No. 20-8343

FILED
JUN 15 2021
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Joseph Jenkins — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

I On third direct appeal, did the fractionally different appellate Panel plainly err by failing to force district court compliance (mandate rule) with the original (majority) panels published, now widely cited (including by this court) opinion and order; violating both laws of the case and circuit by imposing a longer term of imprisonment and harsh supervised release than ordered in the first direct appeal, affecting my substantial due process rights?

II Does the (vehemently) dissenting minority judges reappearance on a subsequent appellate panel, affirming a non-compliant judgment with language and views very similar to the original dissent; convey an appearance of impropriety and panel shopping?

III Do the accumulative judicially biased errors (causing me to linger in the prison system longer than decided in the first appeal) within this widely cited case require reversal, for more meaningful appellate review; to maintain integrity of the process, uniformity of decisions thus preserving public reputation and the appearance of justice?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix ______ to the petition and is

[x] reported at 854 F.3d 181 (2d Cir 2017); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______________________________ court appears at Appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 2, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 30, 2021, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______ (date) on ______ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was ______. A copy of that decision appears at Appendix ______.

[ ] A timely petition for rehearing was thereafter denied on the following date: ______, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______ (date) on ______ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V

In relevant parts: No person shall "be deprived of life, liberty or property without due process of law."

>The due process clause entitles a person to an impartial and disinterested tribunal in both criminal and civil cases.

>The due process clause is implicated whenever a judge determines a fact by a standard lower than "beyond a reasonable doubt" if that factual finding would increase the punishment above the lawful sentence that could have been imposed absent the fact.

TABLE OF AUTHORITIES CITED

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OTHER

TABLE OF AUTHORITIES CITED -- CONTINUED

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Statement of the Case

I a. In United States v Jenkins, 687 Fed Appx 71 (2d Cir 2017); 138 S.Ct. 530; (14-4295) 199 L.Ed. 2d 406, both this court and the appellate court declined to address substantive due process issues related to my being tried in the United States for a Canadian offense. Sentencing was addressed seperately.

b. In United States v Jenkins, 854 F.3d 181 (2d Cir 2017) a majority panel (Judges Parker, Jacobs) rejected, at length, in a publicized decision, in genral an irrational district court sentence that clearly created sentencing disparities and deprivations of liberty. Now widely cited, including by this court (United States v Rosales-Mireles, 585 US ___, 138 S.Ct. ___, 201 L.Ed 2d 375, (2018)) the second circuit criticized the district court for imposing a sentence that failed to take into account "the nature and circumstances of the offense and the history and characteristics of the defendant as 18 USCS 3553(a)(1) and (b) require; calling the sentence "far overboard," "shockingly high," "excessive" and "unusually harsh" in it's entirity "serving no valid public purpose," among other things - for a first time offender. (Guideline Sentence was imposed)

Highlights: The sentence "failed to distinguish between contact and possession-only offenders" creating an unwarranted sentencing disparity that violates [18 USCS] 3553(a)(b)." (a) The "transportation provision" was a technicallity and did not "suppl[y] an appropriate basis for sentencing a person to an additional 10 years in prison" - the sentence should have been less than the 10 year maximum for "possession."

(b) finding the conditions and term of supervised release "seemingly unrelated to [the defendants] offense and circumstances," and unwarranted, as an example "[p]rohibit[ing] Jenkins from having direct contact with anyone under 18 unless supervised by a person approved by the probation office. As mentioned above, Jenkins never contacted or attempted to contact any minors." Finding this unreasonable. (c) concluding "[I] will be a low-not a high-risk to reoffend" and that there must be some "support in the record" to increase a sentence on the "likelihood of reoffending" stating "[h]ere there is none." (d) the court placed too much weight on "failure to accept responsibility" which the court defines as "taking a case to trial," where "the district judge proceeded to add years and years onto Jenkins sentence" and for what the judge perceived as "rudeness and disrespect" calling it a "clear error in judgment." Also citing the "parsimony clause." (e) that the "conditions of supervised release should be sufficiently explained by the district court to permit meaningful appellate review" as the court was "frustrated where it is not possible to understand why the sentence was imposed." The panel further "retain[ed] jurisdiction over any subsequent appeal."

