

NO. _____

In The
Supreme Court of the United States

SALITO MARQUES GOOD,

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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Dated: May 20, 2022

QUESTIONS PRESENTED

Salito Good has been sentenced to two years in prison for violation of supervised release. As detailed in the Statement of the Case, Good was initially sentenced as an armed career offender, and then resentenced when this Court's decision in *Johnson v. United States*, 576 U.S. 59, 135 S. Ct. 2552 (2015) invalidated the portion of the armed career criminal act that was relied upon in Good's initial sentencing. By the time Good was resentenced he had served approximately 18 months beyond the statutory maximum. Good's sentence of two years for violating supervised release therefore resulted in a total sentence beyond the statutory maximum sentence available for his crime of conviction. Both the district court at the supervised release hearing, and the United States Court of Appeals for the Fourth Circuit, rejected Good's objection to a total sentence that exceeded the available statutory maximum.

The questions presented are:

- (1) Whether a defendant can be required to serve more than the statutory maximum sentence for his offense of conviction when a sentence for violating the terms of supervised release is imposed after the defendant has served in excess of the statutory maximum for the underlying offense.
- (2) Whether a defendant who is sentenced to a total term in excess of the statutory maximum sentence can raise an objection to the sentence at a supervised release hearing when that hearing is the first practical opportunity to challenge the total sentence.

LIST OF PARTIES

The caption identifies all parties.

RELATED PROCEEDINGS

United States District Court:

United States v. Salito Good, No. 1:11CV926, 1:16CV455, 1:04CR330-1
(M.D.N.C. Dec. 9, 2016)

United States v. Salito Good, No. 1:04CR330-1 (M.D.N.C. March 31, 2021)

United States v. Salito Good, No. 21-4155 (4th Cir. Feb. 25, 2022)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Salito Good 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 opinion of the Fourth Circuit Court of Appeals is unreported. (Pet. App. 1a-3a)

STATEMENT OF JURISDICTION

The court of appeals filed its opinion on February 25, 2022. Petitioner now invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides in relevant part:

No person shall be ... deprived of life, liberty, or property without due process of law.

The Sixth Amendment provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury...

18 U.S.C. § 922(g) provides in relevant part:

It shall be unlawful for any person –

(1) Who has been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year...

to ... possess in or affecting commerce, any firearm...

18 U.S.C. § 924(a)(2) provides in relevant part:

Whoever knowingly violates subsection ... (g)... of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 3583(e)(3) provides in relevant part:

... a defendant whose term of supervised release is revoked under this paragraph may not be required to serve on any such revocation more than...2 years in prison if such offense is a class C or D felony...

STATEMENT OF THE CASE

Salito Good was convicted of violating 18 U.S.C. §§ 922(g)(1) and 924(e) by possessing a firearm as a convicted felon. Mr. Good was sentenced to 252 months in prison as an armed career criminal based on three prior convictions. After this Court ruled in *Johnson v. United States*, 576 U.S. 59, 135 S. Ct. 2552 (2015) that the residual clause of 924(e) was unconstitutionally vague, Good filed a petition pursuant to 28 U.S.C. § 2255 challenging his sentence. In response the government conceded that Good was entitled to relief and should be resentenced subject to the 10-year statutory maximum. [JA 48]¹ The district court resentenced Good to “time served,” and Good was released. By the time of the new sentencing Good had served approximately 18 months beyond the 10-year maximum. The district court did not conduct a formal resentencing, but rather entered a written order granting the 2255 petition, imposing the new sentence and dismissing another pending 2255 petition as moot. The district court did not inform Good that he could appeal this sentence. In fact, the order specifically denied a certificate of appealability. [App. 1b-2b]

After his release, Good was arrested and convicted of a new state crime. Good faced a revocation of his federal supervised release based on this conviction. At the revocation hearing, Good argued that his total term in prison, for both the underlying conviction and for violation of the terms of supervised release, could not exceed twelve

¹ “JA” refers to the Joint Appendix filed before the Fourth Circuit.

years; ten years for the underlying conviction and two years for the statutory maximum under 18 U.S.C. § 3583(e) for violating the terms of supervised release. Good, therefore, could not be sentenced to more than 6 months for the supervised release violation. The government asserted that Good could be sentenced to the full two years for violating supervised release and argued that Good could not challenge the “time served” sentence in the supervised release hearing. The government also specifically argued that a “time served” sentence was a sentence of 120 months. [JA 107] The district court imposed the two-year sentence, which resulted in Good being subject to serving thirteen and a half years, or 18 months beyond the total statutory maximum.

