

No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 2021

THOMAS BRANTLEY JENKINS, II,
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

1. WHEN RULING ON A MOTION FOR COMPASSIONATE RELEASE UNDER 18 U.S.C. § 3582(c)(1)(A), DOES A DISTRICT COURT FULLY “CONSIDER THE FACTORS SET FORTH IN 18 U.S.C § 3553(a)” IF IT FAILS TO ADDRESS ONE OF DEFENDANT’S PRIMARY CONTENTIONS IN ITS WRITTEN FINDINGS OF FACT?

LIST OF PARTIES

All parties to this case appear in the caption of cases on the cover page.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Thomas Brantley Jenkins, II, respectfully requests that a writ of certiorari issue to review the Opinion of the United States Court of Appeals for the Fourth Circuit issued on April 23, 2021, affirming the District Court's denial of Petitioner's motion for compassionate release.

OPINIONS BELOW

A Panel of the Fourth Circuit Court of Appeals affirmed Petitioner's sentence by Opinion filed April 23, 2021, a copy of which appears as Appendix A.

JURISDICTION

This petition is filed within 90 days of the decision of the Court of Appeals and is therefore timely. The jurisdiction of this Court is invoked pursuant to 28

U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3582(c)(1)(A) provides in pertinent part the following:

The court...may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable...

18 U.S.C. § 3553(a) provides in pertinent part the following:

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;

STATEMENT OF THE CASE

On February 23, 2015, a grand jury sitting in the Middle District of North Carolina returned an indictment against Petitioner and multiple co-defendants alleging a conspiracy to distribute and manufacture methamphetamine, to possess pseudoephedrine with the intent to manufacture methamphetamine and to possess equipment and materials used in the manufacture of methamphetamine, in violation of 21 U.S.C. § 841(a)(1); 841(c)(1); and 843(a)(6). A superseding indictment was issued on March 30, 2015, which added additional defendants but did not change the charges against Petitioner. Petitioner pled guilty to conspiracy to manufacture methamphetamine on July 9, 2015. On October 30, 2015, Petitioner was sentenced to 150 months of imprisonment to be followed by three years of supervised release. On August 12, 2020, Petitioner filed a motion for compassionate

release pursuant to 18 U.S.C. § 3582(c)(1)(A). Petitioner's motion was dismissed by order dated October 6, 2020. Petitioner filed a timely notice of appeal on October 20, 2020. On April 23, 2021, a panel sitting for the United States Court of Appeals for the Fourth Circuit entered an unpublished opinion affirming the trial court's dismissal of Petitioner's motion for compassionate release.

STATEMENT OF THE FACTS

Petitioner Thomas Jenkins was described in his presentence report as a person who cooked methamphetamine in his basement on a fairly regular basis. He was ultimately held accountable for 605.8 grams of pseudoephedrine. He was 58 years of age at the time of his sentencing. His presentence report identified that Petitioner suffered from numerous health conditions, including high blood pressure. He was arrested and remained continuously in custody since March 3, 2015. Petitioner filed his motion seeking compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) on August 12, 2020. He alleged and documented with Bureau of Prison medical records that he suffers from a wide range of maladies, including chronic kidney disease, Type 2 diabetes mellitus, and hypertension. He was 63 years old at the time of his filing and sought release given that his medical problems placed him in a high-risk category if exposed to coronavirus. Petitioner also included documentation that he had submitted a request for compassionate release to the warden of his prison unit and 30 days had elapsed since he made that request.

The Government responded, acknowledging that Petitioner appeared to have exhausted his administrative remedies. The Government further conceded that

“during the COVID-19 pandemic, the Defendant’s chronic medical conditions, specifically Type 2 diabetes mellitus and chronic kidney disease, present ‘a serious physical or medical condition...that substantially diminishes the ability of the Defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.’” (citing U.S.S.G. § 1B1.13). With regard to the evaluation of the 18 U.S.C. § 3553 factors, the Government emphasized that while Petitioner’s offense conduct was serious and he had completed only half of his sentence, it acknowledged that he was a nonviolent offender and that his offenses appeared to have stemmed from substance abuse. Ultimately, the Government deferred to the court’s discretion of Petitioner’s motion for compassionate release. The court denied Petitioner’s motion for compassionate release, finding first that he had satisfied the exhaustion requirement and that his health problems were sufficient to constitute an “extraordinary and compelling” reason for a sentence reduction. However, the court ruled that the § 3553(a) factors did not support a sentence reduction, and Petitioner’s motion for compassionate release was denied.

REASONS FOR GRANTING THE WRIT

The District Court denied Petitioner’s motion for compassionate release based on an incomplete consideration of the § 3553(a) factors. This error rises to the level of procedural error. The court also assumed that, given Petitioner’s health problems, he had “shown extraordinary and compelling reasons for a sentence reduction.”

