NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

JONATHAN HILLIAM McDOUGAL
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 20-61073

PETITION FOR WRIT OF CERTIORARI

Omodare B. Jupiter (MB #102054)
Federal Public Defender
N. and S. Districts of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510

Michael L. Scott (MS Bar #101320)
Assistant Federal Public Defender

Attorney for Defendant-Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the district court erred by ordering Mr. McDougal to undergo alcohol and drug treatment as a special condition of supervised release.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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TABLE OF AUTHORITIES

Provisions of the United States Constitution:

I. OPINIONS BELOW

This case involves a supervised release revocation proceeding. The case arises out of an underlying conviction for conspiracy to possess with intent to distribute over 28 grams of cocaine base, in violation of 21 U.S.C. § 846 (count 1), and distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1) (count 2). The court ordered Mr. McDougal to serve 28 months in prison followed by three years of supervised release. It entered a Judgment reflecting this sentence on October 17, 2016. The district court case number is 3:15cr26-HTW-LRA.

After Mr. McDougal's release from prison, he admittedly violated conditions of supervised release by embezzling money belonging to the State of Mississippi. Accordingly, the court revoked his supervised release on September 11, 2020, and ordered Mr. McDougal to serve ten months in prison, followed by 26 months of supervised release. The court also ordered Mr. McDougal to participate in alcohol and drug treatment while on supervision. The court entered the subject Revocation Judgment on November 12, 2020. The revocation Judgment is attached hereto as Appendix 1.

On November 16, 2020, Mr. McDougal filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit case number is 20-61073. His only issue on appeal was whether the district court erred by

ordering him to attend alcohol and drug treatment as a condition of supervised release.

The Fifth Circuit entered an Order affirming the district court's ruling on August 11, 2021. The Order is attached hereto as Appendix 2. Mr. McDougal then filed a Petition for Rehearing *En Banc*, which the Fifth Circuit denied via an Order entered on September 13, 2021. That Order is attached hereto as Appendix 3. Finally, on September 21, 2021, the Fifth Circuit entered a Mandate, which is attached hereto as Appendix 4.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed its Order denying Mr. McDougal's Petition for Rehearing *En Banc* on September 13, 2021. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Order, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves a discretionary condition of supervised release ordered by the district court. Ordering discretionary conditions of supervised release is governed by 18 U.S.C. § 3583(d), which state in relevant part:

> The court may order, as a further condition of supervised release, to the extent that such condition--
> (1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);
> (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and
> (3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)[.]

This case also involves powers vested in federal courts via the United States Constitution. Specifically, the case involves powers vested by Article III, Sections 1 and 2 of the Constitution, which state:

> Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
>
> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a Revocation Judgment entered in federal court because Mr. McDougal admittedly violated conditions of supervised release. Regarding the underlying criminal conviction that this revocation proceeding is based upon, the court of first instance was the United States District Court for the Southern District of Mississippi. The Southern District of Mississippi had jurisdiction over the case under 18 U.S.C. § 3231 because the underlying criminal charges levied against Mr. McDougal arose from the laws of the United States of America.

B. Statement of material facts.

1. Facts about the underlying conviction.

Mr. McDougal's initial 28-month prison sentence resulted from an underlying conviction for possession with intent to distribute a small amount of cocaine base. The prosecution filed the Indictment on April 21, 2015, but the conduct underlying the conviction occurred over four years earlier on January 31, 2011. That means that the underlying crime occurred over 11 years ago.

The probation officer prepared a Presentence Investigation Report (hereinafter "PSR") before the sentencing hearing on the underlying conviction. The probation officer's comments about Mr. McDougal's alcohol and drug history

are relevant to the issue on appeal. The PSR states, "McDougal advised he has never been addicted to prescription drugs, or so-called 'hard drugs[.]'" Mr. McDougal purportedly admitted that "he has a history of both alcohol and marijuana addiction." However, he "has been able to stop abusing drugs and alcohol on his own." Finally, the probation officer states in the PSR, "*McDougal has been tested* ***numerous times*** *while on pretrial supervision, and has* ***tested negative*** *for any illegal drugs on each occasion*."

