

IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

JOSEPH DAVIS

Petitioner

v.

UNITED STATES OF AMERICA

Steven R. Kiersh
DC Bar #323329
5335 Wisconsin Avenue, N.W.
Suite 440
Washington, D.C. 20015
(202) 347-0200

Attorney for Petitioner
Appointed pursuant to the
Criminal Justice Act
Member of the Bar of the
Supreme Court of the
United States

On Petition or Writ Of Certiorari to the District of Columbia Court of
Appeals

QUESTION PRESENTED

I. Whether the opinion of the District of Columbia Court of Appeals concerning the Petitioner's motion for Compassionate Release is inconsistent with other opinions from courts of the United States and guidelines from the United States Sentencing Commission

PARTIES TO THE PROCEEDING

- 1. Petitioner Joseph Davis:** Joseph Davis is an individual and resident of the District of Columbia. He was convicted before the Superior Court of the District of Columbia. Petitioner is currently serving a life sentence at a United States Penitentiary. His conviction was affirmed on direct appeal by the District of Columbia Court of Appeals. Petitioner filed a post-conviction Motion for Compassionate Release that was denied by the trial court. The denial was affirmed by the District of Columbia Court of Appeals.
- 2. United States of America:** The United States prosecuted Petitioner in the Superior Court of the District of Columbia.

TABLE OF CONTENTS

	PAGE
Question presented.....	i
Parties to the proceeding.....	ii
ii	
Table of Authorities.....	iii
Opinions Below.....	iv
Jurisdiction.....	v
Statutory Provisions.....	vi
Statement of the Case.....	vii
Reasons for Granting the Petition.....	1
Conclusion.....	9
Certificate of Service.....	10

TABLE OF AUTHORITIES

	PAGE
CASES	
Gross v. United States, 452 F. Supp. 3d 26 (S.D.N.Y. 2020).....	10
United States v. Butler, 2020 WL 1689778 at*1 (S.D.N.Y. Apr. 7, 2020).....	9
United States v. Morris Johnson, 15-cr-125 (U.S. District Court for the District of Columbia, 2020).....	7
United States v. Stephens, 447 F. Supp.3d 63 (S.D.N.Y. 2020).....	10
United States v. Williams, 456 F. Supp.3d 414 (D. Conn 2020)..	9
United States Sentencing Guidelines	
U.S.S.G. §1B1.13.....	9
U.S.S.G. § 1B1.13 (1)(A)7 cmtn.1 (A).....	9
Statutes	
COVID-19 Response Supplemental Emergency Act of 2020, 24 D.C. Code § 403.04.....	1

	Page
Other Citations	
Mayoclinic.org/diseases-conditions/schizophrenia.....	5
Schizophrenia-and-life-COVID-19.....	5
Schizophrenia Bulletin, Volume 46 Issue, July 2020, 752-754..	6
Medical News Today.com/covid-19-asthma, April 9, 2020.....	7
www.cdc.gov/coronavirus/2019-ncov/need-extra, December 1, 2020.....	8

Opinions Below

1. On August 30, 2021, the District of Columbia Court of Appeals affirmed the post-conviction denial of Petitioner's Motion for Compassionated release of Petitioner.

JURISDICTION

Jurisdiction of the United States Supreme Court is invoked pursuant to Supreme Court Rule 10 (b). This petition seeks review of an opinion from the District of Columbia Court of Appeals which is the jurisdiction's court of last resort. The opinion of the District of Columbia Court of Appeals is in conflict with decisions of other courts of the United States as well as with the United States Sentencing Guidelines. The appeal related to the denial of Petitioner's post-conviction Motion for Compassionate Release. The District of Columbia Court of Appeals issued its ruling on August 30, 2021.

STATUTORY PROVISIONS

24 D.C. Code § 403.04

United States Sentencing Guidelines § 1B1.13

STATEMENT OF THE CASE

On October 3, 1998, police responded to a parking lot in front of 4137 Wheeler Road, S.E. Washington, D.C. They discovered James Simms who was unconscious and suffering from a gunshot wound to the neck. Mr. Simms later died at D.C. General Hospital and his death was ruled a homicide. A number of other gunshot victims were identified with non-life threatening injuries.