The minority judge (Kearse) dissented separately "from so much of the majorities opinion as rules that the imprisonment componant of the sentence imposed [within guideline range] is substantively unreasonable." Continuing on to cite mostly unproven componants in the judges and governments rhetoric - only intended to increase the sentence.

II In the second direct appeal (14-4295) United States v Jenkins, 768 Fed. Appx. 36 (2d Cir. 2019) the same judge, "chief judge" of the district (Suddaby) was removed after a slanderous tirade, refuting the majorities findings, agreeing with the dissenting appellate judge (Kearse); proceeding on to support his original sentence with a series of alternate facts, findings and propositions which were outrageous by all standards. He did reduce the sentence (25 months) to 200 months and "slightly modified conditions" of supervised release. Highlights of grave proceedural errors as cause for remand (baselessly used to inflate the sentence) were (a) using exclusively, "statistics and studies" to conclude I had committed some prior undetected "phantom" sex offense with references to unreported crimes in general (b) attempting to manufacture an "unidentified" victim (c) I was a high risk to reoffend (d) suggesting that "without polygraph testing, we will likely never know more about Mr. Jenkins' offense conduct or sex offending history." Ie: "refusing to accept the record reflected a clean past, the district court impermissibly placed the burden on Jenkins to prove that he had never committed another offense, with the suggestion that defendants might do so by submitting to a polygraph test."

The panel concluded "that the district court procedurally erred by presuming that Jenkins must have committed one or more prior sexual offenses, and by factoring that ~~risk~~ presumtion into Jenkins risk of recidivism." citing "There is no evidence that Jenkins has committed any other sex offense." The judgment was vacated and remanded for resentencing - before different judge.

III The third district court sentencing was a duplication of the second. The different district judge (McAvoy) directly appointed by the removed district judge mimicked the findings and Statement of Reasons (SOR) using the errant substance, language to impose "a higher sentence" using the trial as an "aggrivating factor[]" due to a "failure to accept responsibility," "justifying a lengthy period of supervision and further justifies placing more restrictive conditions [of] supervised release factors" defiantly all on the basis I was a "serious danger of recidivation" a finding dismissed as baseless by the mayority in Jenkins I+II, as a proceedural error. The panel clearly stated I was a "lowrisk."

Although the sentence, terms of imprisonment were adjusted to 12 years with 15 year supervised release term - the judge refused to address: $40,000 in absolutely baseless, unexplained fines; $12,000 of similarly excessive restitution - proceeding to reimpose the very restrictive conditions of supervised release directly struck down in the first appeal, as not suitable for a "possession only" offense where there was no contact with children, nor was any attempted.

Citing (out of second circuit) case the judge concluded that a "hands-on" sex offense against a minor was not a prerequisite for imposing a special no-contact condition - assuming that a possessor of child pornography would eventually commit a hands-on sex offense if they had unrestricted access to minors. Continuing on he imposed the restrictions suitable to a hands on offense: sex offender treatment, polygraph/voice stress analyzer, computer monitoring, employer notification as to conviction and nature of offense, no contact was reimposed.

IV The third direct appeal for non-compliance (19-3381) United States v. Jenkins, 832 Fed Appx 736 (2d cir 2020) went to a fractionally different appellant panel. The majority from Jenkins I+II was replaced with two unfimiliar (to the case) judges and the minority (vehemently) dissenting judge (Kearse) from the first panel who supported the removed district court judges original findings, remained on the panel.

Not surprisingly, the district courts judgment was affirmed in a "summary order" with language and (erroneous) findings nearly identical to the judges 2017 dissent in Jenkins I. (The 12 year sentence, Supervised Release and conditions nearly identical to those struck down by the majority in Jenkins I+II) The district court judgment was rubberstamped, unconditionally.

Contentiously, the affirmance placed all confidence in the district courts "individualized judgment" and "considerable discretion in fashioning the proper sentence" maintaining that it was "never required [] to explain why any particular unselected sentence would be inappropriate." Supportive of the courts use of the trial, "studies" and "unreported crimes" to determine I was a "high risk" to reoffend justifying the 12 years, 15 years of supervised release with no contact provisions, work restrictions, social restrictions - in total disreguard of the published opinion (in Jenkins I supported in Jenkins II) imposing a higher sentence.

