. Robinson withdrew from high school at age 15 but later completed his general education diploma (GED). J.A. 151. He worked sporadically as an adult, and also received disability income because of his mental health problems. J.A. 151; *see* J.A. 150.

Based on Mr. Robinson's criminal record, the Probation Office calculated a total criminal history score of 18, resulting in a criminal history category of VI. J.A. 147; *see* J.A. 144-46. The Probation Office also concluded that Mr. Robinson had at least two predicate felony convictions of either a crime of violence or a controlled substance offense, and therefore the career offender Guideline applied. J.A. 147, 153. Because Mr. Robinson was classified as a career offender and was also convicted under 18 U.S.C. § 924(c), the total Guidelines imprisonment range was 262 months to 327 months. J.A. 154. The Probation Office suggested that the district court may wish to consider an upward departure pursuant to U.S.S.G. § 4A1.3 for inadequacy of criminal history category, or a downward variance due to Mr. Robinson's childhood, including physical and sexual abuse, and Mr. Robinson's mental health history. J.A. 155.

Mr. Robinson did not file objections to the presentence investigation report. *See* J.A. 9-10, 156. Mr. Robinson did not file a motion for downward variance or departure prior to his sentencing hearing. *See* J.A. 9-10.

At a sentencing hearing held on 25 October 2019, Mr. Robinson gave a detailed presentence allocution. J.A. 100-08. Mr. Robinson's counsel confirmed that Mr. Robinson did not object to the Guidelines calculation in the presentence investigation report. J.A. 108. Mr. Robinson's counsel began his sentencing argument, discussing the difference between the Guidelines range if Mr. Robinson had not been a career offender, and the applicable Guidelines range. *See* J.A. 108-11. The court interjected, calling Mr. Robinson's counsel's argument "the most

disorganized argument I think I've ever heard.” J.A. 112. The court continued, “I have a terrible presentence report and a terrible life and he had an eloquent, sort of disjointed plea for mercy. And then you come in and I have no idea what you’re talking about.” J.A. 112. The court admonished Mr. Robinson’s counsel, “This is a terrible sentencing. He’s got 300 months of punishment and he’s trying to get a break, and you’re not helping him at all.” J.A. 112. Mr. Robinson’s counsel made additional comments about the circumstances that, if true, would have prevented Mr. Robinson from being sentenced as a career offender. J.A. 112-14.

The Government asked for a sentence within the Guidelines range, citing Mr. Robinson’s offense conduct and criminal history. J.A. 114-16.

The court then announced its sentence:

All right. I think that his guideline is 262 to 327, in my opinion, based on this hearing and the evidence presented, that that over-punishes the crime that he’s being sentenced for. I’ll impose on Count IV, a sentence of 120 months, and on Count V, a sentence of 60 months, consecutive, for a combined sentence of 180 months.

J.A. 116-17. The district court entered judgment accordingly. J.A. 120.

Mr. Robinson timely filed a notice of appeal pro se on 1 November 2019. J.A. 126.

Appeal to the Fourth Circuit

Mr. Robinson argued on appeal that his sentence was procedurally unreasonable, because the district court failed to adequately explain on the record its reasoning for rejecting his arguments for a lesser sentence. *See* App. 2. On 4 November 2020, the United States Court of Appeals for the Fourth Circuit issued

an unpublished opinion affirming the judgment of the district court. App. 1-4. As an initial matter, the Fourth Circuit rejected the Government's argument that Mr. Robinson's appeal was subject to plain error review, ruling that Mr. Robinson preserved his claim of procedural error. App. 2 n*. While acknowledging this Court's decision in *Gall v. United States*, 552 U.S. 38 (2007), and noting that the district court did not address all of Mr. Robinson's arguments, the Fourth Circuit concluded that the district court's explanation for the sentence was sufficient. *See* App. 3-4. Therefore, the Fourth Circuit affirmed the judgment of the district court. App. 4.

MANNER IN WHICH THE FEDERAL QUESTION
WAS RAISED AND DECIDED BELOW

The question presented was argued and reviewed below because Mr. Robinson argued on appeal that the district court erred by imposing a procedurally unreasonable sentence. See App. 2. The Fourth Circuit concluded that there was no error. App. 3-4.

