

No. _____

In The
Supreme Court of the United States

KENYAD LAQUAN KELLY,

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: June 3, 2022

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QUESTION PRESENTED

- I. Whether the District Court Erred in Applying a Different Starting Point for Defendant's Sentence than the United States Sentencing Guidelines?

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ORDER BELOW

The order appealed from is the Judgment located at the CM/ECF Docket of the Fourth Circuit in United States v. Kenyad Kelly, Case No. 20-4417, Docket Entry No. 29, entered on March 7, 2022. A copy of the unpublished per curiam opinion of the Fourth Circuit is attached hereto.

JURISDICTIONAL STATEMENT

This petition for writ of certiorari is from a final judgment by the Fourth Circuit Court of Appeals on March 7, 2022 on direct appeal of a sentence imposed against Petitioner Kenyad Kelly in the United States District Court for the Middle District of North Carolina for a criminal violation of 18 U.S.C. § 922(g)(1). Accordingly, the Court has jurisdiction over this Petition for Writ of Certiorari and the matter referenced herein pursuant to 28 U.S.C. § 1254 and 28 U.S.C. § 2101.

CONSTITUTIONAL PROVISIONS INVOLVED

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend V.

STATEMENT OF THE CASE

A. Procedural History

On October 29, 2019, a federal grand jury in the Middle District of North Carolina returned a one count Indictment against Appellant Kenyad Kelly (hereinafter "Appellant" or "Mr. Kelly"). [J.A. at 7.] ¹ That indictment charged Mr.

¹References in the Statement of the Case are to the Joint Appendix filed below in this case in the Fourth Circuit.

Kelly with knowingly possessing in and affecting commerce a firearm in Rowan County on or about March 20, 2019, having been convicted of a crime punishable by imprisonment for a term exceeding one year, and with knowledge of that conviction, in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2). [J.A. at 7.]

On January 17, 2020, Mr. Kelly pled guilty pursuant to a written plea agreement. [J.A. at 8-43.]

On March 31, 2020, a Draft Presentence Investigation Report was filed under seal. [J.A. at 3.] No objections were filed by either the Government or Mr. Kelly. [J.A. at 131.] A final Presentence Investigation Report (hereinafter “PSR”) was filed on May 5, 2020. [J.A. at 100-31.]

On June 23, 2020, the trial court conducted a sentencing hearing in this case. [J.A. at 44-80.] In that hearing, the trial court adopted the PSR without objections from either party, and varied upward from the advisory United States Sentencing Guidelines range to sentence Mr. Kelly to 36 months imprisonment. On June 25, 2020, a written judgment was filed imposing this sentence on Mr. Kelly. [J.A. at 81-88.]

On July 8, 2020, Mr. Kelly’s trial attorney filed a motion for extension to file a notice of appeal with the trial court. [J.A. at 89-91.] The trial court granted this motion on July 13, 2020. [J.A. at 92.]

On August 9, 2020, Mr. Kelly’s trial attorney filed a Notice of Appeal and a motion for leave to file the Notice of Appeal after the deadline. [J.A. at 93-97.] On August 14, 2020, the trial court granted Mr. Kelly’s second motion for extension and deemed his Notice of Appeal to be timely filed as of August 14, 2020.

On March 7, 2022, the Fourth Circuit Court of Appeals upheld the trial court in an unpublished per curiam decision. See Appendix A.

B. Facts.

According to the PSR:

3. Kenyad Laquan Kelly was convicted of Felony Accessory After the Fact to Felony Train Robbery (Docket No. 1:13CR359-3). He was sentenced on June 3, 2014, in the United States District Court, Middle District of North Carolina, to 28 months imprisonment (refer to paragraph 28).

