

No. _____

IN THE
Supreme Court of the United States

DAWN J. BENNETT,
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

Does a district court at sentencing apply an impermissible presumption of reasonableness to the Sentencing Guidelines range if it refers to the range three separate times over the course of the sentencing proceeding as “presumptively reasonable?”

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit:

- *United States v. Bennett*, No. 19-4599, reported at 986 F.3d 389 (2021)
- *United States v. Bennett*, No. 18-4410

United States District Court for the District of Maryland:

- *United States v. Bennett*, No. 8:17-cr-472-PX
- *Securities and Exchange Commission v. Bennett*, No. 8:17-cv-2453-PX

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PETITION FOR WRIT OF CERTIORARI

Petitioner Dawn J. Bennett respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's unpublished opinion affirming Ms. Bennett's conviction and sentence is in the appendix to this petition and is reported at *United States v. Bennett*, 986 F.3d 389 (4th Cir. 2021).

JURISDICTION

The Fourth Circuit issued its opinion on January 21, 2021. Pet. App.1a. The Fourth Circuit denied a timely petition for rehearing on February 19, 2021. Pet. App. 20a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The [United States Sentencing] Commission . . . shall promulgate and distribute . . . guidelines . . . for use of a sentencing court in determining the sentence to be imposed in a criminal case, including . . . a determination as to the . . . appropriate length of a . . . term of imprisonment.

28 USC § 994(a)(1)(B).

The [sentencing] court, in determining the particular sentence to be imposed, shall consider—

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code

18 U.S.C. § 3553(a)(4)(A)(i).

STATEMENT OF THE CASE

This Court has long held that *appellate* courts may apply a rebuttable presumption of reasonableness to a sentence imposed within the advisory Guidelines range. The law permits this presumption because such a sentence reflects the judgment of both the United States Sentencing Commission and the district judge “one, at retail, the other at wholesale” that the sentence is appropriate. *Rita v. United States*, 551 U.S. 338, 348 (2007). In order to effectuate this framework “the sentencing court does *not* enjoy the benefit of a legal presumption that the Guidelines sentence should apply.” *Id.* at 351 (emphasis added).

Here, the Fourth Circuit impermissibly allowed the district court to sentence petitioner, Ms. Dawn Bennett, with a presumption that the advisory Guidelines range in her case was reasonable. The Fourth Circuit thus issued a published opinion in direct conflict with this Court’s decision in *Rita v. United States*.

In 2018, a jury sitting in the District of Maryland convicted Ms. Bennett on 17 counts related to fraud alleged in the operation of her wholly-owned sports apparel business. Due to the size of her business, her Guidelines range was 324-405 months of imprisonment, despite her criminal history category of I.

Her counsel argued for a sentence below that range, emphasizing her lack of any prior criminal convictions; her serious health issues; her major depressive disorder; and the fact that she remained the emotional and financial support for her family.

The United States argued for a 25-year sentence. Pet. App. 117a.

The district court then discussed this recommendation in the context of the Guidelines range:

And, you know, the government's recommendation I note is significantly lower than what's presumptively reasonable according to the law in this – the Supreme Court and the Fourth Circuit . . . with respect to the guidelines. And they are presumptively reasonable. They're based on evidence.

Pet. App. 131a.

The court later, when announcing the sentence started by saying, "I start with the guidelines. They are presumptively reasonable. They are incredibly high in this case. An offense level 41 triggers a sentence on the low end of 324 months to 405 months. In Ms. Bennett's case, if I were to stay within the guidelines—and even the government recognizes this—it would not only be overly punitive, but it would be most certainly a life sentence, and I'm not prepared to do that. So I am prepared to vary, and the question is how much." Pet. App. 146a. The Court then went through the Section 3553(a) factors and imposed a 240-month sentence. Pet. App. 153a.

Ms. Bennett appealed to the Fourth Circuit, raising several issues related to her trial, conviction, and sentence. Relevant to this petition, she argued that the district court—multiple times—impermissibly applied the appellate presumption of reasonableness to the Guidelines range.

The Fourth Circuit—despite the district court's clear language—rejected Ms. Bennett's argument, concluding that the district court did not really apply a

presumption of reasonableness to the Guidelines range. *United States v. Bennett*, 986 F.3d 389, 400-01 (4th Cir. 2021). The Fourth Circuit affirmed the conviction and sentence.