However, the court rejected Petitioner's request based on its evaluation of the § 3553(a) factors. The determinative part of the court's ruling is as follows:

But the § 3553(a) factors do not support a sentence reduction. Mr. Jenkins was involved in a large-scale methamphetamine conspiracy, and he took a leading role in the manufacture and distribution of meth. He recruited persons to buy pseudoephedrine and to cook the meth, many of them very young adults. He used his home to run an assembly-line production process, and he protected his operation with a video surveillance system and many firearms. He made money from the operation, as some \$1500 in cash was seized from his residence during the search. He did all these things while on probation for assault, and he had a serious drug trafficking conviction as a younger man. He has served less than half of his 150-month sentence, which was much lower than the minimum sentence suggested by the guidelines.

The Court appreciates that Mr. Jenkins committed this crime after the untimely death of his wife and understands his concerns about COVID-19. But after review of Mr. Jenkins' rehabilitation efforts, his time served, the severity of his crime, and his criminal history, the sentencing factors overall do not favor a sentence reduction. The nature and circumstances of the offense were aggravated, *see* Doc. 241 ¶¶ 96-97, and a sentence reduction would not reflect the seriousness of the offense, deter future criminal conduct, or protect the public. 18 U.S.C. § 3553(a)(2).

Petitioner asserts that the Court failed to fully consider all of the § 3553(a) factors in rendering its decision.

§ 3553(a) Factors

In *Legree*, we held that, “absent a contrary indication,” we presume a district court deciding a § 3582(c)(2) motion has considered the 18 U.S.C. § 3553(a) factors and other pertinent matters before it. *Id.* at 728-29.

United States v. Smalls, 720 F.3d 193, 195-6 (4th Cir. 2013) citing *United States v. Legree*, 205 F.3d 724 (4th Cir. 2000).

When Petitioner addressed the § 3553(a) factors in his motion for compassionate release, he emphasized that Petitioner was not a danger to the public. Petitioner pointed out the nonviolent nature of his offense and that his criminal history only documented one crime of violence, a simple assault conviction that occurred in 2012. Petitioner also emphasized that, during his time in prison, he had been virtually infraction free. Most importantly, Petitioner included his male pattern risk score from the Bureau of Prisons. Petitioner's male pattern general score was -4 and his violent score was 0. His overall male pattern risk level was minimum. In responding, the Government noted the rather extraordinary nature of this aspect of Petitioner's circumstance:

Moreover, BOP has assessed Jenkins with a PATTERN score of minimum recidivism risk, the only such score the undersigned has observed in the past year. *See id.* Under the totality of the circumstances, Jenkins does not appear to present an imminent risk to public safety if released.

The court makes no mention of this feature of Petitioner's case, but sums up in a single sentence this important feature: "But after review of Mr. Jenkins's rehabilitation efforts, his time served, the severity of the crime and his criminal history, the sentencing factors overall do not favor a sentence reduction." The court does not specifically address Petitioner's potential danger to the community if released. The court makes no mention of Petitioner's male pattern risk scoring sheet or the unusual nature of Petitioner's circumstance. Accordingly, Petitioner asserts that the court did not fully take into account all of the factors under § 3553(a).

Given the significance of Petitioner's lack of danger to the public both in his motion and the Government's acknowledgment of it, the court's failure to address it specifically constitutes "a contrary indication" which rebuts the ordinary presumption that the District Court has considered the factors under 18 U.S.C. § 3553(a).

On appeal, the Fourth Circuit Court of Appeals rejected Petitioner's argument and stated that "...while the district court did not expressly address Jenkins's argument that he did not present a danger to the community if released, it offered a detailed explanation for why 18 U.S.C. § 3553(a) factors did not support granting Jenkins's motions and, thus, demonstrated that it 'considered the parties' arguments and ha[d] a reasoned basis for exercising [its] own legal decision making authority.' Citing *Chevas-Meza v. United States*, 138 S. Ct. 1959, 1964 (2018). However, the district court did not offer a detailed reason for why the 3553(a) factors did not support Petitioner's release. As noted above, the court simply stated that "the sentencing factors overall do not favor a sentence reduction." This can hardly be described as a "detailed explanation" of the 18 U.S.C. § 3553(a) factors.

CONCLUSION

For reasons stated above, this Court should grant Petitioner's petition for writ of certiorari and review the opinion of the panel of the Fourth Circuit Court of Appeals to determine the extent that a district court is required to make findings regarding its consideration of the factors under 18 U.S.C. § 3553(a) in ruling upon a motion filed pursuant to 18 U.S.C. § 3582(c)(1)(A).

Respectfully submitted this the 28th day of July 2021.

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APPENDIX A

Fourth Circuit Court of Appeals Opinion filed on April 23, 2021, Affirming the District Court's Denial of Defendant's Motion for Compassionate Release