4. On March 20, 2019, officers were dispatched to 224 South Merritt Avenue in Salisbury, NC, after receiving a 911 call from Gloria Rankin, reporting her grandson, Kenyad Kelly, had a firearm in his possession and was “walking around and acting irrational.” An officer arrived on the scene and observed Defendant Kelly pacing back and forth in the front yard of the residence while carrying a handgun. The officer pointed his service weapon at the defendant and gave commands for the defendant to put the gun down. After several commands, the officer holstered his weapon in an attempt to go hands on with the defendant. As the officer holstered his weapon, Defendant Kelly attempted to flee on foot. The defendant tossed the firearm to the ground before attempting to flee. The firearm was a **Zastava, M70A, 9mm pistol (serial number Z-M70A-0004010)**. The firearm was not loaded and it was not reported as stolen. He was apprehended after a relatively short foot pursuit. The defendant continued to actively resist officers during the arrest. The defendant was transferred to Rowan Regional Medical Center, Salisbury, NC, while additional officers went to the Magistrate’s Office to obtain involuntary commitment papers.

5. On July 9, 2019, the defendant was arrested and charged with Felony Possession of a Firearm by a Felon (19CR 511281). This charge was voluntarily dismissed on October 28, 2019, in Rowan County District Court, Salisbury, NC, in view of federal prosecution.

6. On July 25, 2019, officers made contact with Gloria Rankin. According to Gloria Rankin, she was on the lower level of her residence when her grandson, Kelvin Kelly, emerged from upstairs. Kelvin Kelly advised the defendant jumped out of the top floor window to the exterior of the residence. Kelvin Kelly told Gloria Rankin that the defendant had a firearm. She stated she went outside and observed the defendant

running around the yard in a frantic manner. Defendant Kelly broke the glass to a lower level window during the episode. Gloria Rankin advised she believes the defendant suffers from a mental illness, but has never been diagnosed by a medical professional and refuses to seek treatment.

[J.A. at 102-03.]

The PSR details a number of chaotic and abusive aspects to Mr. Kelly's childhood.

40. The following information was obtained from the defendant's report and corroborated during the current presentence interview: "Defendant Kelly reported having a chaotic childhood. He stated his parents were separated 'off and on' until he was in the third grade. He reported finances were unstable in his mother's home, and she received public assistance periodically. The defendant stated he was reared primarily by his mother, but lived with his father, grandmother, and aunts on occasion. The defendant advised his family had lengthy involvement with the Rowan County Department of Social Services (DSS), Salisbury, NC. The defendant stated, 'I was happy at times and I was sad at times. I started using drugs young and went to wilderness camp when I was about 13. I was put in DSS custody and when I was released from their custody, I just ended up at my girlfriend's house.' Defendant Kelly reported a history of sexual abuse by 'babysitters' and older family members. The defendant stated he first had sexual intercourse with an older babysitter when he was age eight, and he started to have sexual intercourse on a regular basis at age 12 with older women and with females similar in age to him. The defendant further reported physical abuse by his father."

41. "Records received from Rowan County Department of Social Services (DSS), Salisbury, NC, reflect that on September 4, 1998, the defendant's mother contacted the Spencer Police Department, Spencer, NC, requesting someone 'come get her baby' (Karena) as she (Maxine Rankin) was going to commit suicide. (Kelvin Kelly and Kenyad Kelly were also in the home at the time.) DSS responded on September 4, 1998. Maxine Rankin reported she was very tired and had no sleep due to working third shift. She noted her family took advantage of her, often leaving her with no money for living expenses. Records reflected, 'M [Maxine Rankin] reported she had a nice boyfriend when with the boys Kenyad and Kelvin's father, but he never wanted to do the things she liked. She reported she left him for Karena's father, who is a known drug dealer. He is currently in prison for drugs. She reported he was abusive

towards her and would not allow her to work. She stated she had worked at Taco Bell for a short time and sold drugs through the drive thru also for extra money. Reported she stopped because she felt guilty.' Maxine Rankin was referred to mental health counseling. Maxine Rankin's sister reported to the DSS worker that Maxine Rankin was previously diagnosed with schizoaffective disorder and was on Prozac. The report of abuse/neglect was found to be unsubstantiated and the case was closed."