Reasoning in the affirmation relied exclusively on 'issues' not addressed in Jenkins I. as they are merely concocted talking points not proven by a preponderance - done in bad faith to inflate the sentence or otherwise simply false and slanderous.

V The petition for en banc review was filed on 2/25/21 as #114 - denied without explanation on 3/30/21. There is no evidence it was reviewed by any judge of the precious majority on the original panel majority (14-4295)

Reasons for granting the Writ

I Per Rule 10(a) - On third direct appeal, a fractionally different appellate panel committed Plain Error 52(b) by failing to force district court compliance with (Jenkins I) or the original majorities published opinion rendered on first appeal. This deviates completely from the accepted usual course or hierarchy of judicial proceedings violating the mandate rule, law of the case and law of the circuit directly affecting my due process rights. The writ of certiorari is needed to maintain integrity of the process and uniformity of decisions within this case.

The panels heedless decision undermined years of litigation attempted sentencing reform and the integrity of the appellate process

In Jenkins I, judge Parker stated "On remand, we are confident that Jenkins will eventually receive a sentence that properly punishes the crimes he committed." Over 4 years and 2 remands later, following a third direct appeal for non-compliance; I have still not received the sentence outlined in the 2017 decision, my present term of incarceration has exceeded (by years) that outlined in the opinion and order followed by a mandate. This wrongly rewarded the district court for it's malfeasance - as it simply found a more receptive audience the third time, in the minority judge on a different panel.

A The district court violated the mandate by imposing a longer term of imprisonment than determined necessary

"An inferior court has no power or authority to deviate from the mandate issued by an appellate court," Briggs v Pennsylvania RR Co., 334 U.S. 304, 306, 68 S.Ct. 1039, 92 L.Ed. 1403 (1948) thus Jenkins I became the 'law of the case.' The districts courts opinions otherwise became irrelevant.

The lengthy, easy to understand opinion was nationally published. The circuit took the opportunity to update it's holdings in United States v Dorvee, 616 F.3d 174 (2d Cir 2010) making direct comparisons as the district judge (McAvoy) had made similar "mistakes" years ago; in that U.S.S.G. 2G2.2 guideline governing child pornography offenses can quickly "lead to unreasonable sentences that are inconsistent with what 18 USCS 3553 requires." Coincidentally or not judge McAvoy was appointed for the third sentencing in Jenkins.

The opinion clearly stated "the concerns we expressed in Dorvee apply with even more force here and none of them appears to have been considered by the district court." With first hand knowledge of dorvee on top of the Jenkins opinion the mandate should have been an epiphany on correcting a "possession only" sentencing run amok for years. Yet perplexingly, (McAvoy) reiterated the speech, findings determined erroneous with substantive procedural errors the prior judge was removed for - omitting only the most egregious - forcing a third appeal.

The judge also increased the sentence for "his attitude with the court. His performance before the court." with no explanation. Presumptively, this relates to his removed colleague-which was vindictive and forbidden by the prior majority. Another procedural error.

The judge completely ignored, failed to acknowledge (a) exculpatory facts and evidence from the usurped Canadian case (b) I had been incarcerated 8 years at the time of the sentencing (c) no disiplinary problems whatsoever (d) no criminal history (e) Full support of family (f) exemplary employment history (g) the fines were baseless (h) any specifics of the appellate courts two prior mandates including (i) a sentence over 10 years was inappropriate (2) defendant does not pose a risk of recidivation or contact upon release

Rather, the judge inflated the sentence finding, bogusly I was a "serious danger of recidivation" spewing governments concocted talking points in a melodramatic speech again straying far from the original charge with out of circuit cases - not at all related to my circumstances. Absurdly he compares my case to others where "defendants pose a danger to a particular child," "removing defendants from the act of physically harming a child" and "free passes of child molestation" to name a few - deducing this from a "possession offense" with "no contact" whatsoever. This was not justified by the record, or 3553(a)(1) and not open to interpretation following the mandate. These are also procedural errors - the judge had several other cases remanded decided before and after the mandate where he previously abused his discretion. The judge similarly resorted to slanderous type accusations not supported by the trial or record before the court, this speculation was the basis for the prior remands. Ignored here.

