

No. _____

In the

Supreme Court of the United States

MICHAEL DASEAN ROBINSON,
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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QUESTION PRESENTED

At sentencing, Federal Rule of Criminal Procedure 32(i)(3)(B) gives a district court two options for addressing any “controverted matter”: “rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing.”

Here, the district court chose to rule on a disputed matter: it held Petitioner responsible for someone else’s independent decision to commit suicide. The Fifth Circuit agreed with Petitioner that this was a substantively unreasonable and improper consideration for purposes of sentencing. But the Fifth Circuit held that the error was harmless.

The question presented is whether an explanation inconsistent with Rule 32(i)(3)(B) can inoculate an otherwise unreasonable sentence from appellate review.

PARTIES TO THE PROCEEDING

The parties to the proceeding are named in the caption.

DIRECTLY RELATED PROCEEDINGS

1. United States v. Michael Robinson, No. 4:19-CR-98 (N.D. Tex.)
2. United States v. Michael Robinon, No. 19-11079 (5th Cir.)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully asks for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit was not selected for publication in the Federal Reporter. It is available at 843 Federal Appendix 607 and is re-printed on pages 1a–6a of the Appendix to this Petition. Prior to sentencing, the district court entered a written order expressing its tentative conclusion that Petitioner should be sentence above the guideline range. Pet. App. 34a–37a. The court’s oral findings were announced at the end of the sentencing hearing. Pet. App. 7a–33a. Neither of these opinion was selected for publication.

JURISDICTION

The Fifth Circuit issued its judgment on March 9, 2021. On March 19, 2020, this Court extended the deadline to file certiorari to 150 days from the judgment. The Court’s July 19, 2021 order left in place the 150-day deadline “in any case in which the relevant lower court judgement. . . was issued prior to July 19, 2021.”

This Court has jurisdiction to review the Fifth Circuit’s final decision under 28 U.S.C. § 1254(1).

RULES AND GUIDELINES INVOLVED

Federal Rule of Criminal Procedure 52(a) provides: “Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.”

Federal Rule of Criminal Procedure 32(i)(3)(B) provides:

(3) *Court Determinations.* At sentencing, the court:

* * * *

(B) must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing.

U.S. Sentencing Guidelines § 5K2.1 (Policy Statement) provides:

If death resulted, the court may increase the sentence above the authorized guideline range.

Loss of life does not automatically suggest a sentence at or near the statutory maximum. The sentencing judge must give consideration to matters that would normally distinguish among levels of homicide, such as the defendant's state of mind and the degree of planning or preparation. Other appropriate factors are whether multiple deaths resulted, and the means by which life was taken. The extent of the increase should depend on the dangerousness of the defendant's conduct, the extent to which death or serious injury was intended or knowingly risked, and the extent to which the offense level for the offense of conviction, as determined by the other Chapter Two guidelines, already reflects the risk of personal injury. For example, a substantial increase may be appropriate if the death was intended or knowingly risked or if the underlying offense was one for which base offense levels do not reflect an allowance for the risk of personal injury, such as fraud.

STATEMENT

Michael Dasean Robinson pleaded guilty for his role in a drug-distribution conspiracy lasting from November 2017 to January 2019. Based on the quantity of drugs involved and his criminal history, Mr. Robinson faced an advisory sentencing guidelines range of 151–188 months. Pet. App. 2a, 19a. The district court imposed a much longer sentence: 340 months in prison, followed by 7 years of supervised release. Pet. App. 1a.

The court gave several reasons for imposing such a long sentence, but the bulk of its factual findings related to its decision to hold Mr. Robinson responsible for two people's deaths: B.F., who died of a heroin overdose in November 2017, and her boyfriend R.B., who committed suicide several months later. Pet. App. 7a–16a, 19a, 29a, 31a–32a. The court imposed the sentence as a non-guidelines variance, but repeatedly expressed the conclusion that a sentence above the guideline range was authorized by U.S.S.G. § 5K2.1, because “[t]wo deaths did result from the defendant's conduct.” App., 19a.

Prior to sentencing, the district court entered a written order warning the parties of its tentative conclusion that Mr. Robinson should be sentenced above the guideline range because the drugs he distributed caused B.F.'s overdose death. Pet. App. 34a–37a. The parties hotly disputed that factual finding at sentencing, and presented competing expert testimony.¹ The district court resolved that factual dispute in the Government's favor, finding that

the heroin was a but-for, to use the terminology that the cases use, the death -- the cause of the death of [B.F.]. Had she not been injected with heroin, she would not have died when she did. I think that's clearly established by all of the evidence that I've heard.

Pet. App. 8a.

¹ The Government's expert witness testified that B.F.'s cause of death was “sudden death with a history of recent heroin use.” 5th Cir. R. 292. Petitioner's expert witness testified that the medical evidence did not allow a definitive diagnosis of heroin as the cause of death because there were no heroin-specific metabolites in the laboratory samples—only morphine. 5th Cir. R. 240, 257. In his opinion, the cause of death was a previously undiagnosed heart condition. 5th Cir. R. 266–267.

