
No. _____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,
RESPONDANT,

V.

JONATHAN BRINDA,
PETITIONER.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- A. AFTER DETERMINING MR. BRINDA HAD VIOLATED THE TERMS OF HIS SUPERVISED RELEASE, THE DISTRICT COURT ERRED BY SENTENCING MR. BRINDA EXCESSIVELY BASED ON THE STATUTORY CONSIDERATIONS IN 18 U.S.C. §3553(a) AND IN IMPOSING AN EXCESSIVE TERM OF SUPERVISED RELEASE.**

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I. OPINIONS BELOW

The reported opinion of the Court of Appeals for the Sixth Circuit and the judgment of conviction in the United States District Court for the Eastern District of Tennessee are attached to this petition as the Appendix.

II. JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on April 2nd, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), the petitioner having asserted below and asserting in this petition the deprivation of rights secured by the United States Constitution.

III. STATUTORY PROVISIONS INVOLVED

This matter involves violations of the United States Code, specifically, 21 U.S.C. § 843(a)(6) and (d)(2), 21 U.S.C. § 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 922(g)(1).

IV. STATEMENT OF THE CASE

A. Procedural Background

The matter was briefed for the Sixth Circuit Court of Appeals and, after considering the matter on the briefs submitted, the Court issued an Opinion dated April 2nd, 2021, denying all relief, which has been appended to this Petition below. Mr. Brinda now makes this timely application.

B. Statement of Facts

Mr. Brinda was alleged to have violated his supervised release and an evidentiary hearing was conducted on November 20th, 2020, to determine his guilt as well as any punishment that might be applicable if any violations were substantiated.

At that hearing, the Government called Mr. Reshard Montgomery of the United States Probation office as a witness and he testified that Mr. Brinda was one of his probationers and was considered to be on the “high-risk” caseload due to the nature of his offense, the risk to re-offend and his previous revocations. (R. 96, Revocation Hearing Transcript, PageID# 382) Mr. Montgomery stated Mr. Brinda was to maintain a “risk book” related to thoughts he may have had about sex or sexualizing minor children. (R. 96, Revocation Hearing Transcript, PageID# 383) Mr. Brinda, as a condition of his supervised release, was required to submit to polygraph examinations when he was indicated as deceptive on an examination from February of 2020 and admitted to brushing against a minor at a Walmart as well as having sexual thoughts about underage girls to the polygraph examiner.¹ (R. 96, Revocation Hearing Transcript, PageID# 384-385) Mr. Brinda later admitted this, as well as to masturbating to thoughts of underage females, to Mr. Montgomery and admitted to failing to document this properly to the probation office. (R. 96, Revocation Hearing Transcript, PageID# 385-386) Based on this, Mr. Brinda was prohibited from going to the Walmart but was subsequently seen by law enforcement in Walmart on June 30th, 2020. (R. 96, Revocation Hearing Transcript, PageID# 387-388) When confronted about this, Mr. Brinda initially denied being in the Walmart, but later admitted it to the probation office. (R. 96, Revocation Hearing Transcript, PageID# 388-389)

¹ The parties reference various pieces of information included in the violation petition that is contained in Docket Entry 77, but the document was never explicitly made an exhibit to the evidentiary hearing.

After this, Mr. Brinda was placed on electronic monitoring and on August 2nd, 2020, on August 21st, and on September 18th, the probation office was notified that his device had been “tampered” with, allegations that Mr. Brinda did not entirely agree with, but did not wholly deny. (R. 96, Revocation Hearing Transcript, PageID# 390-393) An examination of the device conducted at the request of the Government showed no “internal damage” to the unit. (R. 96, Revocation Hearing Transcript, PageID# 393)

When cross-examined, Mr. Montgomery agreed that Mr. Brinda had expressed to him in the past that he was depressed and had thoughts of suicide and he was referred by probation for counseling based on that. (R. 96, Revocation Hearing Transcript, PageID# 393-394) He agreed that Mr. Brinda cares for his father and told him that, in the second incident from July of 2020, he had been taking his father to Walmart. (R. 96, Revocation Hearing Transcript, PageID# 394) Mr. Montgomery explained that for a “strap tamper” to register with the electronic monitoring unit, it would have to be moved “rigorously” and cell tower disruption would not cause this. (R. 96, Revocation Hearing Transcript, PageID# 395) He elaborated that being out of range of the monitoring device would also fail to trigger a “strap tamper” alert. (R. 96, Revocation Hearing Transcript, PageID# 396-397)

Various photos of the monitoring device were displayed to the Court and the Government’s attorney alleged that various markings indicated attempts by Mr. Brinda to tamper with the device. (R. 96, Revocation Hearing Transcript, PageID# 398-399; Ex. #1)