Good appealed to the United States Court of Appeals for the Fourth Circuit, which had jurisdiction pursuant to 28 U.S.C. § 1291. The Fourth Circuit affirmed Good’s sentence. The Court held that Good was improperly using the supervised release hearing to challenge the sentence imposed on resentencing, and that he should have appealed the “time served” sentence. [App. 1a-3a]

REASONS FOR GRANTING THE WRIT

1. The Decision of the Court of Appeals for the Fourth Circuit, in affirming a sentence beyond the total statutory maximum sentence for the offense of conviction, conflicts with decisions of this Court.

The decision of the Fourth Circuit, which leaves undisturbed a sentence that totals 18 months more than is authorized by the statute under which Good was convicted, conflicts with several decisions from this Court.

First, in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) this Court held that the imposition of a sentence that goes beyond what is statutorily prescribed for the

offense of conviction violates both the Fifth and Sixth Amendments to the United States Constitution, and that the offense of conviction is determined by the findings of a jury or the entry of a plea of guilty. Second, in *Johnson v. United States*, 529 U.S. 53 (2000) this Court clearly held that supervised release sentences are “part of the penalty for the initial offense.” 529 U.S. at 700. Taking the ruling in *Apprendi* and the ruling in *Johnson* together, this Court held in *United States v. Haymond*, 139 S. Ct. 2369 (2019) that the rule in *Apprendi* prohibited the imposition of a sentence for violation of supervised release that was based upon a fact-finding by a judge rather than based on the underlying conviction.

Today, we merely acknowledge that an accused’s final sentence includes any supervised release sentence he may receive. Nor in saying that do we say anything new: This Court has already recognized that supervised release punishments arise from and are “treat[ed] . . . as part of the penalty for the initial offense.” *Johnson v. United States*, 529 U.S. 694, 700, 120 S. Ct. 1795, 146 L. Ed. 2d 727 (2000). The defendant receives a term of supervised release thanks to his initial offense, and whether that release is later revoked or sustained, it constitutes a part of the final sentence for his crime.

139 S. Ct at 2379.

These cases make abundantly clear that a sentence for violating supervised release is part of a unitary sentence that is imposed for the underlying conviction, and that the supervised release sentence is subject to the constitutional limitations set forth in *Apprendi*. In short, the Fifth and Sixth Amendments prohibit imposition of a total term of imprisonment that exceeds the statutory maximum for the underlying offense and the statutory maximum for the supervised release violation. Good’s total, unitary sentence clearly exceeds the total of 12 years in prison authorized by his conviction.

2. **The decision of the Court of Appeals for the Fourth Circuit, holding that Petitioner could not challenge the unconstitutional sentence at the time it was imposed, but should have appealed from the initial entry of a “time served” sentence, decides an issue that has not been, but should be, decided this Court, and conflicts with a decision from another United States Court of Appeals.**

The Fourth Circuit avoided confronting the constitutional issue presented in Good's sentence by holding that the issue could not be raised at the supervised release hearing or on appeal from the supervised release sentence. The Fourth Circuit appeared to find that Good was required to appeal from the imposition of a “time served” sentence, although it did not identify how such an appeal would have any practical impact. The issue whether the imposition of an unconstitutional sentence during a supervised release hearing can be challenged at that hearing, and on appeal from that hearing, has not been decided by this Court. As Good's case illustrates, resolution of this issue can mean the difference between serving the statutory maximum and serving beyond the statutory maximum.

It is important to observe that this case is about, and what it is not about. Good did not challenge his conviction during the supervised release hearing, and there is therefore no issue whether a supervised release hearing is an appropriate time to challenge an underlying conviction. Good also did not challenge the imposition of a “time served” sentence during his resentencing hearing at the supervised release hearing. Rather, Good challenged whether he could be sentenced to a term of imprisonment for violating supervised release that extended his total, unitary sentence beyond 12 years. The supervised release hearing was the first opportunity for Good to challenge a total sentence that exceeded 12 years.

It is also important to note what the Fourth Circuit’s ruling would require; namely, a totally meaningless appeal that did not challenge the sentence imposed during resentencing, but rather challenged the way in which that sentence was described. In the resentencing order, the district court imposed a “time served” sentence. The impact of imposing a “time served” sentence was the same as imposing the statutory maximum ten-year sentence, which was that Good was immediately released. Indeed, at the supervised release hearing, the government conceded that the “time served” sentence was in essence a sentence of ten years. [JA 107]

The position taken by the Fourth Circuit, and the government, would require that someone in Good’s position appeal to the United States Court of Appeals and argue that the words “time served” be changed to “120 months,” although under either formulation Good would be immediately released, and could not be given back the 18 months he served beyond the statutory maximum. The appeal would only be meaningful if the defendant appealing from this sentence was later subject to revocation of supervised release. Absent a sentencing for a supervised release violation, the appeal would present a purely academic question. Whether a defendant should be required to go through this process to preserve their constitutional right not to be sentenced beyond the statutory maximum is an issue that this Court has not addressed, but which this Court should address.

