

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

CASEY RAY CULP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ANTHONY R. GALLAGHER
Federal Defender
*Rachel Julagay
Assistant Federal Defender
Federal Defenders of Montana
104 2nd Street South, Suite 301
Great Falls, MT 59401
(406) 727-5328
*Counsel for Petitioner

SUBMITTED: September 22, 2021

QUESTIONS PRESENTED

1. Whether a guideline sentence of seventy-five months imprisonment violates the Eighth Amendment prohibition on cruel and unusual punishment in the case of extraordinary and unique reform and personal circumstances, and given significantly evolving societal and legislative views on the propriety of lengthy terms of imprisonment?
2. Whether the failure of the court to give meaningful consideration to evidence of extraordinary and unique reform and personal circumstances also violates the Fifth Amendment guarantee of Due Process?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Casey Ray Culp. Respondent is the United States. No party is a corporation.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the United States District Court for the District of Montana and the United States Court of Appeals for the Ninth Circuit:

United States v. Culp, No. 20-30167 (9th Cir. June 24, 2021)

United States v. Culp, No. 6:20-cr-0002-SEH (D. Montana July 28, 2020)

No other proceedings in state or federal trial or appellate courts, or in this Court, are directly related to this case.

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED.....	ii
PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT	iii
RULE 14.1(b)(iii) STATEMENT.....	iv
TABLE OF CONTENTS.....	v
TABLE OF AUTHORITIES	vi-vii
OPINION BELOW.....	1
JURISDICTION AND TIMELINESS OF THE PETITION.....	1
STATUTORY PROVISIONS INVOLVED.....	1-2
STATEMENT OF THE CASE.....	2-3
BACKGROUND OF THE CASE	3-5
REASONS FOR GRANTING THE PETITION	5-10
CONCLUSION.....	11
Appendix A – United States Court of Appeals for the Ninth Circuit 851 Fed. App’x. 80 (9 th Cir. June 24, 2021)	1a-3a

Table of Authorities

Supreme Court Opinions

Page(s)

<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	10
<i>Coker v. Ga.</i> , 433 U.S. 584 (1977)	2
<i>Gall v. United States</i> , 552 U.S. 38 (2007)	6
<i>Graham v. Florida</i> , 560 U.S. 48 (2010)	8
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012)	8
<i>Robinson v. California</i> , 370 U.S. 660 (1962)	8
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	8
<i>Solem v. Helm</i> , 463 U.S. 277 (1983)	5, 6
<i>Weems v. United States</i> , 217 U.S. 349 (1910)	8

U.S. Constitution

U.S. Const. amend. V	2
U.S. Const. amend. VIII	1

Ninth Circuit Opinions

<i>United States v. Casey Ray Culp</i> 851 F. App'x 80 (9th Cir. June 24, 2021)	1
<i>United States v. Barker</i> , 771 F.2d 1362 (9th Cir. 1985)	9

United States Code

18 U.S.C. § 922(g)(1)	3
18 U.S.C. § 3553(a)	3
28 U.S.C. § 1254(1)	1
28 U.S.C. § 3553(a)	7

Rules

Fed. R. Crim. P. 20	3
---------------------------	---

Other

RULE 14	iv, v
RULE 29	iii, v

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

CASEY RAY CULP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

Petitioner, Casey Ray Culp (Culp), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit’s memorandum is unpublished and is included in the Petition Appendix at 1a-3a.

JURISDICTION AND TIMELINESS OF THE PETITION

The Ninth Circuit issued its opinion on June 24, 2021. (851 Fed App’x 80). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution states as follows: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

The Fifth Amendment to the United States Constitution provides that no person shall be deprived: “of life, liberty, or property, without due process of law[.]”

STATEMENT OF THE CASE

This case presents a fundamental issue regarding the constitutional propriety of a sentence of a term of years of imprisonment that falls within the advisory guideline but fails to account for uncontradicted evidence supportive of a probationary sentence. Integral to the Eighth Amendment is an understanding that “public attitudes concerning a particular sentence” must be consulted in determining whether a specific sentence constitutes cruel and unusual punishment. *Coker v. Georgia*, 433 U.S. 584, 592.