A witness to the shooting testified he saw a large four-door automobile pull into a convenience store parking lot in the 4100 block of Wheeler Road, SE. The witness recognized a rear passenger and saw "Joe-Joe" stick a gun out the window and heard him say "You bitch-ass niggers." Numerous shots were fired and the vehicle with "Joe-Joe" inside fled the scene.

The witness addressed in the preceding paragraph subsequently identified Joseph Davis, "Joe-Joe", Petitioner, as the shooter in the drive-by shooting.

Mr. Davis was charged with being a member of a conspiracy. The

object of the conspiracy was to intimidate, assault threaten and murder John Ellis, a/k/a Pucci and his friends in retaliation for the murder of Ronald Morton who purportedly was a close friend of Mr. Davis and the co-conspirators. The co-conspirators were identified as Rico Allison, Dwayne Allison and other persons unknown to the grand jury.

The conspiracy included allegations that members would arm themselves with multiple firearms for the purpose of obtaining, distributing and using heroin and other illegal narcotics.

In late spring 1998 a truck owned by John Ellis was broken into. Ellis believed the purpose of the break-in was to harass a friend of his and to steal a gun, cash and numerous bags of heroin. John Ellis armed himself with a handgun and shot a person named Rodney Morton who survived the shooting.

Following the shooting of Morton, Joseph Davis, Rico Allison and Dwayne Allison began a campaign of violence that included the shooting of John Ellis in retaliation for the shooting of Ronald Morton. On October 3, 1998, as part of the conspiracy, the decedent James Simms sustained a gunshot wound that resulted in his death.

It was further alleged that on October 25, 1998, Joseph Davis while armed with an assault rifle, walked into the 900 block of Wahler Place, SE and shot and killed Andre McCall.

Defendant went to trial in the Superior Court of the District of Columbia. He was convicted and sentenced to a period of incarceration of life. His direct appeal was affirmed by the District of Columbia Court of Appeals.

On January 1, 2021 defendant filed a Motion for Compassionate Release in the Superior Court of the District of Columbia. The motion was denied by the trial court on June 15, 2021. (Appendix, Exhibit #1). Defendant noted an appeal to the District of Columbia Court of Appeals which affirmed the denial of the Motion for Compassionate Release on August 30, 2021.

REASONS FOR GRANTING THE PETITION

PETITIONER SUBMITTED ADEQUATE REASONS FOR GRANTING THE PETITION FOR COMPASSIONATE RELEASE AND THE DENIAL OF RELIEF IS INCONSISTENT WITH OPINIONS OF OTHER COURTS OF THE UNITED STATES AND THE UNITED STATES SENTENCING GUIDELINES

I. THE EMERGENCY LEGISLATION FROM THE D.C. CITY COUNCIL THAT PROVIDED GROUNDS FOR PETITIONER'S MOTION FOR COMPASSIONATE RELEASE

In response to the pandemic and the especially vulnerable population of incarcerated individuals, the D.C. City Council passed the COVID-19 Response Supplemental Emergency Act of 2020, codified at D.C. Code § 24-403.04. Section 305 (b) of the Act creates a broad mechanism for District of Columbia offenders to seek immediate release during the COVID crisis by allowing incarcerated individuals to move for a reduction of sentences without first having to exhaust administrative remedies. See D.C. Code § 24-403.04(b). The moving party must show an “acute vulnerability to severe medical complications or death as a result of COVID-19” as one of the “extraordinary and compelling reasons” that warrant compassionate

release. Id. § 22.403.04(a)(3)(B)(iii).

In pertinent part, the Act provides as follows:

(a) Notwithstanding any other provision of law, the court may modify a term of imprisonment imposed upon a defendant if it determines the defendant is not a danger to the safety of any other person or the community, pursuant to the factors to be considered in 18 U.S.C. §§ 3142 (g) and 3553 (a) and evidence of the defendant's rehabilitation while incarcerated, and:

(A) Other extraordinary and compelling reasons warranting such modification:

(B) a debilitating medical condition involving an incurable, progressive illness, or a debilitating injury from which the defendant will not recover.