But the court went further. It did not simply hold Mr. Robinson responsible for B.F.’s death, which was the position advocated by the Government. The court performed a detailed analysis of evidence it collected on its own to conclude that Mr. Robinson also caused B.F.’s boyfriend R.B.—who injected her with the heroin—to commit suicide by firearm months later. After making detailed findings—recited over seven pages of the sentencing transcripts—Pet. App. 8a–9a—about the suicide, the district court ultimately concluded that “[t]wo deaths resulted from” Mr. Robinson’s “conduct.” Pet. App. 19a. In explaining its sentence of 340 months, the court again re-emphasized its findings that R.B.’s suicide was a harm caused by Mr. Robinson’s distribution of heroin, as relevant to the “nature and circumstances of the offense” and “the seriousness of the offense.” Pet. App. 29a, 31a. The court then entered an alternative finding: even if it had not made a definitive finding that R.B.’s suicide was caused by the heroin distribution, the court would impose the same sentence because B.F.’s overdose death was “was at least a factor in” R.B.’s decision “to kill himself.” Pet. App. 29a.

REASONS TO GRANT THE PETITION

I. THE FIFTH CIRCUIT AGREED THAT IT WAS SUBSTANTIVELY UNREASONABLE TO HOLD MR. ROBINSON RESPONSIBLE FOR R.B.’S SUICIDE.

“[S]uicide is a complex (and yet not fully understood) phenomenon and may be determined by the interaction between various factors, such as neurobiology, personal and familiar history, stressful events, sociocultural environment, etc.” D. De Berardis et al., *Editorial: Understanding the Complex Phenomenon of Suicide: From Research to Clinical Practice*, 9 *Frontiers in Psychology* 1 (Mar. 2018). In recognition

of that reality, the traditional rule in American law is that a victim's suicide is an independent, intervening cause. E.g. *Scheffer v. Washington City, V.M. & G.S.R. Co.*, 105 U.S. 249, 252 (1881) ("The proximate cause of the death of Scheffer was his own act of self-destruction. It was within the rule in both these cases a new cause, and a sufficient cause of death.").

The Fifth Circuit agreed that the district court's decision to hold Mr. Robinson responsible for R.B.'s suicide constituted reliance on "an irrelevant and improper factor" for sentencing. Pet. App. 4a. He committed suicide "months after" her death; he left no note; there was evidence in the record that he had fought with family over "money issues"; and he surely felt guilt over his own role in the overdose. Pet. App. 4a. "The causal relationship was too attenuated to provide a basis for enhancing Robinson's sentence." *Ibid.*

II. THE FIFTH CIRCUIT NONETHELESS DEEMED THE ERROR "HARMLESS" BECAUSE THE DISTRICT COURT SAID IT WOULD HAVE IMPOSED THE SAME SENTENCE EVEN WITHOUT THE "DEFINITIVE" FINDING OF CAUSATION.

Despite finding that the district court relied on an improper factor to impose a sentence significantly above the advisory Guideline range, the Fifth Circuit held that the error was harmless. Pet. App. 4a–5a. "[C]ritical[]" to that decision was the district court's explanation that it would have imposed the same sentence in the absence of that finding. Pet. App. 5a. But in context, the district court's "alternative" rationale for the sentence embraced the same error—holding Mr. Robinson responsible for R.B.'s independent decision to take his own life:

Even if I had not made that finding about [R.B.], even if I had not made that finding, I would have concluded that the death of [B.F.] was at least a factor in the decision of [R.B.] to kill himself,

and I would have imposed the same sentence I've indicated I'm going to impose under those circumstances, even if I had not made a finding that it was a but-for cause of his death, that is, the death of [B.F.] as a result of the use of the heroin supplied by the defendant to [R.B.] and [B.F.]

I would have imposed the same sentence, even if I had not made the definitive finding about the causation between [R.B.]'s suicide and the heroin that the defendant supplied to [R.B.] and [B.F.]

Pet. App. 29a.

III. THE DISTRICT COURT DID NOT INVOKE RULE 32'S PROCEDURE FOR CONTROVERTED MATTERS THAT WILL NOT AFFECT THE SENTENCE.

Rule 32 mandates, "for any disputed portion of the presentence report or other controverted matter," that the district court "rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing." Fed. R. Crim. P. 32(i)(3)(B). That makes sense: federal courts are not in the business of rendering hypothetical or advisory decisions.

The Fifth Circuit's harmlessness analysis suggests that the district court departed from the procedure contemplated by Rule 32. The court certainly did not say that the suicide would "not affect" sentencing or that the court would not consider it. On the contrary—the court *sua sponte* collected evidence, and then informed the parties that it was holding Mr. Robinson responsible for not one, but two deaths. It is implausible to believe that the district court would do all that work and provide all that explanation for something that had an impact on the sentence.

This Court should vacate the decision. The Court should hold that a substantively unreasonable sentence is never harmless error, and that appellate

courts should not deem a district court's findings on controverted matters harmless where the court did not invoke the procedure identified in Rule 32.

CONCLUSION

Petitioner asks that this Court grant the petition and either reverse the Fifth Circuit's decision outright or set the case for a decision on the merits.

Respectfully submitted,

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