Public and judicial attitudes on terms of imprisonment are by no means fixed. While the most substantial movement in Eighth Amendment jurisprudence in the last few decades was in the context of juvenile sentences, societal and legislative shifts towards rehabilitation and avoiding unnecessary and expensive imprisonment likewise extends to adult offenders.

Casey Culp pled guilty to possessing a firearm as a prohibited person on July 4, 2019. At the time, Mr. Culp, drunk and high on marijuana, also attempted to enter a residence. When he was sentenced over a year later on July 28, 2020, Mr. Culp presented uncontradicted evidence that, acknowledging a criminal history and history of drug abuse, in the year since the offense, he had reunified with the stepmother and family from whom he was involuntarily separated as a teenager, remaining with an abusive and drug-abusing father, was employed, in counseling, on necessary mental health medication, an integral member to his family, and over a year sober. The government requested, and the court sentenced Mr. Culp to a guideline term of imprisonment of seventy-five months.

Given legislative and voter-spurred developments over the last several years towards rehabilitation-focused sentencing alternatives and recognition that lengthy terms of imprisonment do not automatically serve the needs and mores of modern society, a reexamination of terms-of-years Eighth Amendment term-of-years jurisprudence is merited. While brought to bear by the specific circumstances of Mr. Culp, a broader reexamination is needed in view of the developments noted above. Finally, the question of whether Due Process was afforded Mr. Culp also bears examination. Intertwined with the Eighth Amendment question in its examination of the necessarily individualized nature of the federal sentencing scheme, this question likewise examines whether the guarantees of 18 U.S.C. § 3553(a), including parsimony and consideration of relevant sentencing factors were honored.

BACKGROUND OF THE CASE

A. District Court Proceedings

Mr. Casey Culp pled guilty to being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) in United States District Court in Montana. This plea followed a Federal Rule of Criminal Procedure 20 transfer from the District of Iowa to the District of Montana.

At and in advance of sentencing, Mr. Culp presented evidence in the form of letters and testimony from extended family, and documentation of counseling, treatment, and a year of sobriety, of his unique and extraordinary reform in the year preceding sentencing proceedings. In short, Mr. Culp, who previously had a lengthy criminal record ranging from drug crimes, to domestic violence and an instance of sexual assault, had subsequently reunified with his supportive, stable, and loving stepmother and extended family. Mr. Culp was involuntarily separated from his stepmother, half-siblings, and extended family as a teenager when he remained

with his extremely abusive—and substance-abusing father—and thereafter shuffled between the father and his neglectful and substance-abusing biological mother, following his father and stepmother’s divorce. Evidence given by this family in the form of letters and testimony, and documents from a licensed clinical social worker and other programs demonstrated Mr. Culp became stabilized on mental health medication, sought and sustained steady employment and was a valued employee, was a source of help to his entire family, including his elderly grandparents. Central to all of this was that Mr. Culp also achieved sobriety, a year almost exactly at the time of sentencing. Mr. Culp requested a probationary sentence, having also done well for the year prior on pretrial supervision by United States Probation.

No evidence contradicting this reform or unique life circumstances that facilitated this reform—the chance to reunify with a supportive and loving family—was presented by the government, who relied primarily on Mr. Culp’s criminal history that predated the year prior to sentencing, and the circumstances of the offense, to support a guideline term of imprisonment.

Following remarks by the court that primarily recited various sentencing principles, and asserting it had considered all the evidence presented, the court imposed a guideline sentence of seventy-five (75) months of imprisonment, and Mr. Culp appealed.

B. Proceedings on Appeal to the Ninth Circuit

The Ninth Circuit affirmed Mr. Culp’s sentence in an unpublished memorandum. Finding that an appeal waiver existed, the court acknowledged it nonetheless had “jurisdiction to determine whether his sentence violated the Constitution.” Fairly and succinctly summarizing the facts of the firearm possession as follows, the court concluded no constitutional violation existed: “On July 24, 2019, while drunk and high on marijuana, Culp attempted to enter a residence in Dundee, Iowa.

During a pat down conducted in connection with Culp’s ensuing arrest the county sheriff’s deputies discovered a .25-caliber pistol in his shorts.”