REASONS FOR GRANTING THE WRIT

Mr. Robinson contends that there is a compelling reason for granting his petition for writ of certiorari because “a United States court of appeals . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court,” namely this Court’s decision in *Gall v. United States*, 552 U.S. 38 (2007). See S. Ct. R. 10(c).

THE FOURTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S DECISION IN *GALL* BECAUSE THE FOURTH CIRCUIT DETERMINED THAT THE SENTENCE WAS PROCEDURALLY REASONABLE DESPITE THE LACK OF ADEQUATE EXPLANATION BY THE DISTRICT COURT.

Mr. Robinson's troubled childhood and severe mental health issues provide an explanation for his past criminal conduct, demonstrating that Mr. Robinson's actions warranted a sentence focused on treatment rather than punishment. Although the district court recognized that the Guidelines range would over-punish Mr. Robinson, the district court failed to adequately explain its sentence and failed to demonstrate that it considered all of the facts warranting a downward variance from the Guidelines range. Mr. Robinson respectfully contends that the district court's failure to explain the sentence renders the sentence procedurally unreasonable, and precludes meaningful appellate review. By affirming the sentence and judgment, the Fourth Circuit acted contrary to this Court's decision in *Gall*.

In *Gall*, this Court set forth the standards for an appellate court to review the district court's sentence. *See Gall v. United States*, 552 U.S. at 51. An appellate court "must first ensure that the district court committed no significant procedural error, such as . . . failing to consider the [18 U.S.C.] § 3553(a) factors . . . or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range." *Id.* Following *Gall*, the Fourth Circuit has recognized that "[r]egardless of whether the district court imposes an above, below, or within-Guidelines sentence, it must place on the record an individualized

assessment based on the particular facts of the case before it.” *United States v. Carter*, 564 F.3d 325, 330 (4th Cir. 2009) (internal quotation omitted). “This individualized assessment need not be elaborate or lengthy, but it must provide a rationale tailored to the particular case at hand and adequate to permit meaningful appellate review.” *Id.* (internal quotation omitted). Failing to adequately explain the sentence on the record is a procedural error. *See id.*

18 U.S.C. § 3553(a) lists the factors that sentencing courts “shall consider” in fashioning a sentence that is “sufficient, but not greater than necessary,” to comply with the purposes of sentencing. These factors include the nature and circumstances of the offense, the history and characteristics of the defendant, the need for the sentence imposed to provide punishment, afford adequate deterrence, protect the public from further crimes of the defendant, and to provide the defendant with correctional treatment. 18 U.S.C. § 3553(a)(1), (2). Where the defendant argues for a lower sentence by citing the § 3553(a) factors and the court does not explain its sentence, a procedural error is preserved, and the appellate court reviewing the sentence will reverse unless the Government shows that the error was harmless. *See United States v. Lynn*, 592 F.3d 572, 579-81 (4th Cir. 2010); *see also Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766-67 (2020) (holding that defendant preserved challenge to reasonableness of sentence by requesting lower sentence).

An appellate court cannot reach the substantive reasonableness of the sentence if the sentence is procedurally unreasonable. *See United States v. Blue*,

877 F.3d 513, 522 (4th Cir. 2017); *United States v. Carter*, 564 F.3d at 328.

The district court committed procedural error in sentencing Mr. Robinson because it did not “place on the record an individualized assessment based on the particular facts of the case before it.” *See United States v. Carter*, 564 F.3d at 330. Although Mr. Robinson and his counsel discussed his personal history and characteristics and the nature and circumstances of the offense, the record does not show that the district court considered the § 3553(a) factors, because the district court did not explain its application of those factors or the reasons for imposing a below-Guidelines sentence, other than to say that a sentence within the Guidelines range would over-punish Mr. Robinson. J.A. 116; *see Gall v. United States*, 552 U.S. at 51. Mr. Robinson asked for a lower sentence by stating that the career offender Guideline should not apply, *see* J.A. 104-05, and the district court did not address Mr. Robinson’s specific arguments for a lower sentence, *see United States v. Lynn*, 592 F.3d at 584.