2. Facts about the admitted supervised release violations.

At the revocation hearing, the court described the two supervised release violations as follows:

> [T]he charges: The defendant shall not commit another federal, state or local crime. And then it charges that you, on or about and between May 1, 2018, and July 1, 2018, being an employee of Pearl River Valley Water Supply District, converted to your own use $7,924.91, being property of the State of Mississippi.
>
> On November 12, 2019, that you pled guilty in the Circuit Court of Rankin County, Mississippi, and that the court sentenced you to ten years' custody with the Mississippi Department of Corrections, with a five-year term of post-release supervision. And then this petition says that you would be eligible for release after serving three years' imprisonment.

In summary, the two charged violations are: (1) embezzling government funds; and (2) sustaining a conviction for embezzling those same government funds. We note that prior to the subject supervised release revocation proceeding, Mr. McDougal had already served 274 days (nine months) in Mississippi state prison for the exact same embezzlement conduct involved in this appeal.

3. Facts about evidence presented at the supervised release revocation hearing.

The district court conducted three protracted supervised release revocation hearings before rendering a sentence. Mr. McDougal admitted guilt during the first minutes of the initial revocation hearing.

In 2018, after Mr. McDougal's release from prison on the underlying conviction, he began working for the Pearl River Valley Water Supply District (hereinafter "PRV")[1]. He made $7.28 per hour, which was the same hourly rate he earned in 2013, before he left to go to prison.

Mr. McDougal paid child support on seven of his eight children. To help him get back on his feet financially, Mr. McDougal's sister, Shama Harris, allowed him to live with her and her husband when he got out of prison. She did not charge rent initially, but later Mr. McDougal started paying rent, helping with household expenses, and paying gasoline costs related to going to and from work. After paying child support and sharing in household expenses, he had only about $30 to $80 left over every two weeks for all other costs of living.

Mr. McDougal's unfortunate financial situation led him to commit the subject supervised release violation. He embezzled money from PRV through use

[1] As indicated by the language of the charging document, PRV falls under the purview of the State of Mississippi. Thus, the supervised release violation at issue is embezzling money from the State of Mississippi.

of a Fuelman gasoline card. The admitted embezzlement involved "[f]illing up other people's cars with the Fuelman card and accepting cash from them allowed him to buy food and other things that he needed."

The Petition for Warrant states that Mr. McDougal embezzled $7,924.91 from PRV through using the Fuelman card. However, he personally received only about $3,000 to $4,000 of that total. He had to "cut deals" with people to get them to do business with him. In other words, if Mr. McDougal put $40 of gas in a person's car, the person receiving the gas gave him only about $10 to $20. He used much of that money to pay for his children's needs that were over and above what he paid in child support.

Regarding what he was doing with the money, Mr. McDougal testified: "I was buying food, Your Honor. But clothes and stuff like that – I wasn't buying clothes. I was – I was buying food for us. And other than gas, getting back and forth to work, I wasn't spending anything on me. I don't drink. I don't do drugs. I wasn't spending anything on me, Your Honor."

Mr. McDougal's testimony about what he did with the money is consistent with Ms. Harris' testimony and Jontaveyun Jones' testimony. As stated above, Ms. Harris is Mr. McDougal's sister that he lived with after completing the underlying prison term. Mr. Jones is Mr. McDougal's 16-year-old son.

Ms. Harris testified that she personally witnessed Mr. McDougal buying things for his kids and/or giving money to the kids to buy necessities. He bought food for the household. He paid her husband gas money related to going to and from work. At some point, Mr. McDougal started paying her cash rent. He rarely bough clothing for himself.

It is important to note that Ms. Harris stated that to her knowledge, Mr. McDougal is not a drug user. Also, she never heard anyone talking about him using drugs. Finally, she testified that his close friends are law abiding and do not have criminal records.

After defense counsel's direct examination of Ms. Harris and a brief cross-examination by the prosecution, the court began questioning her. The court's questions began at page 188 of the record on appeal and extended through page 238. In other words, the court's questions covered 51 pages of the revocation hearing transcript. When the court concluded its questions, defense counsel asked: "Even though the extensive cross-examination by the Court, you still support your brother?"[2] She responded, "That's correct."