Concluding the sentence did not violate the Eighth Amendment ban on cruel and unusual punishment, the Ninth Circuit observed that the ban forbade “only extreme sentences that are grossly disproportionate to the crime’[.]” and that a sentence “within statutory limitations will generally not violate the Eighth Amendment.”

Observing that although “a different judge might have given more weight to the letters and the testimony attesting to Culp’s rehabilitation,” the court nonetheless concluded that “the 75-month sentence was within the Guidelines range and the limits imposed by the Constitution.”

Concluding that the sentence also did not violate Mr. Culp’s Fifth Amendment right to Due Process, the court stated that the judge “evaluated the evidence” and “made an individualized assessment as our precedent requires.”

Because no constitutional defect existed, the appeal waiver applied, and the court dismissed the appeal.

REASONS FOR GRANTING THE PETITION

Proportionality in sentencing is central to our system of justice. The assurance of proportionality in sentencing dates back to long before this nation was formed, but in order for this constitutional guarantee to be meaningful, to be more than the “hollow guarantees” this Court assured us they were *not* in *Solem v. Helm*, 463 U.S. 277, 286 (1983), rigorous judicial oversight must exist.

When measuring a sentence to determine its constitutionality under the unique facts and circumstances of a given case *and* the person being sentenced, this Court recognized as early as nearly four decades ago that “no penalty is *per se* constitutional.” *Solem* at 290. Equally important,

a sentence need not be shocking to warrant Eighth Amendment scrutiny; indeed, “a single day in prison may be unconstitutional in some circumstances.” *Id.*

But despite the directive from the Court in *Solem* that the proportionality principle clearly applies not just to capital punishment, but to term-of-years sentences, lower courts are loathe to question whether sentences of imprisonment constitute cruel and unusual punishment. *See, Solem* at 285. A further potential obstacle arises in the context of testing federal sentences for cruel and unusual punishment: the United States Sentencing Guidelines themselves and corresponding continued reliance by lower courts. Despite holding the guidelines to be advisory to save them from constitutional infirmity over fifteen years ago in *United States v. Booker*, “Judges [have] continued to use the numbers in the Guideline framework as a significant, even dispositive, point of reference...”¹ The warm blanket of guideline sentencing has been difficult for lower courts and attorneys alike to abandon, as illustrated by the need for Court intervention in such cases as *Gall v. United States*, 552 U.S. 38 (2007), where the Court stepped in to affirm a lower court sentence of probation and reassure everyone that the guidelines are *truly* advisory as held in *Booker*, endorsing a sentence of probation that constituted a considerable downward departure from the guidelines.²

While not an Eighth Amendment case, the issue highlighted by *Gall* is a cultural hesitance to step outside the guidelines, despite Court assurance of their advisory nature. And the adjudicated issue raised by this petition is the reverse mirror image of *Gall*: the court that *declined* to sentence outside the advisory guideline range despite abundant, uncontradicted

¹ Judge Nancy Gertner, *Supporting Advisory Guidelines*, Vol. 3, Harvard Law & Policy Review (2009).

² The similarities between *Gall* and this matter are notable, including stark instances of “self-rehabilitation,” and a Government request for a guideline sentence without contradicting defense evidence supportive of a probationary sentence.

evidence supporting a probationary sentence. In what way is Mr. Culp, with his considerable reform for a year prior to sentencing, and separation from, but subsequent reunification with, a supportive and loving family, a “mine run” defendant? This observation of the Court in *Gall* that supported a probationary sentence could apply to Mr. Culp without modification—that the defendant’s “self-motivated rehabilitation” lent “strong support to the conclusion that imprisonment was not necessary to deter Gall from engaging in future criminal conduct or to protect the public from his future criminal acts.” *Gall* at 59.

This mirror-image comparison to *Gall* illustrates the need for Court intervention in circumstances such as these, to give weight and force to the mandated directives aimed at individualized sentencing. To ensure individualized sentencing required by the federal sentencing scheme of advisory guidelines, the parsimony principle, and § 3553(a) factors, *both* endorsement of non-guidelines’ sentences *and* oversight of rote guidelines’ sentences must operate in tandem. And an essential component of this oversight is ensuring sentences do not violate the Eighth Amendment ban on cruel and unusual punishment, even when they are within the advisory guideline range.