A district court does not put on the record the required “individualized assessment” simply by announcing that it believes it has reached an appropriate sentence. *See id.* at 583. In *Lynn*, one of the defendants argued for a below Guidelines sentence based on certain of the § 3553(a) factors. *Id.* Without addressing the defendant’s arguments, the district court imposed a within-Guidelines sentence, saying that the sentence was “fair and appropriate” and “consistent with the requirements of [§ 3553(a)].” *Id.* (alteration in *Lynn*). Following this Court’s decision in *Gall*, the Fourth Circuit found the district court’s

explanation inadequate, because “it failed to address [the defendant’s] specific § 3553 arguments or explain why the sentence imposed on him was warranted in light of them.” *Id.* at 584. Because the Government failed to show that the district court’s procedural error was harmless, the Fourth Circuit vacated and remanded for resentencing. *Id.* at 584-85.

In *Lynn* and other cases following *Gall*, the Fourth Circuit has repeatedly held that a district court commits procedural error when it fails to discuss which § 3553(a) factors the court considered or found important, or how the factors apply to the defendant. *See, e.g., id.* at 584 (district court’s statement that sentence was consistent with § 3553(a) was insufficient to explain sentence); *United States v. Carter*, 564 F.3d at 329 (district court’s statement that it was considering § 3553(a) factors, without explaining how factors applied to defendant, was insufficient); *accord United States v. Martinez-Martinez*, 378 F. App’x 302, 304 (4th Cir. 2010) (per curiam); *United States v. Pacheco Mayen*, 383 F. App’x 352, 355 (4th Cir. 2010) (per curiam) (same).

Like the district court in *Lynn*, the district court in this case failed to address Mr. Robinson’s specific sentencing arguments and explain the court’s application of the sentencing factors. *See* J.A. 100-17. Mr. Robinson pointed to a variety of mitigating circumstances, citing evidence of his self-directed rehabilitation work and discussing his struggles with drug addiction. J.A. 103-04. He explained, both personally and through counsel, that he committed some of the predicate offenses for the career offender Guideline nearly twenty years earlier. J.A. 104, 109. Mr.

Robinson's counsel argued that Mr. Robinson's prior drug convictions that caused him to be a career offender involved relatively small quantities of drugs. J.A. 110, 114. Mr. Robinson's counsel also drew the court's attention to the abuse Mr. Robinson suffered at the hands of his father while his mother dealt with drug addiction, and Mr. Robinson's substance abuse and mental health struggles. J.A. 109-110.

The district court did not address these arguments when pronouncing the sentence. *See* J.A. 116-17. The court did not explain whether it was accepting or rejecting any of Mr. Robinson's arguments, or what its reasoning was. *See* J.A. 116-17. Instead, the court stated that "based on this hearing and the evidence presented," the Guidelines range "over-punishes the crime that he's being sentenced for," and pronounced a total sentence of 180 months' imprisonment. J.A. 116-17. Reciting that the Guidelines range over-punishes an offense is not a "rationale tailored to the particular case at hand" that allows meaningful appellate review. *See United States v. Carter*, 564 F.3d at 330.

The district court's failure to make an "individualized assessment" of Mr. Robinson's case on the record forecloses meaningful appellate review of Mr. Robinson's sentence. *See id.* The district court's error is not harmless, because "explicit consideration" of Mr. Robinson's sentencing arguments might have persuaded the district court to impose a lesser sentence. *See United States v. Lynn*, 592 F.3d at 582. The Fourth Circuit's decision affirming the sentence is therefore inconsistent with this Court's directive in *Gall* that a district court "must

adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Gall v. United States*, 552 U.S. at 50. Mr. Robinson is entitled to remand for resentencing, to allow the district court to impose a sentence only after properly considering and addressing the sentencing factors. *See United States v. Lynn*, 592 F.3d at 583-84.

CONCLUSION

For the foregoing reasons, Petitioner Gary Lamont Robinson respectfully requests that the Court grant his petition for writ of certiorari, reverse the decision of the Fourth Circuit, and remand for resentencing.

This the 5th day of April, 2021.

/s/ Kelly Margolis Dagger

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Petition for Writ of Certiorari was served on the Respondent herein by depositing a copy thereof in the United States mail, postage prepaid, first class, addressed as follows:

Jennifer P. May Parker, Esq.
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This the 5th day of April, 2021.

/s/ Kelly Margolis Dagger
Kelly Margolis Dagger