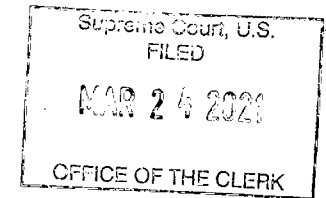


20-7832

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES



CHADWICK MARVIN THOMPSON
PETITIONER

V.

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) What qualifies as 'extraordinary and compelling circumstances' under a Motion for Compassionate release, 18 U.S.C. 3582(c)(1)(A)?

(2) Does the lower court lack authority to reduce a defendant's sentence if the reasons do not fit within one of the categories described in the application notes in U.S.S.G. 1B1.13?

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Petitioner, Chadwick M. Thompson, respectfully petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit for review of its decision to deny Compassionate Release.

INTRODUCTION

By denying Compassionate Release the Fifth Circuit did not argue the merits of Mr. Thompson's 'extraordinary or compelling circumstances'.

The Fifth Circuit applied U.S.S.G. 1B1.13 to justify that Mr. Thompson's issues do not fall within the categories described in the application notes in 1B1.13.

The Sister Courts are divided on what applies as 'extraordinary or compelling circumstances' that would qualify for compassionate release. The Second Circuit ruled in Brooker that: "First Step Act freed district courts to consider full slate of 'extraordinary or compelling circumstances' that an imprisoned person might bring before them in motion for compassionate release. Neither U.S. Sentencing Guidelines manual 1B1.13, limits district court's discretion." U.S. v. Brooker, 976 F.3d 228, no. 19-3218-CR (2nd Cir. Sep 25, 2020)

U.S.S.G. 1B1.13 only applies when the BOP brings forth a Motion for Compassionate Release under 18 U.S.C. 3582(c)(1)(A).

The Sixth and Seventh Circuit have followed the ruling in the Second Circuit, Brooker, that if the defendant files a Motion for Compassionate Release U.S.S.G. 1B1.13 does not apply.

The lower courts would benefit greatly from further elucidation of the extent to which U.S.S.G. 1B1.13 applies to Motion for Compassionate Release that is brought by a defendant.

The First Step Act of 2018 changed the landscape for what qualifies as 'extraordinary or compelling circumstances' that apply for Compassionate release under 18 U.S.C. 3582 and the time limits on when and how to file a Motion for Compassionate Release.

Covid-19 is a deadly virus and the record shows that the BOP is not capable of protecting the inmate population. High risk inmates are dying from Covid-19 and the U.S. Attorney General has Ordered that the BOP reduce the prison population due to Covid-19.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit concerning Mr. Thompson's Motion for Compassionate Release, reported at United States v Thompson, no. 20-40381, 6:13-CR-23(01) (5th Cir. 2021)

JURISDICTION

Jurisdiction is proper pursuant to 28 U.S.C. 1254(1). The Fifth Circuit entered its Judgment and opinion affirming the judgment of conviction and sentence on January 5, 2021. This petition is being filed within 90 days of that date and accordingly, is timely. (see Sup. Ct. R. 13.1)

STATUTORY OR OTHER PROVISIONS

INVOLVED

18 U.S.C. 3582(C)(1)(A)

18 U.S.C. 3582(c)(1), an inmate may file a request for a reduction in sentence with the sentencing court after receiving a BP-11 response under subparagraph (a), the denial from the General Counsel under subparagraph (d), or the lapse of 30 days from the receipt of such a request by the Warden of the inmate's facility, **WHICHEVER IS EARLIER**.

571.61

a. A request for a motion under 18 U.S.C. 3582(c)(1)(A) shall be submitted to the Warden. Ordinarily, the request shall be in writing, and submitted by the inmate. An inmate may initiate a request for consideration under 18 U.S.C. 3582(c)(1)(A) only when there are particular extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing. The inmate's request shall at a minimum contain the following information:

- (1) The extraordinary or compelling circumstances that the inmate believes warrant consideration.
- (2) Proposed release plan, including where the inmate will reside, how the inmate will support himself/herself, and, if the basis for the request involves the inmate's health, information on where the inmate will receive medical treatment, and how the inmate will pay for such treatment.