Mr. Brinda's counsel proffered various statements and evidence to the Court without objection by the Government. He informed the Court that Mr. Brinda was his father's caretaker and, since his incarceration for these violations, his father had to be hospitalized multiple times. He also informed the Court that Mr. Brinda is seeking disability benefits for his own health issues and he suffers from depression and suicidal thoughts. (R. 96, Revocation Hearing Transcript, PageID# 399-400)

Mr. Brinda allocuted at the hearing. He indicated that he had manipulated the strap of the device due to discomfort caused by bug bites he got during his work. (R. 96, Revocation Hearing Transcript, PageID# 406-407) He also informed the Court that his father was 89 years old and in need of care and he had various medical issues, including being tested for potential prostate cancer, that he had to deal with. (R. 96, Revocation Hearing Transcript, PageID# 407)

STANDARDS OF REVIEW

A district court's sentencing decisions are reviewed for abuse of discretion. See *Gall v. United States*, 552 U.S. 38, 49 (2007). A sentence imposed by the District Court after the revocation of supervised release is likewise reviewed for procedural and substantive reasonableness under the same abuse-of-discretion standard. *United States v. Bolds*, 511 F.3d 568, 578 (6th Cir. 2007).

Sentences imposed by the District Court are reviewed for reasonableness, and only a procedurally erroneous or substantively unreasonable sentence will be set aside. See *Gall*, 552 U.S. at 46; *Rita v. United States*, 551 U.S. 338, 351 (2007). A sentence is procedurally unreasonable if the district court "failed to calculate the

Guidelines range properly; treated the Guidelines as mandatory; failed to consider the factors prescribed at 18 U.S.C. § 3553(a); based the sentence on clearly erroneous facts; or failed to adequately explain the sentence.” *United States v. Coppenger*, 775 F.3d 799, 803 (6th Cir. 2015). The substantive reasonableness of a sentence is reviewed under an abuse-of-discretion standard. *United States v. Curry*, 536 F.3d 571, 573 (6th Cir. 2008). A sentence may be substantively unreasonable if the sentencing court “imposed a sentence arbitrarily, based on impermissible factors, or unreasonably weighed a pertinent factor.” *Coppenger*, 775 F.3d at 803. “Sentences within a defendant’s Guidelines range are presumptively substantively reasonable.” *United States v. Pirosko*, 787 F.3d 358, 374 (6th Cir. 2015). Once the district court determines the proper sentence for an individual defendant, the district court must sufficiently explain the sentence to permit meaningful appellate review. *United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

SUMMARY OF ARGUMENT

The District Court erred when it failed to adequately account for the sentencing factors outlined in 18 U.S.C. §3553(a) when crafting Mr. Brinda’s individual sentence of nine months imprisonment after determining he had violated his supervised release. The District Court further erred when it imposed a 10-year period of supervised release following his custodial sentence.

ARGUMENT

A. AFTER DETERMINING MR. BRINDA HAD VIOLATED THE TERMS OF HIS SUPERVISED RELEASE, THE DISTRICT COURT ERRED BY SENTENCING MR. BRINDA EXCESSIVELY BASED ON THE STATUTORY CONSIDERATIONS IN 18 U.S.C. §3553(a) AND IN IMPOSING AN EXCESSIVE TERM OF SUPERVISED RELEASE

The reasonableness of a district court's sentence "has both substantive and procedural components." *United States v. Jones*, 489 F.3d 243, 250 (6th Cir. 2007). This Court's inquiry into the reasonableness of the sentence requires a review "into both 'the length of the sentence' and 'the factors evaluated and the procedures employed by the district court in reaching its sentencing determination.'" *United States v. Liou*, 491 F.3d 334, 338 (6th Cir. 2007) (quoting *United States v. Webb*, 403 F.3d 373, 383 (6th Cir. 2005)). When the Court conducts this review, it should "first ensure that the district court committed no significant procedural error" and "then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." *United States v. Smith*, 516 F.3d 473, 476 (6th Cir. 2008) (quoting *Gall*, 128 S.Ct. at 597). Prior panels of this Court have concluded, when reviewing the sentencing decisions of the district court, "[a] district judge act[s] unreasonably by, for example, selecting the sentence arbitrarily, basing the sentence on impermissible factors, failing to consider pertinent §3553(a) factors, or giving an unreasonable amount of weight to any pertinent factor." *Webb*, 403 F.3d at 385.

United States Code 18 § 3553 provides the District court with guidance when sentencing a defendant. §3553 outlines numerous considerations that the District

court must take into account when formulating a sentence. §3553(a) instructs the District court that, when crafting a sentence, it “shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection”. The Code goes further in §3553 to promulgate the following factors for determining a just sentence, stating:

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.

