

No. _____

SUPREME COURT OF THE UNITED STATES

STEVEN CRAIG BETHEA,

Petitioner,

vs.

United States of America,

Respondent

**On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE DISTRICT COURT ERRED IN SENTENCING THE APPELLANT STEVEN BETHEA TO A GREATER SENTENCE THAN NECESSARY AS THE COURT ABUSED ITS DISCRETION BY UPWARDLY VARIED THE SENTENCE BY IMPOSING A SUBSTANTIVELY UNREASONABLE SENTENCE THAT VIOLATED THE EIGHTH AMENDMENT OF THE US CONSTITUTION.

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**IN THE
SUPREME COURT OF THE UNTIED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that the Supreme Court of the United States will grant a writ of certiorari to review the judgment below.

INTRODUCTION

Steven Craig Bethea was indicted in the Eastern District of North Carolina on November 8, 2008, in a four (4) count Indictment. J.A.11-15. Appellant Bethea was named with one co-defendant Robert Hampton Taylor in the Indictment. J.A. 11-14. The Appellant Bethea was charged in Count One of the Indictment with Conspiracy to unlawfully obstruct, delay and affect commerce by robbery in , all in violation of Title 18, United States Code, Section 1951(b)(1); in Count Two, Appellant Bethea was charged with possession of a firearm in furtherance of a crime of violence in violation of Title 18, United States Code, Section 924(c); and in Count Four, Appellant Bethea was charged with possession of a firearm by a convicted felon in violation of Title 18, United States Code, Section 922(g)(1) and Title 18, United States Code,Section 924. J.A. 11-14.

The Appellant was sentenced to One Hundred Twenty (120) months incarceration for Count Two of the Indictment and One Hundred Thirty-Two (132) months incarceration for County Four to run consecutively; thus Appellant was to serve Two Hundred Fifty-Two Months total for both counts. J.A. 74, 86. A five year period of supervised release was to occur following the Appellant's release from

incarceration as well as a One Hundred and no/100 (\$100.00) Dollar special assessment for each of the two counts. J.A. 74, 86.

On or about June 9 2016, the Appellant filed a Motion to Vacate pursuant to Title 28, United States Code, Section 2255. J.A. 87-105. On or about August 28, 2019, the Honorable James C. Dever, III granted the Appellant Bethea's Motion to Vacate Count Two of the Indictment and further ordered that this matter be set for rehearing on the Appellant's sentence. J.A. 114. Prior to the resentencing hearing, the Government filed a Motion for an Upward Departure and/or Variance on December 5, 2019. J.A. 118-122. A resentencing hearing was held in Raleigh, North Carolina before the Honorable James C. Dever, III on December 12, 2019. Following the arguments of counsel, the Court denied the Government's motion for Upward Departure but upwardly varied from the guideline range and sentenced the Appellant to Two Hundred Fifty-Two (252) months in custody. J.A. 126-148; 149-155.

The Petitioner respectfully prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Fourth Circuit in *United States of America v. Steven Craig Bethea*, was entered on July 1, 2021, is unpublished, and is reprinted in the Appendix, App. 1.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on July 1, 2021. This petition is filed within 150 days from said order. The petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

Fifth Amendment to US Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Eighth Amendment to US Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

A. Factual Basis

Petitioner Steven Craig Bethea, filed a motion to appeal to the United States Court of Appeals for the Fourth Circuit on December 18, 2019, through his legal counsel. Petitioner's motion to appeal challenged the District Court's sentencing and abused its discretion by enhancing the sentence though a variance given the

totality of the entire case. The filing of an upward departure along with the variance that generated a sentence that increased the Appellant's sentence by Sixty-Four (64) months was an error as it was greater than necessary and violated the Eighth Amendment of the U.S. Constitution solely as a blatant attempt to simply go around the agreed upon plea agreement that was entered between the parties. The Government's and Court's arguments for the increase in the sentence, which was not expressed at the time of the original sentence, appears to be an after the fact posturing to simply ensure that the Appellant receive the same sentence he received for two counts of conviction despite the fact that the original sentence was based upon an illegal conviction.

