

No. 21-1245

IN THE

SUPREME COURT OF THE UNITED STATES

JULIA ANN POFF, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR REHEARING ON

WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Supreme Court, U.S.

FILED

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TO THE HONORABLE JUSTICES OF THIS COURT:

COMES NOW, Julia Ann Poff, prose and respectfully requests this Honorable Court to reconsider the denial of her Writ of Certiorari. Ms. Poff received verbal notice on March 31, 2022 from the Clerk of the Court of Appeals, ironically the same day she received the letter from March 2nd, saying her case had been docketed. In compliance with Rule 44, she now presents this Petition for Rehearing.

Issues:

1. Did the District Court and Court of Appeals abuse their discretion in failing to consider a prisoner's rehabilitation and good conduct when deciding the compassionate release motion which has and continues to cause a large disparity in releases across the nation?
2. Is inadequate medical care, a factor under 18 U.S.C. Section 3553 (a)(2)(D), an analysis also subject to the "may or must consider" discretion of the district courts?

Argument: Issue One

This Court has recently heard oral arguments in Concepcion v. United States, 142 S. Ct. 54, Case No. 20-1650, in which the nation is awaiting a ruling. Ms. Poff is essentially arguing the same issue. The "must consider" verses "may consider," will definitely help eliminate some disparity when it comes to releases. During the oral argument, Justice Samuel Alito stated:

"Your argument introduces an enormous amount of discretion and it's hard to understand why Congress would have wanted that."

If you take the time to analyze the purpose of the "First Step Act," Congress detailed what they wanted. From her understanding, the "First Step Act," is one of several acts being introduced as a part of criminal reform. There were several parts included within it, the compassionate release, time credits, and others that are not applicable to Ms. Poff. It was designed as "incentive program to promote rehabilitation and reduce the risk of recidivism." So it only makes sense that it all works together to achieve that goal. It amended several different statutes to accomplish that task.

A. 18 U.S.C. Section 3582 (c)(1)(A)

The amended statute here allows an inmate or defendant the ability to file their own compassionate release motion for anything they consider "extraordinary and compelling reasons." These too, have varied across the nation and include: 1) medical issues, 2) family circumstances, 3) excessive sentences, 4) age, 5) how long already been incarcerated, and the list goes on. Some Courts have even added rehabilitation and conduct while incarcerated to that list. Though the Statute dictates that rehabilitation "alone" is insufficient to constitute extraordinary and compelling reasons, 28 U.S.C. Section 994 (t), rehabilitation can combine with other factors to satisfy the Statutory standard. Congress's use of the modifier "alone" evidences that they believed that rehabilitation is relevant to the question of whether a sentence should be reduced. United States v. Millan, 2020 WL 1674058 (S.D.N.Y. April 6, 2020). As Justice Neil Gorsuch stated during Concepcion Oral arguments:

"In what world does it make sense that some district courts will take cognizance of changes in the law like that and others

will not, and the results will be dramatically different for different individuals?

The United States that's where because that is exactly what is happening. In 2016, this Court ruled in Torres v. Lynch, 136 S. Ct. 1619, that "18 U.S.C. Section 844, is not a crime of violence." However, Ms. Poff was sentenced in 2019 and continues to be penalized as it is. Unfortunately, she isn't alone. Recently, at a House Subcommittee on Crime, Terrorism and Homeland Security, legislators learned "10% of female inmates have been assigned the wrong risk categories, and the Bureau of Prisons has no plans to correct these errors." This equates to about "14,000 men and women in the wrong risk categories." This alone has caused Ms. Poff to be incarcerated for nine (9) extra months and continuing since she qualified for release under the Coronavirus, Aid, Relief and Education Act signed by President Trump in 2020. Talk about a huge disparity across the nation as the Judges' refuse to even acknowledge this when brought to their attention. She qualified last July and is still fighting to get this error corrected.

A second "change of law" resulting from the First Step Act in which the Bureau of Prisons is clearly

abusing their discretion involves time credits. In her compassionate release denial, the Honorable Judge Gilmore stated, "Ms. Poff has only completed roughly 30% of her sentence." At the time of her denial Ms. Poff had been incarcerated from November 9, 2017 through September 2020, which is 34 months. However, with the amended 18 U.S.C. Section 3624(b) awarding "54 days of good-time credits per year sentenced at the time of sentencing," she had actually done 52 months or 43%. The BOP refuses to honor this change continuing to award the credit only on the anniversary date of sentencing every year, resulting in factual error of sentences computation data. As stated in the Court of Appeals order:

"A district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence." United States v. Henderson, 636 F.3d. 713, 717 (5th Cir. 2011).

Another reason that this Court should order the "must consider" approach regarding compassionate release motions is because "approximately sixty-thousand inmates potentially did not receive properly received credits for time served under the First Step Act," Department of Justice Inspector General Michael

Hbrowitz recently wrote in a report:

"We are concerned that the delay in applying earned time credits may negatively affect inmates who have earned a reduction in their sentence or an earlier placement in the community."

Before Ms. Poff was even sentenced she began taking classes and courses, to date she has earned over 100 certificates and done 1,400 hours. This does not include the 915-hour Blackstone Paralegal Program she is working on or the second Associate's Degree she is doing in Christian Counseling. Ms. Poff did NOT receive her "needs" until September 24, 2021 so the BOP says "she receives NO credit for what she has done since November 2019 when she was sentenced." The BOP states that "all courses must be approved by them." However, the Statute 18 U.S.C. Section 3632 (d)(4) does not say that. Shortly after President Biden took office he signed the Pell Grant for inmates to qualify stating, "to enhance the First Step Act, and allow inmates to pursue college educations." If it has to be a BOP approved program then why do they need a Pell Grant? Again, in 18 U.S.C. Section 3635 it lists the types of program/courses allowed

and there is no mention of it having to be "BOP approved." The Vera Institute for Justice says that there's a 48% decrease in recidivism if a prisoner takes education courses while locked up. The RAND Corporation says the same thing, adding that education increases a releasee's chances of employment by 13%. It also helps to increase the quality of jobs and higher wages for all former prisoners. While offering education to inmates would reduce the likelihood of returning to prison, the impact would be felt nationwide saving the States and feds \$365.9 million due to decreased incarceration costs. But if they are fighting to get these credits then their motivation will be lost, which is why rehabilitation efforts in a compassionate release motion must be considered as the following courts have agreed:

United States v. Davila, 2022 U.S. Dist. LEXIS 19161
(D. Kansas) (released due partly to "his remarkable rehabilitative efforts.") (may consider circuit)

United States v. Thompson, 2023 U.S. Dist. LEXIS 28228
(D. Kansas) (post-sentencing rehabilitation)

United States v. Hale, Case No. 10-CR-1032 (S.D. Texas)

(400 hours of coursework) - (may consider circuit)

United States v. Carrington, 2022 U.S. Dist. LEXIS 37157 (E.D. Virginia) ("post-offense rehabilitation")
(must consider circuit)

United States v. Howze, 2022 U.S. Dist. LEXIS 40973
(M.D. Florida) ("took a number of educational classes")
(may consider circuit)

United States v. Marshall, 2022 U.S. Dist. LEXIS 44272
(E.D. Pennsylvania) ("remarkable efforts at rehabilitation") (Undecided circuit)

United States v. Mitsuyoshi, 2022 U.S. Dist. LEXIS 47439 (D. Hawaii) ("rehabilitation efforts")
(may consider circuit)

and this list continues to grow daily but without consistency, resulting in huge disparities across the states.

Argument: Issue Two:

The explicit wording of 18 U.S.C. Section 3582(c)(1)(A) as amended by the First Step Act says, "after considering

the factors set forth in Section 3553(a)." In looking at 18 U.S.C. Section 3553(a)(2)(D) it states:

"to provide the defendant with ... medical care..."

This factor has never been considered in Ms. Poff's motion but has lead to many other releases:

United States v. Stanley, 2022 U.S. Dist. LEXIS 17494 (E.D. Cal.) "showing a significant delay in receiving medical treatment")

United States v. Head, 2022 U.S. Dist. LEXIS 14215 (E.D. Tennessee) "inability to provide basic self-care after emergency heart surgery")

United States v. Creamer, 2022 U.S. Dist. LEXIS 11629 (M.D. Florida) "inadequate treatment for heart conditions)

United States v. McPeck, 2022 U.S. Dist. LEXIS 24824 (N.D. Iowa) (delay in treatment)

United States v. Sanders, 2022 U.S. Dist. LEXIS 41504 (D. New Mexico) (denied treatment)

Is this another "may consider" type of analysis factor?

In United States v. Williams, 2020 U.S. Dist. LEXIS 63824 (N.D. Florida), he had a heart attack while he was in prison. Mr. Williams had a very lengthy criminal history and was convicted of armed robbery and sentenced to life. The Judge granted his compassionate release stating, "he has served much of his sentence while seriously ill and in physical discomfort. This means that his sentence has been significantly more laborious than that served by most inmates." Ms. Poff has too.

(Nov. 9, 2017)
On the night of her arrest Ms. Poff got physically ill and complained of chest pains for over 24 hours before being taken to the hospital. She was then denied her Lupus medication for 315 days to try and force her to plead guilty. Chest pains are documented several times in her record along with shortness of breath. Her complaints went unanswered, she even received an email from Mr. Allen (HSD Supervisor) that a "mid-level triage could take up to two weeks." So someone with chest pains has to wait two weeks to be seen? That was unacceptable so she returned to sick call the next day (May 8, 2018) and her chest pains and shortness of breath was diagnosed as "acid reflux." The chest pains continued. On May 31, 2018 she sees Dr. Serrano-Clawers who tells her "the x-ray done on

May 17th showed an "enlarged heart." She stated she was ordering an echo cardiogram. The U.S. Marshal's didn't approve it until June 11, 2018 and wasn't done until July 19, 2018. Ms. Poff was never told results.

Chest pains continue. April 23, 2019, the Rheumatologist now orders an echo cardiogram. July 2, 2019 the U.S. Marshal's Ordered by Judge Gilmore contact Mr. Allen to inquire about why the test ordered on April 23rd had not been done. Mr. Allen replied, "Dr. Serrano-Clowers said "not medically necessary" and also removed the consult for a follow-up visit with Rheumatologist."

Someone with Lupus should see a Rheumatologist every 6-8 months. Ms. Poff had also received a letter from LBJ hospital stating the echo cardiogram had been scheduled for May 31st and the appointment had not been kept. On August 15th she was taken to LBJ for the echo cardiogram, no results ever told.

She then arrives to FMC Carswell and even before seeing her Dr. Juddy (a D.O. and not Rheumatologist) removes lupus, anemia, fibromyalgia, overweight and several other issues to "resolved." Lupus, for one is non-curable, so how can it be resolved? Then he sees her on February 24, 2020 and on that record in the comments area it states "EF 40-45% diastolic dysfunction." But yet never said a word to Ms. Poff or order a cardiology consult. "Heart Disease" was added to her medical

Issues on September 23, 2020. Ms. Poff sees her new doctor, Dr. Robinson - Brown on February 26, 2021 and asks her, "When did she get diagnosed with heart disease? The doctor replies "you haven't." "Then why is it listed on my medical records?" After about 30 minutes of looking through the records she states, "in August 2019." Ms. Poff asked, "Why has she never seen a cardiologist?" The doctor replies "because one has never been ordered." This conversation took place 6 days after Ms. Poff's mother died of a heart attack. Ms. Poff has now seen a Cardiologist (Dr. Kline), three times including today (April 1, 2022). Three weeks ago she had a nuclear stress test done at his office he ordered last October. Today, she received those results:

"While incarcerated you have had a heart attack that has damaged the lower part of your heart. There is also evidence leaving me to believe that you have at least a 70% blockage in the front area of the heart."

He stated that he was ordering an angioplasty and if there is indeed a blockage he will put in a stent while in there. Other than today's information all of this was attached as exhibits to the original

Compassionate release request but failed to be considered by the district or appellate court. United States v. Dillard, 891 F. 3d. 151, 158 (4th Cir. 2018) (holding the district court abused its discretion by failing to consider all appropriate factors in analysis) Isn't this an appropriate factor? Didn't this Court say: "A prison that deprives prisoners of ... adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society." Brown v. Plata, 563 U.S. 493, 511 (2011).

As a result of the COVID pandemic and the latest breakout here, Ms. Poff was moved out of the hospital unit to the high-rise on January 3, 2022. To the cafeteria and back is over 1,000 steps, she can not walk that without getting short of breath. So this prevents her from receiving any meals, some days she has eaten an orange, others maybe an apple, some just graham crackers to take her medication with. The last time she went to Commissary was March 16th and they were out of most of their food items. She has been lucky some days and others have brought her a tray that they didn't want or she is forced to buy food from someone who works in the kitchen. She has told Officers and sent emails but they ignore her

because they just don't care. The prisons are supposed to provide you with "two hot meals a day," but with her medical issues she is receiving none.

Another area that is depriving her of her own self-care is being able to wash her clothes. As of a few weeks ago, Carswell started utilizing central laundry. This again is done in the main building that she can't walk to without being short of breath. Ms. Poff also has Severe Raynaud's Syndrome and the extreme cold temperatures are harsh to her body. They are allowed two pair of sweat clothes and that is what she lives in to survive. To deprive her of these clothes for over 24 hours could result in amputation of body parts, because she would be without any adequate clothing for the frigid temperatures. Bibbs v. Early, 541 F.3d. 267 (5th Cir. 2008); and Gaston v. Coughlin, 249 F.3d. 156 (2d. Cir. 2001). The intentional exposure to dangerous documented conditions is also a violation under the Eighth Amendment, cruel and unusual punishment. This Court has yet to decide if United States Sentencing Guidelines 1B1.13 applies to an inmate filed motion, but if it does then Ms. Poff qualifies under Section A(ii)(1).

CONCLUSION

Ms. Poff still maintains her innocence in this case. On the night of her arrest, did this upset her enough to cause her a heart attack? Or was it one of the many other times she complained of chest pains and was ignored? At some point she did and now has permanent damage. Since her arrest she has taken every course that she can get her hands on, even while on lockdown, with the appropriate time credits applied, she has done 66% of her erroneous sentence, and way over the guidelines of 27-46 months. Ms. Poff was indicted by fraud, detained by perjury, convicted by threats, and sentenced by hate and injustice. At her bond hearing and sentencing, she was accused of being a "malingering," this has been proven false and clearly violated Giglio and her due process rights. Every medical issue Ms. Poff claimed has been determined to be true.

This Honorable Court needs to re-examine her petition and if nothing else hold it in abeyance until they rule on ~~Concepcion~~, because that ruling will have impact on her case as well.

Respectfully Submitted,

Guin An Poff