In 2010 the judge removed 119 months from Dorvee's distribution sentence to comply with the mandate. Ignoring rulings in Jenkins I & II to impose a sentence accounting for "important differences between Jenkins and those who produced or distributed child pornography or who physically abused children received." Jenkins @191; the judge imposed a term of imprisonment that exceeds (a) Dorvee's distribution re-sentence by 23 months (b) the median sexual abuse category by 24 months (c) the mean of possession offenses by 92 months, highest by 47 months. The 144 month sentence for merely possessing child pornography in Canada, followed by a $40,000 fine, 15 years of Supervised release with conditions more fitting to a contact offense - it is not supported by any other case law - It is not compliant with the mandate, erroneously based on factors dismissed by Jenkins I & II.

B <u>The panels failure to uphold rulings within same case is plain error violating 'law of the case' doctrine</u>

"The decision on direct appeal is the 'law of the case'" Davis v United States, 417 U.S. 333, 41 L.Ed. 2d 109, 94 S.Ct. 2298 (1974) thus the doctrine "bars the... appellate court in a subsequent appeal from reopening such issues..." United States v Quintieri, 306 F.3d 1217, 1229 (2d Cir 2002) and that an appellate panel is "bound by the decisions of prior panels until such time as they are overruled either by an enbanc court of appeals or by the Supreme Court." United States v Wilkerson, 361 F.3d 717, 732 (2d cir 2004)

This court granted certiorari in Rosales-Mireles under Rule 52(b) that "additional jail time" warrants serious consideration. The original panel here explicitly decided in Jenkins I "as a reviewing court" (see United States v Sawyer, 892 F.3d 558 (2d Cir 2018) a sentence exceeding 10 years did not "meet the requirements of 18 USCS 3553." The 12 year sentence* violates the mandate, along with the supervised release and terms thereof.

"A district court on remand 'must implement both the letter and spirit of the mandate and may not disreguard the explicit directives of that court'" United States v McCrimmon, 443 F.3d 454, 459 (5th cir 2006). The cringeworthy first resentencing seriously "called into question the competence [and] integrity of the [chief] district court judge," Rosales-Mireles, 850 F.3d 250, of the Northern District of New York. The second re-sentencing erroneously was based on the first.

The 'law of the circuit,' under judicial precedents states that an appellate panel is "bound by the decisions of prior panels until such time as they are overruled either by an en banc court of appeals or by the supreme court." United States v Wilkerson, 361 F.3d 717, 732 (2d cir 2004) Obviously if not for the "error" my term of imprisonment would have been lower, "any amount of jail time is significant and has exceptionally severe consequences for the individual..." Jenkins @ 192 also recited/quoted by this court in Rosales-Mireles which was as noted reversed under Rule 52(b), which went on to discuss the importance of "maintaining public perception of fairness and integrity in the justice system".

II The fractionally different appellate panels affirmation of a non-compliant district court judgment gives an overall appearance of vindictiveness and panel shopping on third direct appeal

The revised panels 'summary order' affirming the conviction is fundamentally wrong. Simply consulting the sentencing transcripts would have been beneficial to the panel as it debunks their 3 primary reasons for the affirmation. Incessant droning of alleged "failure to accept responsibility" and "obstruction of justice" claims are merely overweighted biased opinions contradicted by actual records and my fundamental rights to due process. "[C]allous disregard..." is totally false. Showcased here is the need for meaningful appellate review and guidelines sentencing reform. The trial judge was removed for 'abuse of [broad] discretion' yet his egregious findings continue to taint the proceedings as they were merely duplicated by a sympathetic colleague; subsequently rubber-stamped by a revised panel with the dissenting minority judge from the first panel whose dissent was revered by the trial judge in his wretched SOR for which he was removed on remand.
This trial and appeal has evoked judicial animous in both courts for various reasons. My sentence remains severe for no reason. The outdated sentencing guidelines and enhancements allow for some 20 years of "broad discretion" on this case. Disgruntled judges on nothing more than whims, personal animous and biased opinions are misusing this discretion to improperly inflate the sentence to accomplish vindictive punishment for trial. Ive previously pointed out (doc #248, p19) this invokes Supreme Court rulings designed to protect defendants who have gone to trial and had successful appeals from retaliatory motivations on the part of sentencing judges.