B. Decisions Below

Petitioner Steven Craig Bethea filed a Motion to Vacate his original sentence on June 9, 2016. The Honorable James C. Dever, III granted said motion as to Count Two of the Indictment. A resentencing hearing was held in Raleigh, North Carolina before the Honorable James C. Dever, III on December 12, 2019. The Court denied the Government's motion for Upward Departure but upwardly varied from the guideline range and sentenced the Appellant to Two Hundred Fifty-Two (252) months in custody. Petitioner Bethea filed a timely Notice of Appeal on December 18, 2019, through his legal counsel.

REASONS FOR GRANTING THE PETITION

"Where fundamental and constitutional rights are ignored, due process does not exist and a fair trial in contemplation of law cannot be had" *Chambers v.*

Mississippi, 410 U.S. 284, 305 (1973). This case presents an exceptionally important question regarding the rights of a defendant to a sentencing hearing and due process of law, in a Federal criminal matter, that should be settled by this court; namely, whether the District Court unjustly sentenced the Petitioner to a sentence that was greater than necessary. Pursuant to the Fifth Amendment of the United States Constitution, a person shall not be deprived of life, liberty, or property, without due process of law. *Johnson v. United States*, 576 U.S. 591, 595 (2015).

At that initial sentencing, based upon a criminal history level IV and an offense level of VI, the court found that the Appellant was facing a guideline range between 188 to 235 months in custody for Count Four of the Indictment which was to be followed by a One Hundred Twenty (120) month sentence for Count Two. The Appellant was sentenced to One Hundred Thirty-Two (132) months in custody for Count Four followed by the mandatory One Hundred Twenty (120) month sentence for Count Two. The Court did not provide any variance in the sentence based upon the facts of the case NOR did it have any enhancements for specific offense characteristics of the offense itself. The initial base guideline range was not increased for certain specific offense characteristics.

At the resentencing, the Court upwardly varied the Appellant's sentence by approximately Sixty-Four (64) months and sentenced Appellant to the same exact sentence as he previously set forth stating that it was based upon his review of the factors set forth in Section 3553(a) including the "serious nature of the criminality,

the criminal offense; the relevant conduct, his history and characteristics, the good and the bad; the need to deter others who might choose to engage in this type of behavior; the need to incapacitate; the need to promote respect for the law.” JA 146. But these factors were already considered in the PSI Report inasmuch as the base offense level was increased by four (4) points pursuant to Section 2K2.1(b)(6)(B) of the U.S. Sentencing Guidelines Manual and enhanced by six (6) levels pursuant to U.S. Sentencing Guideline Section 3A1.2(c)(1) again for the risk of serious bodily injury that the Appellant’s actions and crime caused or could have caused. The Appellant’s past criminal history was also already considered by the Guidelines as he was deemed to be an armed career criminal and his guideline range was enhanced once again to a level 33 and was only reduced to a level pursuant to his acceptance of responsibility in accordance with Section 3E1.1(b). J.A. 193-194.

The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The Appellant maintains that the Court violated his Eighth Amendment rights when it sentenced him to a sentence greater than necessary and which was above the based offense guideline range as set forth during the sentencing hearing. Specifically, the Appellant maintains that the District Court’s sentence should have been proportional to the charge from which he pleaded guilty and for which he is being sentenced. “The concept of proportionality is central to the Eighth Amendment. Embodied in the Constitution’s ban on cruel and unusual

punishments is the ‘precept of justice that punishment for crime should be graduated and proportioned to [the] offense.’” *Graham v. Florida*, 560 U.S. 48, 59 (2010) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910) (emendation in original)). Accordingly, a disproportionate sentence may be cruel and unusual even if it is not “inherently barbaric.” Id.

Furthermore, if the Supreme Court of the United States grants a writ of certiorari over this issue, the Court would inevitably need to review Petitioner’s sentencing. Petitioner contends that his sentencing was unreasonable, and based on the information stated above, then the sentence given against the Petitioner would be unreasonable, and therefore should be reduced.

CONCLUSION

The petition for a writ of certiorari should be granted. Respectfully submitted.

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