In addition to the above considerations listed, the District court must also take into consideration, “any pertinent policy statement” that is in effect at the time of the sentencing. Further, the District court must be aware of “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” when arriving at a decision on a sentence for a particular defendant. The District court should use the appropriate range of the offense and the appropriate category of defendant as defined by the sentencing guidelines, but the District court may depart from the specified guidelines if and when:

[T]he 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

Once the District Court has arrived at a sentence for a particular defendant, the court must “at the time of sentencing..... state in open court the reasons for its imposition of the particular sentence” so the parties will know the court’s reasoning behind the decision reached. If the District Court determines that the sentence shall be “of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months” then the court must inform the parties of “the reason for imposing a sentence at a particular point within the range”. Similarly, if the District Court crafts a sentence that “is not of the kind, or is outside the range, described in subsection (a)(4)” the court must state “the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity”.

The United States Sentencing Commission has promulgated guidelines to assist courts in formulating appropriate sentences for individual defendants based on a myriad of considerations. The District court is no longer bound by the guidelines produced by the Sentencing Commission when making a sentencing determination.

United States v. Booker, 543 U.S. 220, 245-246 (2005). Nonetheless, the District court must consider the sentencing guidelines and the principles outlined therein when crafting a sentence for an individual defendant even if the court then chooses to deviate from the guidelines. See *Gall*, 552 U.S. 38 (2007). The guidelines should be viewed as “one factor among several” that must be considered in imposing an

appropriate sentence under § 3553(a). *Nelson v United States*, 555 U.S. 350, 352 (2009).

i. THE SENTENCE IS PROCEDURALLY UNREASONABLE

The District Court's sentence in Mr. Brinda's case was procedurally unreasonable when it crafted his sentence and he is entitled to relief from his sentence and his term of supervised release. In order to assure that the District court has complied with procedural reasonableness when determining a specific sentence for each individualized defendant, the reviewing Court should begin its analysis "with a robust review of the factors evaluated and the procedures employed by the district court in reaching its sentencing determination." *Bolds*, 511 F.3d at 578. This review should encompass an examination of whether the District court: "(1) properly calculated the applicable advisory Guidelines range; (2) considered the other § 3553(a) factors as well as the parties' arguments for a sentence outside the Guidelines range; and (3) adequately articulated its reasoning for imposing the particular sentence chosen, including any rejection of the parties' arguments for an outside-Guidelines sentence and any decision to deviate from the advisory Guidelines range." *Id.* at 581.

Specifically, when reviewing the District Court's application of the § 3553(a) factors, "there is no requirement ... that the district court engage in a ritualistic incantation to establish consideration of a legal issue," or that it "make specific findings related to each of the factors considered." *Id.* at 580. Nonetheless, in order

for a sentence from the District Court to be procedurally reasonable, “the record must contain the District Court’s rationale for concluding that the ‘sentence imposed is sufficient but not greater than necessary, to comply with the purposes’ of sentencing set forth in 18 U.S.C. § 3553(a).” *Id.* at 580. In order to comply with procedural reasonableness when crafting its sentence, the district court is required to provide an “articulation of the reasons [why it] reached the sentence ultimately imposed.” *United States v. Jackson*, 408 F.3d 301, 305 (6th Cir.2005).

In Mr. Brinda’s case, his counsel requested that the sentencing court focus on Mr. Brinda’s need for continued therapy and the extreme length of Mr. Brinda’s term of supervised release when determining his sentence and, essentially, asked for no additional time in custody.² (R. 96, Revocation Hearing, PageID# 403-406) Previous panels of this Court have noted that “[F]or a sentence to be procedurally reasonable, when a defendant raises a particular, non-frivolous argument in seeking a lower sentence, the record must reflect both that the district judge considered the defendant’s argument and that the judge explained the basis for rejecting it.” *United States v Gapinski*, 561 F.3d 467, 474 (6th Cir. 2009). Mr. Brinda also spoke at his revocation hearing and informed the district court that he had been scheduled to undergo tests for prostate cancer and that his elderly father had serious health problems of his own that needed Mr. Brinda’s attention. (R. 96, Revocation Hearing, PageID# 406-407) Instead of focusing its attention on these legitimate “non-frivolous” arguments for a lower sentence, particularly Mr. Brinda’s mental and

² Mr. Brinda was initially placed on supervision for Life and has been on supervision continuously for the past eight years since his initial release from his custodial sentence in 2012.

physical health, the District Court determined that its sentencing determination was based on the perceived dishonesty of Mr. Brinda with his probation officer. Despite telling Mr. Brinda that he had grave concerns about his conduct leading to actual contact offenses with minors, the district court ordered incarceration rather than refocusing on Mr. Brinda's request for a renewed emphasis on treatment that will help prevent him from acting on his impulses in the future. By failing to address his need for rehabilitation during its sentencing determination, the District Court failed to act as *Gapinski* instructs and did not address Mr. Brinda's good faith, non-frivolous request that his sentencing focus on treatment rather than incarceration. Further, the District Court did not address Mr. Brinda's mental or physical health treatment needs which were certainly non-frivolous issues for the District Court's consideration.