Acknowledging deference to lower courts’ judgment as essential to a functioning judicial system, the guarantee that sentencing remains within bounds of the Eighth and Fifth Amendments cannot simply be left to lower court discretion. And the message cannot be that the Court will stand behind lower courts who appropriately exercise discretion and impose an individualized sentence, as in *Gall*, but that lower courts who decline to do so will *not* be subject to judicial constitutional oversight because cruel and unusual punishment is such a high bar. The Ninth Circuit’s very framing of the issue in its memorandum illustrates this high bar, observing both that the Eighth Amendment “forbids *only* extreme sentences that are grossly disproportionate to the

crime” (emphasis added) and that generally, any sentence within statutory limits will not violate Eighth Amendment. Naturally, a sentence outside statutory limits would automatically be illegal without ever consulting the Eighth Amendment, which leaves the question of what is left of Eighth Amendment applicability.

This raises the question of what the Eighth Amendment means in current terms, and a thoughtful examination of current societal and judicial attitudes towards sentencing is overdue. Modern attitudes towards sentencing necessarily inform the evolution of Eighth Amendment jurisprudence; what is cruel and unusual punishment is not fixed. That the ban on such punishment applies well beyond those punishments thought cruel at the inception of the Eighth Amendment is well established. *See, generally, Weems v. United States*, 217 U.S. 349 (1910).

But despite the evolving nature of cruel and unusual jurisprudence, and some significant development in this area, for example, in the context of juvenile sentencing over the last couple decades, this Court’s jurisprudence analyzing cruel and unusual punishment in the context of term-of-years sentences for adults has remained largely unchanged. *See, generally, Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

In view of significant legislative and voter-led steps away from lengthy terms of imprisonment, reexamination of term-of-years Eighth Amendment jurisprudence is poised for reexamination. As recognized by the Court in *Robinson v. California*, 370 U.S. 660, 666 (1962), current state views on both criminalization of an act and the understanding of “contemporary human knowledge” play roles in measuring whether a punishment is cruel and unusual. Several such examples of modern views of imprisonment, and lengthy sentences of imprisonment in particular, therefore bear consideration here.

Examples of this evolving sense of appropriate punishment in recent years include the Fair Sentencing Act of 2010, reducing the mandatory minimum penalties for crack cocaine offenses, the colloquially known “Drugs Minus Two” reduction in Amendment 782 for most federal drug trafficking offenses in 2014, the First Step Act in 2018 that contained a number of provisions, largely geared at either reducing sentence lengths or providing more meaningful rehabilitative and reentry options for offenders. That sentencing in general is geared more toward the individual is also part of this trend—as observed by the court in *United States v. Barker*, 771 F.2d 1362 (9th Cir. 1985) “..the concept of individualized sentencing is firmly entrenched in our present jurisprudence.” Evidence exists at the state level as well, including the California voter-led successful referendum to reduce the application of the Three Strikes Law, and the growing number of states legalizing, and thereby eradicating prison sentences for marijuana possession and even trafficking.

Absent additional guidance from this Court, lower appellate courts will be unlikely to wade into the interplay between rapidly changing societal and legislative views on imprisonment and the implications for term-of-years Eighth Amendment jurisprudence. The movement towards recognizing that imprisonment is not a “one-size-fits-all” criminal justice solution suggests that for Eighth Amendment jurisprudence to reflect current societal values, a more robust appellate oversight of term-of-years sentence is warranted. And given the focus of the United States Sentencing Guidelines on imprisonment, and the likelihood that district courts mostly simply adhere to the guidelines in sentencing, guidance is necessary from the Court on when a sentence of imprisonment that falls within the advisory guideline range nonetheless may run afoul of the Eighth Amendment, particularly in view of unique circumstances such as present here.