STATUTORY OR OTHER PROVISIONS
INVOLVED

A. 18U.S.C. 3553(a)

This case implicates 18 U.S.C. 3553(a). It states the following:

- (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--
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (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;
 - (3) The kind of sentence available;
 - (4) the kinds of sentences 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 amendment 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 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 victim of the offense.

B. 18 U.S.C. 3553(b)(1)

This case also implicates 18 U.S.C. 3553(b)(1). It states the following:

Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating, or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purpose set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense.

STATEMENT OF THE CASE

A. ORIGINAL SENTENCE

Mr. Thompson was convicted of conspiracy to distribute and to possess with intent to distribute methamphetamine. The court deemed Mr. Thompson an Career Criminal and sentenced to 240 months imprisonment. Mr. Thompson has served eight years of his 240 months sentence, which is over 50% of his time counting good credit time.

Mr. Thompson's prior conviction for 18 U.S.C. 922(o), possession of a machine gun is no longer considered a crime of violence after the Supreme Court ruling in Johnson. A machine gun falls within the same category as a sawed-off shotgun.

REASON FOR GRANTING THE PETITION

The court of appeals did not argue or discuss what qualifies as 'extraordinary or compelling circumstances' that apply on a defendant's Motion for compassionate release, which left important questions unanswered and in conflict between the Sister Circuits and how to apply the U.S.S.G.

The lower courts are split in determining whether Covid-19 and high risk inmates would fall within extraordinary or compelling circumstances to reduce a defendant's sentence under 18 U.S.C. 3582.

Mr. Thompson is forty-three years old, suffers from hypertension and high cholesterol, and had a stroke over ten years ago. Mr. Thompson has a BMI over 30%, which is considered obese.

Mr. Thompson is considered a high risk inmate that could die from contracting Covid-19 according to the CDC guidelines. There has been over 200 deaths of inmates in federal prison due to Covid-19. Mr. Thompson has not contracted Covid-19 yet, but he is surrounded by inmates that have already recovered from covid-19 virus. It is only a matter of time before he contracts this virus. The record clearly shows that the BOP is not protecting the prison population and does not have adequate space for social distancing. The BOP has not supplied the inmate population proper cleaning supplies. There is multiple new strains of covid-19 that are more contagious and deadlier as reported by the CDC.

Mr. Thompson has served over 50% of his sentence and has a home plan and job if he is released.

Mr. Thompson is a care level 2 and requires cronic care for his illnesses. The government argues that he is "stable" with medication, but majority of people who died from covid-19 was "stable" on medication. Covid-19 affects the stability of ill or medically vunerable people. The CDC guidelines has declared that obese individuals are at a high risk of death from covid-19.

The Bop refused to put Mr. Thompson on home confinement, eventhough he qualified under the U.S. Attorney General's Order. Mr. Thompson is at a high risk of death due to covid-19, he has a home plan, is eligible under the First Step Act with low recidivism, and Congress suspended the amount of time an inmate can be put on home confinement.

U.S.S.G 1B1.13 does not apply to a Motion for Compassionate Release if the defendant files the motion in the courts. (See U.S. v. Brooker, (2nd Cir. 2020)

Mr. Thompson's prior conviction for unlawful possession of a machine gun is not a crime of violence and can not be used to enhance his sentence under the U.S.S.G. 4B1.2, Career Criminal. The Supreme Court ruled in Johnson that: "possession of a sawed off shotgun is not a crime of violence." Possession of a machine gun and a sawed-off shotgun are both defined in U.S.S.G. 4B1.2 and neither can be used to enhance a defendant's sentence under U.S.S.G. 4b1.2. Mr. Thompson's sentence would be reduced drastically with out the Career Criminal enhancement.

The lower courts are split on what qualifies as 'extraordinary or compelling circumstances' or how to apply U.S.S.G. 1b1.13. This petition would help clarify these questions and the future of Motions for Compassionate Release.

CONCLUSION

For the foregoing reasons, Petitioner Chadwick M. Thompson respectfully requests that this court grant Certiorari to review the judgment of the United States Court of Appeals in this case.

Respectfully submitted this March day of 16th 2021.

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