

No.:

*In the Supreme Court of the United
States*

Christopher Coffey
Petitioner,

v.

The United States of America
Respondent.

On Petition for Writ of Certiorari to the U.S Court of
Appeals for the Sixth Circuit

Petition for a Writ of Certiorari

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Question Presented for Review

What is the extent of medical disadvantage that a defendant must present in order to secure a variance based on ill health?

Parties to the Proceeding and Rule 26.9 Statement

Petitioner and defendant-appellant below, Christopher Coffey, is an individual person and United States domiciliary. The respondent, here, and the plaintiff-appellee below is the U.S. Pursuant to S.Ct.R. 26.9, both parties, the U.S. and Coffey are non-corporate entities, and have no corporate disclosures to make.

List of Related Proceedings

There are no proceedings that qualify as “related proceedings” under Rule 14 of this Court’s rules of practice.

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Petition for a Writ of Certiorari

Christopher Coffey petitions for a writ of certiorari to review the decision of the U.S. Court of Appeals for the Sixth Circuit, affirming the Northern District of Ohio's order convicting and sentencing him for various charges described below.

Opinions Below

The Sixth Circuit's Decision decision dated July 15, 2021 is unreported and reproduced in Appendix A.

Jurisdiction

This Court's jurisdiction rests on 28 U.S. Code § 1254, allowing a writ to issue relative to the final decision of a U.S. Court of Appeals.

Constitutional and Statutory Provisions

This Cause turns on the 18 U.S.C.S. § 3553 and the notion of substantive reasonableness in sentencing.

Reasons for Granting the Writ of Certiorari

Procedural Posture and Factual Background

This cause began with an indictment charging Receipt and Distribution of Visual Depictions of Real Minors Engaged in Sexually Explicit Conduct under 18 U.S.C. 2252(a)(2) and Possession of Child Pornography under 18 U.S.C. 2252(a)(5)(B). [Indictment ("Ind."): R.E. 1, PageID# 1 – 2.] He

entered a plea to the charges. [Plea Transcript (“Plea.Tr.”): R.E. 50, PageID# 204 – 255.] The trial court sentenced him as follows, to the custody of the Bureau of Prisons for a term of 121 months as to each of Counts 1 and 2 of the Indictment, each such term to be served concurrently. And upon release, to serve a 5-year term of supervised release as to each of Counts 1 and 2 of the Indictment, each such term to be served concurrently, with standard and special conditions of supervision imposed. The Court waived the fine and ordered that Coffey pay a \$200.00 special assessment as to Counts 1 and 2 of the Indictment, due immediately. [Sentencing Transcript (“Sen.Tr.”): R.E. 51, PageID# 266 – 323.]

As he explained to the Court, himself, at his sentencing hearing, Coffey is dreadfully sorry for the conduct that led to him being criminally charged and socially outcast. He expressed tremendous regret for the pain that his conduct has caused his own children and extended family due to his absence as a father and family member. He reiterated the points contained in the PSI in regard to his actions including a debilitating fascination with child pornography since adolescence. [Pre-Sentence Investigation (“PSI”): R.E. 31, PageID#138.]

For many, admitting an addiction or psychological abnormality paralyzes one with fear; so one can imagine the further crushing impact of admitting sexually aberrant conduct that constitutes felonies and registering sex offenses. Coffey understands that part of taking responsibility for his conduct includes facing a substantial prison sentence. However, based on the points that this

brief proceeds to relate, the defense offers that a sentence below the guidelines range is sufficient.

The defense agreed at sentencing with the factual characterization of Coffey's conduct, which involved downloading, viewing, and filing computer child abuse material with file sharing software. [Id., PageID#131; accord Sentencing Brief ("Sen.Br.") R.E. 40, Page ID# 166 – 173.] The number of files occurs by operation of law, many of the files having been relatively long videos. [Id., PageID# 133.]