Based on the procedural unreasonableness of the District Court's methodology in crafting both the sentence and the term of supervised release, Mr. Brinda is entitled to relief and a resentencing on this basis.

ii. THE SENTENCE IS SUBSTANTIVELY UNREASONABLE

In addition to the procedural error committed by the District Court in arriving at Mr. Brinda's sentence, the Court also arrived at a sentence that was substantively unreasonable.

When reviewing a sentence for substantive reasonableness, this Court is required to conduct an "inquiry into ... the length of the sentence and the factors evaluated ... by the district court in reaching its sentencing determination." *United*

States v. Herrera-Zuniga, 571 F.3d 568, 581 (6th Cir.2009) This portion of the appellate Court’s review must focus on the statutory mandate that a sentence is adequate, but not “greater than necessary” to accomplish the sentencing goals identified by Congress in 18 U.S.C. § 3553(a).” *Id.* at 590; see also *United States v. Tristan-Madrigal*, 601 F.3d 629, 632-33 (6th Cir.2010). (“The essence of a substantive- reasonableness claim is whether the length of the sentence is ‘greater than necessary’ to achieve the sentencing goals set forth in 18 U.S.C. § 3553(a).”) “A sentence may be considered substantively unreasonable when the district court selects a sentence arbitrarily, bases the sentence on impermissible factors, or gives an unreasonable amount of weight to any pertinent factor.” *United States v. Conatser*, 514 F.3d 508, 520 (6th Cir. 2008). The inquiry by the appellate court into substantive reasonableness “take[s] into account the totality of the circumstances, including the extent of any variance from the Guidelines range.” *Bolds*, 511 F.3d at 581 (quoting *Gall*, 552 U.S. at 51, 128 S.Ct. 586).

In the instant case, the trial court erred in the sentence imposed after the violation of Mr. Brinda’s supervised release. The sentence imposed was greater than necessary to achieve the goals of sentencing outlined above. Additionally, the District Court erred when it imposed a term of ten years of supervised release as that term was an excessive sentence for what is necessary to achieve the goals of sentencing. Lastly, the district court placed an “unreasonable amount of weight” on a single factor, Mr. Brinda’s perceived failure to be truthful with his probation officer. As cited above, when determining a sentence, the District court must consider, pursuant to

§3553(a)(1), among other factors, “the history and characteristics of the defendant” when tailoring a sentence to a specific defendant. Additionally, the sentence the District court determines must be designed “to promote respect for the law....to provide just punishment for the offense” and “to protect the public from further crimes of the defendant”. §3553(a)(2). The district court informed Mr. Brinda, when pronouncing its sentence, that it needed to “get your attention again” with an incarceration sentence without referencing anything related to the potential benefit of renewed or increased treatment for his admitted attraction to minors. The district court’s sentence was arbitrary and it focused unreasonably on the interaction between Mr. Brinda and his probation officer.

Further, the District Court’s decision to place Mr. Brinda on an additional ten years of supervised release following his incarceration sentence was substantively unreasonable. In Mr. Brinda’s previous two supervised release violation judgments, the District Court had placed him on five years of supervised release after his incarceration sentence had ended. (R. 69, Revocation Judgment, PageID# 194, & R. 76, Revocation Agreed Order, PageID# 221) The District Court’s decision, after this revocation proceeding, to double the term of his supervised release was an arbitrary decision and the District Court provided no specific reasoning for its decision. The term of supervised release after Mr. Brinda’s incarceration sentence is also substantively unreasonable and warrants relief.

The District Court, due to the arbitrariness of the sentence crafted and the overreliance on a single factor, has created a sentence, and a term of supervised release, that are substantively unreasonable because the sentence is greater than necessary to achieve the purposes of sentencing. Mr. Brinda is entitled to relief from both his sentence and the term of his supervised release on this independent basis in addition to the procedural unreasonable of the district court's sentencing. This matter should be remanded to the District Court for sentencing in accordance with the sentencing guidelines.

CONCLUSION

For the aforementioned reasons, Mr. Brinda prays that this Honorable Court will grant his request for a writ of certiorari in order to review the questions of presented relating the various erroneous and prejudicial evidentiary and legal rulings by the District Court, affirmed by the Circuit Court, that created reversible error.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing writ of certiorari and the accompanying appendix has been served via electronic mail upon counsel for the Respondent, Assistant United States Attorney Mr. Samuel Fitzpatrick, United States Attorney's Office for the Eastern District of Tennessee at Chattanooga, 1110 Market Street, Suite 515, Chattanooga, TN 37402 and Ms. Elizabeth Prelogar, Acting Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington D.C. 20530-0001, this 28th day of June, 2021.

/s/ Manuel B. Russ
Manuel B. Russ