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[2] In an unrelated case, another district judge in Southern District of Mississippi characterized similar questioning by the judge in this case as "cross examination." *See United States v. Donald Ray Quinn*, Criminal No. 3:92cr121-DPJ-FKB, in the United States District Court for the Southern District of Mississippi. The other judge stated:

> I do want to say for the record – I meant to say it early on – that I obviously read the order of recusal and, Ms. Stewart, your motion to try to get some context of what was going on.

Mr. Jones testimony also supports Mr. McDougal's contention that he did now spend the embezzled money on himself. He testified that Mr. McDougal bought him food, clothing and sporting equipment. Mr. McDougal also gave him money, as needed. Finally, Mr. Jones testified that "[h]e takes care of us good. He makes sure we have what we need. He's always there for us when he can be, and he makes sure we are doing right in school and stuff, and make[s] sure we are keeping up on our work, and that we aren't in trouble."

Notwithstanding the uncontroverted testimony from Mr. McDougal, Ms. Harris and Mr. Jones, the court was not persuaded that "this defendant spent any significant money on his children, nor that he spent any significant money with his sister when he was staying there free with her and her husband." The court inexplicably stated that it "has no idea what he did with that money[.]" Then, as if to say that Mr. McDougal's seventh grade education made him a master at record keeping, the court stated that he provided "no sales slips or anything else to show that you spent this money on your children."

> I started to read the first transcript. And as *I sort of got into what sounded like a cross-examination*, I decided to stop reading it. And this may be overly cautious, but I didn't want – *I didn't want there to be any suggestion that any bias for recusal by the prior judge might taint my review of the case so I elected not to read that*, I guess it was a 95-page transcript. I read your motion, but I tried to separate my thought process from that of the original judge. I did want to put that on the record.

Hearing Transcript, pp. 21-22 (emphasis added). The hearing transcript is available for this Court's review under docket entry number 31 in *Quinn*, Case No. 3:92cr121, in the Southern District of Mississippi.

4. Facts about the supervised release revocation sentence.

Mr. McDougal had already served nine months in Mississippi state prison for the same embezzlement conduct that is the subject of this supervised release revocation proceeding. As punishment for violating conditions of federal supervised release, the district court ordered him to serve an additional ten months in prison, followed by 26 months of supervised release. As stated above, neither the prison term nor the term of supervised release are at issue on appeal.

At issue on appeal is the special condition of supervised release requiring Mr. McDougal to participate in alcohol and drug treatment, and to contribute to the cost of the treatment. Specifically, the Revocation Judgment states: "You must participate in an alcohol/drug abuse treatment program and follow the rules and regulations of the program. The probation officer will supervise your participation in the program. You shall contribute to the cost of any substance abuse treatment program to the best of your ability."

The language of the Revocation Judgement clearly states that Mr. McDougal "*must* participate in an alcohol/drug abuse treatment program[.]" That mandatory language conflicts with what the judge stated at the revocation hearing. After defense counsel objected to this special condition of supervision, the court stated, "I'm ordering treatment if the probation officer deems it necessary. But *that decision will lie with the probation officer*." That conflict, and the legal issues

raised by the conflict, are further addressed below in the "Arguments" section of this Petition.

When defense counsel objected to the special condition of supervised release requiring alcohol and drug treatment, the court responded:

> You protest too much, because you're protesting - - your protest is a frivolous protest if he doesn't have a problem, because I've already said the probation officer does not have to impose those conditions if it does not have a problem. But your vigorous objection to this matter may indicate that you feel that he might.
>
> * * * * *
>
> Otherwise, why protest if he doesn't have a problem.
>
> So as I said, Mr. Scott, you protest too much[.]

The reasons for the defense's objection, an objection which the district court deemed "frivolous," are as follows:

- Mr. McDougal was tested for drugs "numerous times" while on pretrial supervision for the underlying crime in 2016, and he "tested negative for any illegal drugs on each occasion."
- After his release from prison on the underlying conviction, Mr. McDougal tested negative for drugs on numerous occasions.
- The district court recognized that Mr. McDougal tested negative on his drug tests. It stated, "I didn't see very much about your potential use of drugs[.]"
- The probation officer identified no problems with alcohol and drug abuse.
- Mr. McDougal testified that he does not currently drink alcohol or do drugs.