The Due Process question implicates many of the same individualized sentencing issues as the cruel and unusual punishment inquiry in that it asks: what was in fact considered in sentencing? Is it sufficient for a lower court to assert consideration of the individual circumstances of a defendant while imposing a guideline sentence, if unique circumstances proven through uncontradicted evidence suggest anything but a mine run case? The guarantee that no person shall be deprived of liberty without due process of law is one of the “constitutional protections of surpassing importance.” *Apprendi v. New Jersey*, 530 U.S. 466 (2000). And yes, courts are afforded broad discretion in imposing judgment within a prescribed statutory range. *Apprendi* at 481. But this discretion must be exercised “taking into consideration various factors relating both to offense and offender...” *Id.* And although due process protections are greatest in questions of guilt and innocence, they likewise extend to the length of sentence imposed. *Id.*


Where, as here, Mr. Culp presented considerable and uncontradicted evidence of his “self-motivated rehabilitation” and unique circumstance of reuniting with a supportive and loving family, the only assurance that this evidence was given its “due” consideration is a statement that all evidence was considered by the sentencing judge. This raises the larger question of how to ensure due process is granted. But given a situation that presents itself not just for Mr. Culp, but others as well, where uncontradicted and considerable evidence of reform demonstrates there is no need for imprisonment to achieve aims of rehabilitation or protection of the public, due process requires reinforcement by this Court.

Given the Eighth Amendment and its unique nature as reflective of modern attitudes and knowledge regarding sentencing, considerable changes in this arena as evidenced by both legislative and voter-led reform, term-of-years jurisprudence is well-poised for reexamination by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



RACHEL JULAGAY
Assistant Federal Defender
Counsel of Record

September 22, 2021

APPENDIX A

**United States Court of Appeals
for the Ninth Circuit**

Memorandum Opinion

United States v. Casey Ray Culp, 851 Fed. App'x. 80 (9th Cir. June 24, 2021)

Filed June 24, 2021

FILED

JUN 24 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CASEY RAY CULP,

Defendant-Appellant.

No. 20-30167

D.C. No.

6:20-cr-00002-SEH-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted June 10, 2021**
Seattle, Washington

Before: W. FLETCHER, WATFORD, and COLLINS, Circuit Judges.

Casey Ray Culp challenges the sentence imposed following his guilty plea for possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). Despite the appeal waiver contained in Culp's plea agreement, we have jurisdiction

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

to determine whether his sentence violated the Constitution. *United States v. Torres*, 828 F.3d 1113, 1124–25 (9th Cir. 2016). Because it did not, we dismiss.

Culp is a 42-year-old resident of Montana. On July 4, 2019, while drunk and high on marijuana, Culp attempted to enter a residence in Dundee, Iowa. During a pat down conducted in connection with Culp’s ensuing arrest, the county sheriff’s deputies discovered a .25-caliber pistol in his shorts. After the case was transferred to the District of Montana pursuant to Federal Rule of Criminal Procedure 20, Culp pled guilty to possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). In the plea agreement, Culp knowingly and voluntarily waived his right to appeal his sentence, unless that sentence was “constitutionally defective.”

Culp had previously been convicted of a felony punishable by a term of imprisonment of more than one year. Given his criminal history and the facts to which he stipulated, the Sentencing Guidelines range was 70 to 87 months. Culp submitted nine letters from his family, friends, and employer. These letters explained that Culp had reconnected with his family, had secured consistent employment, had spent one year sober, and had become a productive member of society. Some of these witnesses testified. Culp took full responsibility for his crime. The district judge imposed a 75-month sentence.

1. Culp’s sentence did not violate the Eighth Amendment. In non-capital cases, the Eighth Amendment “forbids only extreme sentences that are grossly disproportionate to the crime.” *Graham v. Florida*, 560 U.S. 48, 60 (2010) (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and concurring in the judgment)). A sentence within statutory limits will generally not violate the Eighth Amendment. *See United States v. Parker*, 241 F.3d 1114, 1117–18 (9th Cir. 2001). Though a different judge might have given more weight to the letters and the testimony attesting to Culp’s rehabilitation, the 75-month sentence was within the Guidelines range and the limits imposed by the Constitution.

2. Nor was there any violation of Culp’s Fifth Amendment right to due process. The judge evaluated the evidence, including the presentations from Culp’s family and friends, and made an individualized assessment as our precedent requires. *See United States v. Carty*, 520 F.3d 984, 990–93 (9th Cir. 2008) (en banc).

Because there was no constitutional defect, the appeal waiver applies.

DISMISSED.