The minority judges viewpoints along with the district courts were overridden in the first direct appeal - Neither are relevant in subsequent proceedings or third direct appeal

"[A] majority vote on any given issue counts as a holding of the court, and the remaining judge is bound as if it occured on a prior precedental case." Hanover 3201 Reality, LLC v. Vill Supermarkets, Inc, 806 F.3d 162 (CA3, 2015) "Thus, no subsequent panel overrules the holding in a precedental opinion of a previous panel."

Further, Judge Parker, who authored the opinions in Jenkins and Doruee for the majority "retained jurisdiction over any[1] subsequent appeal" in Jenkins I. There is no evidence the judge is aware that two prior decisions/opinions, considered important in the circuit, were undermined by the minority judges appearance (questionably) on a third direct appeal for non-compliance.

Judicial Vindictiveness violates due process, "an appellant is not required to prove by a preponderance 'that but for [the] error things would have been different'" United States v. Dominguez-Benitez, 542 U.S. 74, 124 S.Ct. 2333, 159 L.Ed.2d (2004) he must establish that "the probability of a different result is sufficient to undermine the outcome of the proceeding," Id at 83. An individual of ordinary intelligence would conclude that absent the minority judges influence, or assignment error that a diffent-more favorable decision was eminent - Triggering Plain Error 52(b)

(1) any - one or some, no matter how much or how many (Oxford Dictionary)

The different panels review only exaggerated the procedural errors committed on remand by the district court – the decision should be reversed for proper review and for correction

With all due respect, the revised panels 'summary order' was uninformed, contentious and misguided. The perfunctory review of proceedings ignored or neglected to consult inter-alia the sentencing transcripts; where I expressed sympathy for "actual victims of child pornography and I've never blamed them." JA 344 Consel reaffirmed "he's never said that as far as I know... It's never been [a] part of the transcript." JA342 There was no "callous disregard". The government provided no expert testimony at the trial. (A527) What does constitute or does not constitute C.P. was not determined. The 'pro se' sentencing memorandum the government refers to (p11, fn # 6) were not actual victims and classified as adults by the Canadians. The statement is irrelevant. None of "the governments [alleged] evidence" so relied upon was a preponderance nor proven by such.

Further erroneous was the panels claim "[Jenkins] contends that the district court placed undue weight on his failure to accept responsibility, obstruction of justice, and risk of reoffending." (Sum Ord p2) This was the first panel mayorities conclusion in Jenkins I & II that counsel merely reiterated; Along with the "special conditions of supervised release restricting [my] access to minors and requiring him to notify future employers of his conviction." Again, the majority in "Jenkins I" of course found the "restrictions excessive and unreasonable" along with the length of the sentence, which was why it was instructed to explain it's chosen sentence. It is as if the revised panel has not even read the publicized decision, or any relevant documents before drawing incredibly biased conclusions and affirming a sentence (largely) rejected by the prior majority panel (14-4295; dk#138, #279 (Jenkins I & II))

The panels reasoning for affirming the district courts vindictive sentence mirrors the dissent of the minority judge in "Jenkins I." The cherry picked items (page 2, line 7-11) denounce directly, right to trial, vigorous defense and totalities surrounding the case; while encouraging massive trail penalties violating basic due process rights for daring to question the charges against me.

This invokes supreme court rulings as I pointed out in briefs (#248 p19, 14-4295) that a person cannot be punished for what the law plainly allows him to do and that vindictiveness is to play no role in the sentencing of defendants. The rulings are crafted to protect defendants who have gone to trial and/or had successful appeals - from retallitory motivations on the part of the sentencing judge.