- Ms. Harris testified that she does not believe that Mr. McDougal uses drugs and she never heard any state that he uses drugs.

Notwithstanding all of this evidence that Mr. McDougal does not have a problem with alcohol and drugs, the district court required him to undergo treatment for the same, and participate in the cost of treatment.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, "[r]eview on writ of certiorari is not a matter of right, but of judicial discretion." For the following reasons, this Court should exercise its discretion and grant certiorari in this case.

The district court abused its discretion by requiring Mr. McDougal to undergo alcohol and drug treatment as a special condition of supervision. How the district court ordered this special condition of supervision was inconsistent. On the one hand, the Revocation Judgment states that Mr. McDougal "must" attend treatment. On the other hand, at the revocation hearing the district court delegated authority to the probation officer to determine whether he must undergo treatment.

Because of the district court's inconsistency in the way it ordered alcohol and drug treatment, Mr. McDougal's argument follows two separate and distinct paths. If this Court grants certiorari, either argument requires the Court to vacate the district court's requirement for alcohol and drug treatment.

The first path of Mr. McDougal's argument focuses on the Revocation Judgment's statement that Mr. McDougal "must" attend alcohol and drug treatment. Ordering this or any other special condition of supervision requires the condition to be reasonably related to one or more of the following 18 U.S.C. § 3553(a) factors:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the deterrence of criminal conduct;

(3) the protection of the public from further crimes of the defendant; and

(4) the provision of needed educational or vocational training, medical care, or other correctional treatment to the defendant.

As argued in detail below, requiring Mr. McDougal attend alcohol and drug treatment is not reasonably related to any of these § 3553(a) factors.

The second path of Mr. McDougal's argument focuses on the district court's delegation of authority to the probation officer to decide whether Mr. McDougal must undergo alcohol and drug treatment. This improper delegation of an Article III judge's authority to a probation officer is squarely against Fifth Circuit precedent established in *United States v. Barber*, 865 F.3d 837 (5th Cir. 2017).

B. The district court erred by ruling that Mr. McDougal ***must*** attend alcohol and drug treatment.

1. Introduction.

First addressed is the rendition of this special condition of supervision as described in the Revocation Judgment. The Revocation Judgment states: "You *must* participate in an alcohol/drug abuse treatment program and follow the rules and regulations of the program. The probation officer will supervise your

participation in the program. You shall contribute to the cost of any substance abuse treatment program to the best of your ability."

2. Applicable legal tests.

United States v. Caravayo, 809 F.3d 269 (5th Cir. 2015) articulates the tests for determining whether a special or discretionary condition of supervised release is legally acceptable. "Under § 3583(d), a discretionary condition must be 'reasonably related' to one of the four factors under § 3553(a)[.]" *Id.* at 274. Those conditions are:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
> (2) the deterrence of criminal conduct;
> (3) the protection of the public from further crimes of the defendant; and
> (4) the provision of needed educational or vocational training, medical care, or other correctional treatment to the defendant.

Id. (citing *United States v. Weatherton*, 567 F.3d 149, 153 (5th Cir.2009) and 18 U.S.C. § 3553(a)(1), (a)(2)(B)–(D)).

In summary, "[t]he condition must … impose no greater deprivation of liberty than is reasonably necessary to advance deterrence, protect the public from the defendant, or advance the defendant's correctional needs." *Caravayo*, 809 F.3d at 274 (citation omitted). In that context, "[a] district court must 'set forth factual findings to justify special probation conditions' in terms of the § 3553(a) factors." *Id.* at 275 (citation omitted).

3. Application of the law to the facts of Mr. McDougal's case.

As required by the *Caravayo* court, we must look to the following four § 3553(a) factors to determine if requiring Mr. McDougal to participate in alcohol and drug treatment is legally acceptable.

a. The nature and circumstances of the offense and the history and characteristics of the defendant.