The PSI identifies grounds for variance, and the defense urges this Court to consider same. According to the PSI, "The probation officer has identified the following factors as possible grounds for a variance from the applicable sentencing guideline provisions: the nature and circumstances of the offense, that is, the length of the videos that were possessed by the defendant. The defendant has significant health issues." [PSI, PageID# 145.] The PSI outlines this further:

The defendant reported he suffers from the following illnesses: neuropathy (both feet, legs, hands, arms); arthritis/degenerated discs in lower back and neck; Vertigo; diabetic retinopathy (both eyes); Ulnar tunnel syndrome (both arms, hands, wrists); two toes/partial foot amputation; Type I Diabetes

(uncontrolled/requires insulin pump); Diabetic Keto acidosis (high risk, hospitalized several times); severe depression/anxiety; blood pressure (high/low, blackouts); high cholesterol; high infection risk; skin breakdown; ingrown hairs; constipation; irritable bowel syndrome; social anxiety; tooth decay due to lack of vitamin D; and infections in gums from tooth decay.

[Id., PageID# 137.]

The foregoing conditions and symptoms resulted in a finding of disability for diabetic nephropathy in 2018, for which Coffey receives disability benefits. [Id., PageID# 138.] Under seal, the defense offered additional medical and dental records that support the above claims.

The trial court declined to issue a variance based on the medical information. The court did, however, issue a two-level general variance, stating,

So against that backdrop, please listen as I impose the following sentence that I achieve by way of a variance, slight, but in my mind deserved and respectful of the 3553(a) factors. Mr. Coffey, to be

served concurrently for
Counts 1 and 2, I hereby
impose a term of
incarceration of 121
months, the low end
achieved when I vary
downwards by two levels
to an offense level 32.

[Sen.Tr, PageID# 303.]

Coffer raised the issue with the Sixth Circuit,
who affirmed. This petition follows, urging this
Court to assume jurisdiction.

Law & Discussion

Standard of Review: This court reviews sentences for both procedural and substantive reasonableness under an abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2D 445 (2007). Within that framework sounds the argument that a trial court failed adequately to explain its sentencing decision. And this follows under the U.S. Supreme Court's directive that "[a] sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has reasoned a basis for exercising his own legal decision-making authority." *Rita v. United States*, 551 U.S. 338, 356, 127 S. Ct. 2456, 168 L. Ed. 2D 203 (2007). Granted, a trial court "need not recite" the § 3553 factors when it imposes a sentence nor invoke any talismanic incantations. *United States v. Hernandez-Fierros*, 453 F.3d 309, 312 (6th Cir. 2006), internal quotation marks omitted. That is, "[t]he crucial question is whether the record makes clear that the sentencing judge listened to each argument, considered the supporting evidence, was fully aware of the defendant's circumstances and took them into account in sentencing him." *United States v. Wallace*, 597 F.3d 794, 804 (6th Cir. 2010), internal quotation marks omitted.

Issue and Summary of Argument: What is the extent of medical disadvantage that a defendant must present in order to secure a variance based on ill health? Under the U.S. Sentencing Guidelines, a

trial court has discretion to vary down in sentencing based on a defendant's ill health. Here, the defendant presented before the trial court with a variety of health conditions that render his confinement in prison substantially more unpleasant than for that of an ordinarily situated inmate, but the trial court declined to issue a variance. Must this Court reverse?

Argument

Varying from the guidelines requires rational-proportional analysis. That is, "...a sentence above or below the Guidelines range ... requires the district court to consider the extent of the deviation to ensure that the justification is sufficiently compelling to support the degree of variance." *United States v. Perez-Rodriguez*, 960 F.3d 748, 754, (6th Cir. 2020), citing *Gall v. United States* 552 U.S. at 50. According to the Courts, "[t]he greater the variance, the more compelling the justification must be." *Id.*, citing *United States v. Poynter*, 495 F.3d 349, 352 (6th Cir. 2007).

The Courts recognize both variance and departure as appropriate remedies when dealing with seriously ill defendants, though the Sixth Circuit has limited literature on the issue. Some extended analysis comes from the First Circuit in the matter of *U.S. v. Almenas*. In *United States v. Almenas*, 553 F.3d 27 (1st Cir. 2009), the First Circuit took well of a sentence 43 months below the bottom of the guideline range based on defendant's combination of physical and mental disabilities. The

First Circuit reviewed the trial court's findings as so:

The court addressed Almenas's personal history, noting that he had unfortunate circumstances, and extensively discussed his personal characteristics remarking, that Almenas seem[ed] to have a combination of physical and mental disabilities including chronic neck pain, chronic low back pain and [severe] depression and psychosis. In fact, the court referred to Almenas's personal history and characteristics as the motivating force behind its grant of a substantial downward departure under U.S.S.G. § 5K2.0. Additionally, the court touched on other § 3553(a) factors during its explanation. It noted that a lower sentence would fail to promote appropriate respect for the law, see § 3553(a)(2)(A), and that it was taking into account the guidelines' severe penalties for crack cocaine offenses. See § 3553(a)(4). In summarizing its decision, the court stated that: (1) it would impose[] the same sentence[] as a non-Guideline sentence under Section 3553(a); (2) it imposed a sentence necessary to achieve the purposes of sentencing under Section 3553(a); and (3) it had considered the sentencing factors set forth at 18

U.S.C. Section 3553(a). In sum, the court gave an adequate explanation for the 192-month sentence which honored the competing concerns of mercy and punishment.

Id. at 35. Notably, the First Circuit appears to take a hybrid or joint approach, addressing the same facts as germane to both departure and variance. *United States v. Meyers*, 503 F.3d 676 (8th Cir. 2007) reaches a similar conclusion focusing on mental illness and concluding that the “...district court did not abuse its discretion in finding that a shorter period of incarceration, with mental health treatment and supervised release, was an appropriate sentence, considering a defendant's long history of debilitating mental illness.”¹

This cause invites a variance on the basis of Coffey's physical health because there is a serious risk that given the Coffey's roster of conditions his prison sentence could become a death sentence. The defense proffered this recognizing an admonition of the trial court Court at the time of Coffey's plea—i.e. that Coffey's many physical conditions would not

1 The *Meyers* court addressed the issue as a variance under the 3553 factors, but discussed at length the difference between using variance and departure, particularly eligibility for particular departures, though recognizing the distinction between the two, i.e. the first being an analysis under the 3553 factors and the second involving analysis under a specific guidelines factor, in the *Meyers* case, USSG 5K2.13.

carry the day at sentencing in terms of a variance request. [R.E. 50 PageID# 262.] That being said, the plea, having been taken on January 30, 2020, occurred well before the circumstances of the COVID-19 pandemic. COVID-19 changed everything.

Without belaboring the point, it is a matter of general knowledge, and a matter thoroughly litigated before the Northern District of Ohio, that (a) the U.S. Prison System suffers from unpredictable if not sometimes uncontrolled outbreaks of COVID-19 and (b) that persons with Coffey's health conditions are at risk of death and/or complication from COVID-19 at a rate far over and above the average prisoner.

The defense presented the following discussion below, specifically that the CDC issued guidance that individuals at higher risk of contracting COVID-19 and of enduring COVID-19 complications (i.e. diabetics and hypertensives as is Coffey) take immediate preventative actions, including avoiding crowded areas and staying home as much as possible. [R.E. 40, PageID 170.] The conditions in jails do not allow for an inmate to take the recommended preventive actions and create an ideal environment for the transmission of contagious disease. [Id.] Inmates cycle in and out of jails from all over, and people who work in the facilities leave and return daily, without effective screening. According to public health experts, incarcerated individuals "are at special risk of infection, given their living situations," and "may also be less able to participate in proactive measures to keep themselves

safe;” “infection control is challenging in these settings.” [Id.]

In Ohio, these matters came to litigation in a cause concerning the Federal Prison at Elkton, but the issues are now nationwide. Given these circumstances and high risk of infection in jails and prisons, federal circuit and district courts across the country have released defendants from pretrial detention, due to COVID-19. *See Xochihua-Jaimes v. Barr*, 962 F.3d 1065 (9th Cir. 2020), sua sponte releasing detainee from immigration detention “[I]n light of the rapidly escalating public health crisis.” And notably, the key analysis in the compassionate release cases is, similar to a case such as this presenting a variance, the factors of 18 U.S.C. 3553. *United States v. Jones*, 980 F.3d 1098 (6th Cir.2020), examining that section.

Given the foregoing two things are apparent: (1) Christopher Coffey is remarkably, rendering him in probably the lowest decile of inmate health and (2) the tendency among courts is to look at the foregoing and vary down in sentencing. The appellant requests that this Court take well of this issue and assume jurisdiction.

Conclusion

The Petitioner urges this Court to assume jurisdiction over this cause and to hear it on its merits.

Respectfully Submitted,

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