These decisions are retallitory. The sentence is far above average for no legitimate reason. The district court blames the appellant for bad publicity it has suffered, locally and nationally from the trial and somewhat successful first appeal. There were many remands and heighted scrutiney on all their decisions directly related to "Jenkins I." While countless defendants benefit from the sentencing rulings in my own case - my sentence remains unreasonable, unjustified and in totality, excessive. A 12-15 month offense should not be inflated to 144 to 225 months plus add ons.

III The accumulation of judicially biased "errors" severely undermine the legitimacy of the sentencing and appellate process requiring reversal for appearance of vindictiveness.

Jenkins II was reversed/remanded to a different judge after what turned out to be a spectacular display of intolerance, ignorance and vindictiveness after the district judge adopted, sourced and plagerized a rejected government document loaded with falsely manufactured, unsupported, inaccurate and speculative notions. The bogus findings strayed far from the original charge, were slanderous and pathetic in that they attempted to force me to fit some clinical, criminal profile I clearly did not; seeking to impose the maximum punishment that the court would allow - while rejecting appellate findings and the interference in his judgment, trying desperately to justify the original sentence, while ignoring an exemplary and clean past, and the mandate.

Jenkins III was no different. The noncompliant sentence sought to appease with minimal compliance to achieve maximum punishment; Only omitting the most egregious of the errors, bias by omission was once again rampant - violating the mandate a second time. The vindictive proceedings (likely because the trial judge was admonished nationally by name in the publicized opinion - Jenkins I) only found a receptive audience in the minority judge whose opinions were also rejected by the previous majority, on original appeal.

Over 4 years later I have still not received a sentence that distinguishes between a possession and contact offense.

When the case was re-remanded in Jenkins II, the summary order (see paragraph 5) pointed out extensively that "facts used at sentencing must be fond by a preponderance of evidence" not "unsupported theorys, not fond in record evidence" and that it was "troubled by the district court's apparent assumption that [the defendant] was likely to actually sexually assult a child" citing cases remanded as not supported by the record or any allegations. As was determined by the original majority in 2017.

Here the district court used it's own biased, unqualified opinion to conclude - against the mandate - it warranted additional punishment and restrictions without support in the record, to enhance the sentence.

Other courts opining on this case CFTC v McDonnell 2018 US Dist Lexis 146576 (2018) stated it was to "constantly control[] [the defendant] while on supervised release" regarding the conditions attached to Jenkins. United States v Ulbright, 858 F.3d 171 (2d cir 2017) noted the sentence was vacated because the district court relied on on the defendants "disdain for the law" in "dramatically increasing" my sentence for child pornography offenses. This case has been cited hundreds of times by defendants and courts themselves - Including by this court in granting certiorari in Rosales-Mireles for similar district court discrepancies or Plain Error 52(b).

This court in Caperton v A.T. Massey Coal Co Inc, 129 S.Ct. 2252, 2257, 173 L Ed. 2d. 1208 (2009) stated that judges are admonished to "avoid both impropriety and the appearance of impropriety" and "aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiallity, integrity and competence. Id Judges in this case have brazenly disreguarded all of these rules, judge and panel shopping is obvious.

The districts obstinate disobedience makes the sentencings vindictive. The appellate court stating the district court was never obligated to explain the reasoning behind the sentence assures it never planned on conducting any meaningful appellate review. The panels uniformed summary order clearly did not consult the sentencing transcripts or the published opinion in Jenkins I making the contents predetermined or premeditated.

The original judgment was essentially pushed through with different judges affecting my right to due process. Not only does the incarceration remain excessive but the supervised release is in violation of 18 USCS 3553(a)(2)(A) being used as extra punishment for additional harassment further infringing on liberty in addition to an overly lengthy prison sentence. It has nothing to do with reintigration in to the community, and is not appropriate for a no contact offense. Having nothing to do with rehibilitation.

Judicial Vindictiveness violates due process (Marshall v Jerrico, 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed. 2d 182 (1980) holding that an impartial and disintrested tribunal is required. Inherent instutional biases and the results are vividly displayed here. As long as judges and prosecutors are allowed to act with impunity their decisions should be scrutinized. The sentence here was 10 years excessive - it remains uncorrected in totallity from a vindictive, substantially meaningless appellate review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph Jenkins, Appellate, ProSe

Date: June 9, 2021