The Fourth Circuit’s decision is also in conflict with the decision of the United States Court of Appeals for the Sixth Circuit in *United States v. Nichols*, 897 F.3d 729 (6th Cir. 2018). Nichols received a “time served” sentence under circumstances

similar to Good's resentencing; he was resentenced after serving more than the statutory maximum. The district court imposed a "time served" sentence, and Nichols appealed. The Sixth Circuit reversed the "time served" sentence. In doing so, the court relied on the fact that the "time served" sentence had an immediate impact on Nichols as he was serving a consecutive sentence for an unrelated offense, and by imposing a "time served" sentence the court prevented Nichols from applying the overserved portion of his sentence to his consecutive sentence. The Sixth Circuit observed that appealing a "time served" sentence in this situation is different than appealing a "time served" sentence that results in the defendant's immediate release. In the case of those who are being released, "these prisoners had no reason to challenge their corrected sentences as unlawful and doing so may have only prolonged their confinement." 897 F.3d at 734. The Fourth Circuit's decision directly contradicts the reasoning in Nichols as to when it is appropriate to appeal a "time served" sentence.

CONCLUSION

The writ of certiorari should be granted.

Respectfully submitted,

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UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4155

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SALITO MARQUES GOOD,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:04-cr-00330-NCT-1)

Submitted: February 14, 2022

Decided: February 25, 2022

Before GREGORY, Chief Judge, KING, Circuit Judge, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Amos G. Tyndall, Thomas K. Maher, AMOS TYNDALL PLLC, Carrboro, North Carolina, for Appellant. Sandra J. Hairston, United States Attorney, Ashley E. Waid, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Salito Marques Good appeals the district court's judgment revoking his supervised release and imposing a sentence of 24 months' imprisonment. On appeal, he argues that the district court erred in imposing a revocation sentence that resulted in a total sentence outside the statutory maximum authorized for his underlying conviction and upon revocation of his term of supervised release. In response, the Government asserts that Good seeks to challenge his underlying sentence and that he cannot do so in a supervised release revocation proceeding. We affirm.

"A district court has broad discretion when imposing a sentence upon revocation of supervised release. [We] will affirm a revocation sentence if it is within the statutory maximum and is not plainly unreasonable." *United States v. Patterson*, 957 F.3d 426, 436 (4th Cir. 2020). In effect, Good does not challenge any error in the revocation proceeding. Instead, his attack is premised on an alleged error made when he was resentenced for his underlying conviction; Good did not appeal the sentence imposed on resentencing. We have held that "[a] supervised release revocation hearing is not a proper forum for testing the validity of an underlying sentence or conviction." *United States v. Sanchez*, 891 F.3d 535, 538 (4th Cir. 2018). Contrary to Good's suggestion, the Sixth Circuit's decision in *United States v. Nichols*, 897 F.3d 729 (6th Cir. 2018), and the Supreme Court's decision in *United States v. Haymond*, 139 S. Ct. 2369 (2019), do not dictate a different result.

Therefore, we affirm the district court's judgment. We deny as moot Good's pending motion to expedite. We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SALITO MARQUES GOOD,)
Petitioner,)
v.) 1:11CV926
) 1:16CV455
UNITED STATES OF AMERICA,) 1:04CR330-1
Respondent.)

JUDGMENT

For the reasons set out in an Order filed contemporaneously with this Judgment,

IT IS ORDERED AND ADJUDGED that Petitioner's Motion to vacate, set aside or correct sentence [Doc. #86] is GRANTED, Petitioner's sentence is VACATED, and a Corrected Judgment shall be entered reducing Petitioner's sentence of imprisonment to time served which is greater than the new statutory maximum of 10 years and to a period of 3 years supervised release. Further, in light of this determination, Petitioner's earlier Motion [Doc. #59] to vacate, set aside, or correct sentence, his Motion [Doc. #87] seeking expedited review, and his Motion [Doc. #91] for bail pending resentencing are DENIED AS MOOT, and that, finding no substantial issue for appeal concerning the denial of a constitutional right affecting the

conviction, nor a debatable procedural ruling, a certificate of appealability is DENIED.

This the 9th day of December, 2016.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge