

IN THE
Supreme Court of the United States

CHARLES AUSTIN ALGER, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the district court violated 18 U.S.C. § 3583(d) when it imposed special financial conditions of supervised release that do not reasonably relate to the relevant sentencing factors, involve a greater deprivation of liberty than is reasonably necessary, and are inconsistent with the pertinent policy statements issued by the Sentencing Commission?

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Petitioner Charles Austin Alger, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's unpublished opinion is available at 2022 U.S. App. LEXIS 3267, 2022 WL 337128 (4th Cir. Feb. 4, 2022); *see also infra*, Pet. App. 1a.

LIST OF PRIOR PROCEEDINGS

- (1) *United States v. Charles Austin Alger, Jr.*, District Court No. 5:20-CR-62-FL-1, Eastern District of North Carolina (final judgment entered April 8, 2021).
- (2) *United States v. Charles Austin Alger, Jr.*, United States Court of Appeals for the Fourth Circuit, No. 21-4167 (decision issued February 4, 2022).

JURISDICTION

The Fourth Circuit issued its opinion on February 4, 2022. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 3583(d) of Title 18 of the United States Code provides 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) [18 USCS § 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) [18 USCS § 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)[.]"

STATEMENT OF THE CASE

A. District Court Proceedings

On January 29, 2020, a federal grand jury in the Eastern District of North Carolina returned a two-count indictment against the Petitioner, Charles Alger, Jr., alleging that he unlawfully possessed a firearm and ammunition as a felon, in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2). (Fourth Circuit Joint Appendix 10-

12; hereinafter “J.A.”). Petitioner pled guilty to the charges without a plea agreement on June 18, 2020. (J.A. 13-36).

According to the government’s proffer at the arraignment hearing, the charges against Petitioner arose when the Fayetteville Police Department investigated his potential involvement in a string of shootings. During the course of that investigation, officers found the magazine for a nine-millimeter firearm in Petitioner’s bedroom. When they later arrested him at his girlfriend’s house, officers found a nine-millimeter Kimber firearm with an obliterated serial number in her bedroom. Petitioner’s girlfriend denied owning any firearms. Examination of the gun and ammunition verified that neither was manufactured inside North Carolina. And a criminal history check revealed that Petitioner had prior convictions for which he received sentences of more than one year. (J.A. 31-34).

In preparation for sentencing, the probation officer submitted a presentence report calculating Petitioner’s guideline imprisonment range, among other things. (J.A. 96-108). The presentence report stated that the total offense level was 25, and that Petitioner’s criminal history category was V, yielding a guideline imprisonment range of 100 to 125 months. (J.A. 106, ¶ 61). The presentence report further noted that restitution was not applicable. (J.A. 107, ¶¶ 73-74). Neither side objected to the presentence report. (J.A. 108).

At sentencing on April 7, 2021, the district court agreed that the guideline imprisonment range was 100 to 125 months. (J.A. 49). The government moved for an upward departure or variance and advocated for an above-Guidelines sentence of

188 months. (J.A. 70). Counsel for Petitioner requested a sentence within the guideline range. (J.A. 73). Upon consideration of the sentencing factors, the court denied the government's motion for an upward departure or variance and imposed a within-Guidelines sentence of 120 months on each count, to run concurrently. (J.A. 80).

The court also imposed three years of supervised release. As to the conditions of supervision, the court told Petitioner, "you can't break any law, you can't possess a weapon and you can't possess drugs." (J.A. 80). The court further noted that "we have some other standard and mandatory conditions in this district, and you're going to have to follow those." (J.A. 80). The court also stated that it was imposing special conditions of supervision. Specifically, the court ordered Petitioner to submit to warrantless searches, participate in mental health treatment and vocational training, and provide regular reports about employment efforts. (J.A. 80-82). The court did not impose restitution but ordered Petitioner to pay a reduced fine of \$2,000. (J.A. 82). The court specified that the fine was "due in full immediately." (J.A. 93).

The court entered its written judgment the next day. (J.A. 7; 85-93). The judgment contains two special financial conditions of supervised release labeled "additional standard conditions of supervision." (J.A. 90). These special conditions provide as follows: "The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office" and "The defendant shall provide the probation office with access to any requested financial

information.” (J.A. 90). Petitioner timely appealed to the United States Court of Appeals for the Fourth Circuit on April 12, 2021. (J.A. 94).

B. Court of Appeals Proceedings

On appeal to the Fourth Circuit, Petitioner argued that the district court plainly erred in imposing special financial conditions of supervision. The Fourth Circuit rejected that argument and affirmed the judgment of the district court. This petition followed.

THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

Petitioner argued to the Fourth Circuit that the district court plainly erred by imposing special financial conditions of supervised release. The Court of Appeals rejected Petitioner’s argument and affirmed the district court. Thus, the claim was properly presented and reviewed below and is appropriate for this Court’s consideration.