This petition follows.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c).

A. The Fourth Circuit improperly affirmed the district court’s presumption that the Sentencing Guidelines range was reasonable.

Rita’s within-Guidelines appellate presumption is standard practice now. But immediately post-*Booker*,¹ courts and litigants were unsure whether such a presumption accorded with the newly advisory nature of the Guidelines and with sentencing courts’ duty to comply with the statutory purposes of sentencing. This Court clarified in 2007 that “a court of appeals may apply a presumption of reasonableness to a district court sentence that reflects a proper application of the Sentencing Guidelines.” *Rita*, 551 U.S. at 347.

But this Court tethered this presumption to the Section 3553(a) factors. It noted that, in a properly conducted sentencing, both the Guidelines and the district court “carry[] out the same basic § 3553(a) objectives, the one, at retail, the other at wholesale.” *Id.* at 348. The presumption is, in other words, a practical real-world short cut for appellate review of sentencing. “[T]he courts of appeals’ ‘reasonableness’ presumption, rather than having independent legal effect, simply

¹ *United States v. Booker*, 343 U.S. 220 (2005).

recognizes the real-world circumstance that when the judge's discretionary decision accords with the Commission's view of the appropriate application of § 3553(a) in the mine run of cases, it is probable that the sentence is reasonable." *Id.* at 350-51.

Thus, the presumption only works because the district court, *independent of the Guidelines range*, reached the same result as the Commission on the appropriate sentence for a given crime and given defendant. The sentence can be presumptively reasonable on appeal only because it "reflects both the Commission's and the sentencing court's judgment as to what is an appropriate sentence for a given offender." *Id.* at 351.

That dual support system breaks down when the district court applies a reasonableness presumption. When that happens, the sentence is no longer supported by two independent conclusions supporting its reasonableness. Instead, the district court becomes a mere pass-through for effectively mandatory Guidelines. Thus, "the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply." *Id.*

Ms. Bennett's district court nonetheless applied that presumption. It said three separate times, expressly, that the guidelines are presumptively reasonable. Pet. App. 131a, 146a. Thus, it erred, and its error undercut the entire justification for the appellate presumption in the first place. It did not do its job "at retail." Instead, it took the advice of the Commission "at wholesale" and presumed that it was reasonable. It lacked the power to do this.

In response, the Fourth Circuit criticized the district court's language, but it did not correct the district court's error. Instead, it held that the district court did not actually apply the presumption that it said it was applying. In reaching this conclusion, the Fourth Circuit relied in large part on the fact that the district court imposed a sentence below the range that it found presumptively reasonable.

In so relying, the Fourth Circuit focused on a distinction without a difference. As other circuits have noted, the fact that a defendant "was ultimately sentenced below the applicable Guidelines range," does not cure "the district court's application of a rebuttable presumption that [the defendant] should be sentenced within the Guidelines range." *United States v. Wilms*, 495 F.3d 277, 281 (6th Cir. 2007). If the district court applies a presumption of reasonableness to the Guidelines range, then the appellate court must "vacate [the defendant's] sentence," regardless of the sentence ultimately imposed. *Id.*

Here, the Fourth Circuit needed to take the district court at its word. It improperly applied the *Rita* presumption. The Fourth Circuit needed to vacate the sentence, regardless of the sentence ultimately imposed. This Court's review is necessary to correct the error.

B. This Court has Summarily Reversed the Fourth Circuit in a Similar Case.

Because the Fourth Circuit's error is apparent on the face of this record, this Court may want to consider summary reversal to conserve judicial resources. In *Nelson v. United States*, it was "plain from the comments of the sentencing judge that he did apply a presumption of reasonableness to [petitioner's] Guidelines

range.” 555 U.S. 350, 352 (2009). The Fourth Circuit nonetheless affirmed the sentence. *Id.* at 351. This Court, relying on the “fairly explicit” language in *Rita*, summarily vacated and remanded. *Id.* at 352.

The same approach seems appropriate here. *Rita* is clear. The district court’s improper application of the presumption appears on the face of the record. The Fourth Circuit’s holding should be summarily vacated and this case remanded.

CONCLUSION

For the forgoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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