(i) The nature and circumstances of the offense.

Mr. McDougal's supervised release violation involved embezzling money. As described in detail above, the court uncovered no evidence whatsoever linking the embezzled money to alcohol and drug use, and/or the sale of illegal drugs. This weighs in favor of ruling that the district court erred by ordering alcohol and drug treatment.

(ii) Mr. McDougal's history and characteristics.

Evidence presented at the revocation hearing proves that Mr. McDougal's history and characteristics do not support requiring him to participate in alcohol and drug treatment. Mr. McDougal tested negative for drugs "numerous times" while on pretrial supervision for the underlying crime in 2016. After his release from prison on the underlying conviction, he again tested negative for drugs on numerous occasions. Even the district court recognized that Mr. McDougal tested negative on his drug tests.

The probation officer identified no problems with alcohol and drug abuse. That is probably because, as Mr. McDougal testified, he does not currently drink alcohol or do drugs. Further, Mr. McDougal's sister, Ms. Harris, testified that she does not believe that he uses drugs and she never heard anyone state that he uses drugs. She should know about Mr. McDougal's habits because he lived with her for about a year prior to the subject arrest.

The *only* evidence that Mr. McDougal may have had an issue with alcohol and drugs comes from the PSR, which was initially prepared about five years ago on August 26, 2016. The PSR begins by stating that Mr. McDougal admitted that he had a history of alcohol and marijuana abuse in the past. However, the PSR goes on to state that he "has been able to stop abusing drugs and alcohol on his own."

Mr. McDougal's definitive statement that he stopped using alcohol and marijuana on his own is supported by the probation officer's statement in 2016 that "McDougal has been drug tested numerous times while on pretrial supervision, and has tested negative for any illegal drugs on each occasion." Even more important, as stated above Mr. McDougal tested negative for drugs while he was on supervised release leading up to the subject revocation hearing in 2020. These facts indicate that the district court erred by requiring him to attend alcohol and drug treatment as a special condition of supervision.

b. The deterrence of criminal conduct, and protection of the public from further crimes.

Since there is no evidence before the Court that Mr. McDougal currently has a problem with alcohol and drugs, requiring him to undergo alcohol and drug treatment will do nothing whatsoever to either deter criminal conduct or protect the public from further crimes. Therefore, these two factors bode in favor of overturning the district court's requirement for him to attend alcohol and drug treatment.

c. The provision of needed educational or vocational training, medical care, or other correctional treatment to Mr. McDougal.

The only conceivable reason to require Mr. McDougal to undergo alcohol and drug treatment is to cure a problem with alcohol and drug abuse. As described in detail above, he has no such problem. This factor, therefore, provides further support for overturning the district court's unreasonable ruling on the alcohol and drug treatment issue.

d. The district court's explanation, or lack thereof, for ordering alcohol and drug treatment.

As required by the Fifth Circuits rulings in *Caravayo*, a district court must "set forth factual findings to justify special probation conditions[.]" 809 F.3d at 275 (citation omitted). The district court's comment related to this requirement is especially telling. Rather than identifying facts supporting required alcohol and

drug treatment, the court stated, "I didn't see very much about your potential use of drugs[.]"

This comment by the district court speaks for itself. That is, the court had no facts to support its unreasonable requirement for Mr. McDougal to attend alcohol and drug treatment. Therefore, this condition must be vacated, because it imposes a "greater deprivation of liberty than is reasonably necessary" under the facts of the case. *See Caravayo*, 809 F.3d at 274 (citation omitted).

C. The district court erred by delegating to the probation officer the authority to require Mr. McDougal to attend alcohol and drug treatment.

Next considered is the district court bench ruling that improperly gives the probation officer authority to determine whether or not Mr. McDougal must attend alcohol and drug treatment after his release from prison. As stated above, this is at odds with the Revocation Judgment that states Mr. McDougal "must" submit to alcohol and drug treatment.

Defense counsel objected to the alcohol and drug treatment requirement. Counsel argued that requiring treatment was unreasonable because Mr. McDougal currently does not have a problem with alcohol and drug abuse. In response, the court chided defense counsel for making a "frivolous protest[.]"