REASONS FOR GRANTING THE PETITION

“The terms and conditions of supervised release are a substantial imposition on a person’s liberty.” *United States v. Maxwell*, 285 F.3d 336, 342 (4th Cir. 2002). When imposing discretionary conditions of supervised release, the sentencing court may impose any condition it considers appropriate “as long as that condition is ‘reasonably related’ to statutory factors referred to in [18 U.S.C.] § 3583(d)(1).” *United States v. Dotson*, 324 F.3d 256, 260 (4th Cir. 2003); *accord United States v. Douglas*, 850 F.3d 660, 663 (4th Cir. 2017). These statutory factors to which any discretionary condition must reasonably relate include: “the nature and

circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1); the need to provide deterrence and to protect the public from additional crimes, *see id.* §§ 3553(a)(2)(B) & (C); and the need to provide the defendant with any necessary training, medical care, or treatment, *see id.* § 3553(a)(2)(D). The conditions imposed must involve “no greater deprivation of liberty than is reasonably necessary” to serve these purposes, 18 U.S.C. § 3583(d)(2), and must be consistent with the policy statements governing supervised release issued by the Sentencing Commission, *see id.* § 3583(d)(3).

“[A] sentencing court’s duty to provide an explanation for the sentence imposed also requires that the court explain any special conditions of supervised release.”

United States v. McMiller, 954 F.3d 670, 676 (4th Cir. 2020). As *McMiller* explains, the court’s duty “arises from 18 U.S.C. § 3583(d), which requires that special conditions of supervised release be: (1) ‘reasonably related’ to the statutory goals of deterrence, protection of the public, and rehabilitation; (2) ‘no greater [a] deprivation of liberty than is reasonably necessary’ to achieve those statutory goals; and (3) consistent with any relevant policy statements issued by the Sentencing Commission.” 954 F.3d at 676.

“[I]mportantly, this duty cannot be satisfied or circumvented through the adoption of a standing order purporting to impose special conditions of supervised release across broad categories of cases or defendants.” *McMiller*, 954 F.3d at 676. Instead, special conditions “must be tailored to the individual defendant and may not be based on boilerplate conditions imposed as a matter of course in a particular

district.” *Id.* at 676-77. And “[u]nless a district court explains why particular special conditions are being imposed,” the appellate court has “no basis for determining whether they are reasonably related” to the appropriate factors. *Id.* at 676. “[T]he district court’s failure to give an explanation for the special conditions of supervised release is reversible plain error.” *Id.*

Here, the district court imposed special financial conditions of supervised release that do not reasonably relate to the relevant sentencing factors, involve a greater deprivation of liberty than is reasonably necessary, and are inconsistent with the pertinent policy statements issued by the Sentencing Commission. Begin with the pertinent policy statements. Section 5D1.3(d) of the Sentencing Guidelines recommends that the sentencing court impose such special financial conditions in connection with restitution or a fine. U.S.S.G. § 5D1.3(d)(2), (d)(3). Section 5D1.3(d)(2) states as follows:

DEBT OBLIGATIONS

If an installment schedule of payment of restitution or a fine is imposed – a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with the payment schedule.

U.S.S.G. § 5D1.3(d)(2) (emphasis added). Notably, § 5D1.3(d)(2) does not recommend the condition unless the court imposes “an installment schedule of payment of restitution or a fine.” And the condition only applies if the defendant is not complying with the imposed payment schedule.

But here, the court did not impose an installment payment schedule for Petitioner's fine. Instead, the court ordered that the \$2,000 fine was "due in full immediately." (J.A. 93). Thus, the court's imposition of the special financial conditions is inconsistent with the relevant policy statements. *See McMiller*, 954 F.3d at 676 (conditions must be consistent with Guidelines).

Nor is it apparent why these special financial conditions would be appropriate in Petitioner's case. He did not commit a financial crime, and nothing in his background suggests the need to regulate his finances. The presentence report included scant information about Petitioner's finances or employment history, but noted that he had no liabilities and no credit history. (J.A. 104). At sentencing, the court did not explain why it was imposing these special financial conditions and instead incorporated them through reference to the district's standing order. But special conditions "must be tailored to the individual defendant and may not be based on boilerplate conditions imposed as a matter of course in a particular district." *McMiller*, 954 F.3d at 676-77.

Because the district court did not explain why it was imposing the special financial conditions, the appellate court has "no basis for determining" whether the special conditions of supervised release are "reasonably related" to the appropriate factors. *McMiller*, 954 F.3d at 676.

Finally, imposition of the financial conditions involves a greater deprivation of liberty than is reasonably necessary. Under the special conditions, Petitioner cannot use a credit card to purchase gas or food at a convenience store without getting

approval. He must have his probation officer's buy-in before applying for a credit card at Wal-Mart or Target. To be sure, the probation officer has the ultimate authority to prevent him from accessing any credit at all.

Because the district court failed to comply with 18 U.S.C. § 3583(d) in imposing special conditions of supervised release, the district court reversibly erred. The Fourth Circuit likewise erred in affirming the district court's judgment. For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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