II. PETITIONER PRESENTED NUMEROUS SERIOUS HEALTH ISSUES IN SUPPORT OF HIS ARGUMENT THAT HE SATISFIED THE STANDARD OF EXTRAORDINARY AND COMPELLING REASONS IN SUPPORT OF HIS REQUEST FOR COMPASSIONATE RELEASE

(a) Petitioner's Documented Diagnosis of Schizophrenia

As referenced and documented in Petitioner's institutional medical records, he suffers from a diagnosis of schizophrenia. The ailment has been characterized as,

a constellation of symptoms such as hearing voices...trouble with thinking and concentration, and its cause is not exactly known. In that sense schizophrenia is still an enigma. Studies of schizophrenia among groups of varied ethnicities across the world have shown associations of the disease with alleles (variant genes) related to the human leukocyte antigen-an important part of the immune system and related to a group of genes on chromosome six. However, the specific allele that was found to be associated with schizophrenia varied from group to group.hindu.com/sci-tech/science/gene-variants, *August 1, 2020, Shubashree Desikian, Science journalist, Physics, Ph.D.*

The Mayo Clinic published a landmark study on the causes, symptoms and ramifications of schizophrenia. In relevant part, the study found as follows:

OVERVIEW

Schizophrenia is a serious mental disorder in which people interpret reality abnormally. Schizophrenia may result in some combination of hallucinations, delusions, and extremely disordered

thinking and behavior that impairs daily functioning and can be disabling. People with schizophrenia require lifelong treatment. Early treatment may help get symptoms under control before serious complications develop and may help improve the long-term outlook.

SYMPTOMS

Schizophrenia involves a range of problems with thinking (cognition), behavior and emotions. Signs and symptoms may vary, but usually involve delusions, hallucinations or disorganized speech, and reflect an impaired ability to function.

CAUSES

“It’s not known what causes schizophrenia, but researchers believe that a combination of genetics, brain chemistry and environment contributes to development of the disorder. Problems with certain naturally occurring brain chemicals, including neurotransmitters called dopamine and glutamate, may contribute to schizophrenia. Neuroimaging studies show differences in the brain structure and central nervous system of people with schizophrenia.

While researchers aren't certain about the significance of these changes, they indicate that schizophrenia is a brain disease." www.mayoclinic.org/diseases-conditions/schizophrenia, Mayo Clinic Staff.¹

Unfortunately for Petitioner, the presence of schizophrenia has dangerous consequences within the context of COVIS -19. "Schizophrenia patients have a higher risk of COVID-9 infection and worse outcome, especially if suffering from concomitant disease. Furthermore, this group is also vulnerable to relapse as a consequence of distress from compulsory social distancing." *Schizophrenia -and life-COVID-19*

In an article published by the University of Maryland School of Medicine by the Maryland Psychiatric Research Center, the authors explained the reasons for negative outcomes and particularized

¹ Petitioner notes that his history of schizophrenia is documented in his institutional records and has been corroborated by undersigned counsel in contacts with defendant's family members. However, it appears that the presence of a diagnosis of schizophrenia, which may have been relevant to trial and sentencing issues, was never raised on behalf of Petitioner.

susceptibility to the devastating effects of COVID-19 among the population of people suffering from the disease

People with schizophrenia may be more susceptible to transmission of COVID-19 due to a number of factors Cognitive impairment, lower awareness of risk, and barriers to adequate infection control including congregate living. As schizophrenia is characterized by impairment In insight and decision-making capacity, it may be harder for people with schizophrenia to adopt and adhere to the protective measures recommended to prevent infection (eg, hand washing, social distancing)...Furthermore, people with schizophrenia are overrepresented in vulnerable populations that are at increased risk for COVID-19 outbreaks, including prisoners....

Schizophrenia Bulletin, Volume 46, Issue, July 2020, 752-754, Kozloff, Mulsant, Stergiopoulos, Voineskos

(b) Petitioner's Documented History of Bronchial Impairment

According to records from the Bureau of Prisons, Petitioner has a history of upper respiratory infections, asthma, acute bronchitis and has been prescribed Albuterol for his ailments.

“Asthma is a chronic disease that causes inflammation in the lungs, which narrows the airways, causing it more difficult for sufferers to breath.” *Asthma.com*. According to an article written Kathleen Davis,

FNP and reviewed by March Meth, M.D. in Medical News Today,

COVID-19 is a highly infectious disease caused by the CoV-2 virus. As the disease primarily affects the respiratory system, people with moderate to severe asthma who develop COVOD-19 symptoms may be at higher risk of developing severe symptoms.

www.medicalnewstoday.com/articles/covid-19-asthma, April 9, 2020.

The Center for Disease Control has recently noted in relevant part, “Based on what we know at this time, adults of any age with the following conditions might be at an increased risk for severe illness from the virus that causes COVID-19: Asthma (moderate to severe).

www.cdc.gov/coronavirus/2019-ncov/need-extra, December 1, 2020.

III. OTHER INSTANCES WHERE AN INCARCERATED PERSON WAS GRANTED COMPASSIONATE RELEASE BASED UPON A MENTAL HEALTH ISSUE AND A HISTORY OF BRONCHIAL IMPARMENT BY A COURT OF THE UNITED STATES

In *United States v. [Morris] Johnson*, No. 15-cr-125, Judge Ketanji Brown-Jackson of the United States District Court for the District of Columbia granted a Motion for a Compassionate Release for an

individual convicted of a federal conspiracy charge and a District of Columbia charge of manufacturing weapons of mass destruction. The defendant, a veteran of the United States Armed Forces, suffered from a documented case of PTSD.

While acknowledging the seriousness of defendant's convictions, Judge Jackson determined that it was appropriate to release him from a previously imposed sentence. The Court addressed the significance of mental health issues within the context of the COVID pandemic. "The Sentencing Commission's policy statement also plainly indicates that a defendant's *mental* health needs may also be a basis for granting compassionate release...."

In granting a Motion for Compassionate Release, the trial court in *United States v. Williams* determined that asthma, combined with other comorbidities, amounted to grounds for compassionate release. "Having demonstrated that he suffers from asthma, hypertension, diabetes and other health conditions that place his at greater risk from

COVID-19, and that he is unable to guard against infection while incarcerated, a reduction of Mr. Williams' sentence to time served is consistent with U.S.S.G. §1B1.13." 456 F. Supp. 3d 414, 419 (D. Connecticut 2020).

IV THE UNITED STATES SENTENCING COMMISSION HAS RECOGNIZED THAT SIGNIFICANT MENTAL HEALTH ISSUES AND PHYSICAL ISSUES CAN CONSTITUTE EXTRAORDINARY AND COMPELLING REASONS JUSTIFYING RELEASE FROM INCARCERATION

Petitioner cites to the United States Sentencing Commission for guidance related to whether his unique situation constitutes extraordinary and compelling reasons to justify compassionate release. "Congress tasked the Sentencing Commission with identifying the circumstances that are sufficiently extraordinary and compelling to justify a reduction in sentence." *United States v. Butler*, No. 19-cr-834 (PAE), 2020 WL 1689778 at *1 (S.D.N.Y. Apr. 7, 2020). The applicable policy statement, U.S.S.G. § 1B1.13, outlines four circumstances that constitute extraordinary and compelling reasons thereby warranting a sentence reduction. One of the circumstances exists where the

“defendant is suffering from a serious physical or medical condition...that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” U.S.S.G. § 1B1.13(1)(A) 7 cmt.n.1(A).

Petitioner’s status as an incarcerated person places him at greater risk for the devastating consequences of COVID-19. The pandemic presents an extraordinary and unprecedented threat to incarcerated individuals. See, e.g., *United States v. Stephens*, 447 F. Supp.3d 63 S.D.N.Y. 2020); *Gross v. United States*, 452 F. Supp. 3d 26, 27 (S.D.N.Y.2020) (“defendant is at higher risk of contracting COVID-19 due to his incarceration...the risk of contracting the virus in jail is palpable”)

CONCLUSION

Defendant’s diagnosed schizophrenia, combined with his history of asthma, presented as co-morbidities affecting his mental and physical

health. The co-morbidities as grounds for compassionate relief have been recognized by other courts of the United States as well as by the United States Sentencing Guidelines. The opinion denying relief by the District of Columbia Court of Appeals was inconsistent with other courts of the United States and inconsistent with the United States Sentencing Guidelines.

Respectfully submitted

/s/
Steven R. Kiersh
5335 Wisconsin Avenue, N.W.
Suite 440
Washington, D.C. 20015
(202) 347-020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Petition for Writ of Certiorari, Motion to Proceed in Forma Pauperis and Appendix was mailed, postage prepaid, on this the 28th day of January, 2022 to the Office of the Solicitor General, Department of Justice, Room 5614, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

/s/
Steven R. Kiersh