The court further stated, "I'm ordering treatment if the probation officer deems it necessary. But that decision will lie with the probation officer." In other words, the court delegated authority to the probation officer to determine whether

or not Mr. McDougal must attend alcohol and drug treatment. This improper delegation of authority is squarely against Fifth Circuit precedent.

In *United States v. Barber*, 865 F.3d 837 (5th Cir. 2017), the Fifth Circuit addressed the subject issue. The district court ordered a special condition of supervised release requiring Barber to "participate in a drug and/or alcohol treatment program *as deemed necessary and approved by the Probation Office*." *Id.* at 839 (emphasis added). On appeal, Mr. Barber challenged this special condition of supervised release. *Id.* at 838. However, defense counsel failed to object to this condition at the sentencing hearing, so a plain error standard of review applied on appeal. *Id.* at 839. But even under a plain error standard of review, the Fifth Circuit found reversible error because this condition of supervision improperly delegated power to the probation officer to determine whether Mr. Barber had to undergo substance abuse treatment. *Id.* at 842.

The *Barber* court set forth the probation officer's power to supervise defendants. "Probation officers have power 'to manage aspects of sentences and to supervise probationers and persons on supervised release with respect to all conditions imposed by the court.'" *Barber*, 865 F.3d at 839 (citation omitted). The court went on to set forth limits on a probation officer's power. "[A] district court cannot delegate to a probation officer the 'core judicial function' of imposing

a sentence, '*including the terms and conditions of supervised release*.'" *Id.* (emphasis added; citation omitted).

The Fifth Circuit found reversible error in *Barber*. The court held that this condition of supervised release "affected Barber's substantial rights because it affected his right to be sentenced by an Article III Judge."[3] *Barber*, 865 F.3d at 840. In other words, "the unauthorized delegation of sentencing authority from an Article III judicial officer to a non-Article III official affects substantial rights[.]" *Id.* (citation omitted).

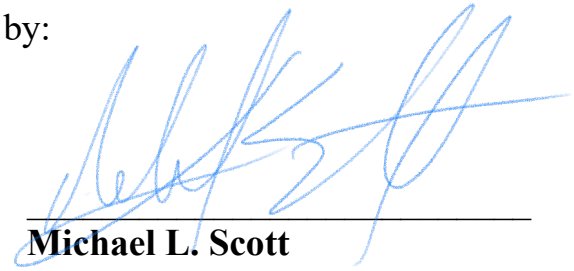
Under the binding holdings in *Barber*, the district court in Mr. McDougal's case legally erred to the extent that it delegated authority to the probation officer to decide whether he must undergo alcohol and drug treatment. Accordingly, this Court should grant certiorari to address this error of constitutional magnitude.

[3] Article III, Section 1 of the United States Constitution establishes the federal court system. Article III, Section 2 establishes federal jurisdiction over crimes defined in the United States Code. Federal district judges are Article III judges.

VI. CONCLUSION

The Fifth Circuit ignored its own binding precedent in this case. Based on the arguments presented above, Mr. McDougal asks the Court to grant his Petition for Writ of Certiorari in this case. Granting certiorari is necessary to ensure consistency in the Fifth Circuit's rulings in all similar cases in the future.

Submitted December 7, 2021, by:



Michael L. Scott
Assistant Federal Public Defender
Office of the Federal Public Defender
Southern District of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510

Attorney for Defendant-Petitioner

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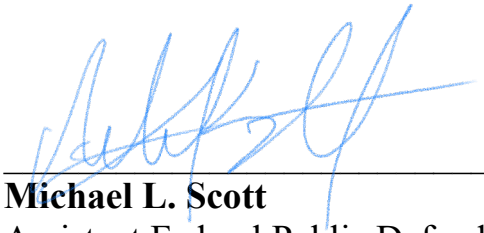
CERTIFICATE OF SERVICE

I, Michael L. Scott, appointed under the Criminal Justice Act, certify that today, December 7, 2021, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No.775416334232, addressed to:

The Honorable Elizabeth Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.



Michael L. Scott
Assistant Federal Public Defender