42. "On October 22, 1999, DSS received a report of abuse as the defendant appeared in school with multiple marks and bruises on his body. The defendant confided to the reporter that his father beat him with a switch and then the father's girlfriend said the father did not beat the child enough, so the father's girlfriend beat the child with the switch also. The defendant's mother was notified and she reported prior issues with inappropriate discipline by the father and his girlfriend. The defendant's father submitted a statement on October 25, 1999, in which he reported he whipped the defendant with grape vines after the defendant continued to get in trouble. He reported he may have accidentally hit him in the face with the switches. The defendant's father also reported his girlfriend whipped the defendant for lying after he whipped him with the grape vines. The girlfriend of the defendant's father submitted a statement in which she reported she whipped the defendant for lying and for continuously being in trouble. She further stated the defendant would be disciplined as long as he lived under her roof. The defendant's father and his girlfriend were arrested and charged with Felony Child Abuse. The report of abuse was substantiated."

43. "On January 24, 2001, a report of neglect was made to DSS that the defendant was left outside until after dark as no one was home. The complaint also noted the defendant came to school dressed inappropriately. The report stated the children were living between three different homes and were constantly packing a suitcase. The school is unable to get responses from the mother. The reporter stated, 'The kids watch TV all night and are sleepy during the day. They have described mom and her bf (boyfriend) making noises that indicate they were having sex. The boys said it kept them up all night.' Interviews conducted with the defendant's teacher reflected the teacher reported the defendant often came to school dirty, and he was not receiving proper rest. The defendant's grandmother was interviewed and reported she picked the children up when they came home and no one was at home. She reported the mother of the defendant worked at a warehouse. The defendant's mother did not respond to requests for an interview and did not attend scheduled appointments with the DSS worker. The case was substantiated for neglect and closed."

44. “On September 9, 2003, a report of neglect was made to DSS that the boyfriend of the defendant’s mother had threatened her with a gun with the children in the house. The report stated the boys (Kenya and Kelvin) are scared and don’t sleep well at their mother’s house as they are afraid something will happen to her. The report stated Kelvin described the boyfriend coming to the house in a mask and fighting with his mother. Kelvin Kelly, Jr., was interviewed by the DSS worker and was hesitant to talk as his father had told him and Kenya ‘to quit telling school personnel about their family problems...’ The defendant’s mother was interviewed and advised she was no longer seeing her boyfriend and that the incident was over. The report of neglect was unsubstantiated and the case was closed.”

45. “On April 7, 2009, a report was made to DSS that on April 5, 2009, the defendant was hit by his mother with a belt on two occasions. The defendant punched a hole in the wall and his mother called the police. After the defendant went onto the porch of the residence, the defendant’s mother locked the door and stood by the door with a knife. A social worker visited the home and records reflect the defendant’s mother stated the defendant was ‘more than she could handle,’ and that ‘none of this was her fault...’ Interviews were also conducted with the defendant’s sister, Karena. The defendant’s sister noted that her mother ‘doesn’t punish her like she does Kenya and she is glad.’ On May 27, 2009, a report of neglect was made due to lack of medical services for the defendant. The report noted, ‘He ran out of ADHD medication and mom is just not responding to the need to get this child his medication. Reported contacted mom on May 7, 2009, and mom was nonchalant. Motion filed on 5/12/09 to go back to court. On May 8, he was suspended due to behaviors. When this child is on his medication, he is a great student. When this goes to court, it is going to be recommended that the child come out of the home due to mom’s lack of compliance with the medication. Mom has been inappropriate with the child, she has hit him with a curtain rod and belt for not going to church...’ The defendant and his mother were involved in group counseling at the time of the report. The defendant was subsequently expelled from school (after having behavioral problems related to lack of medication). The defendant’s sister reported to DSS that her mother whipped the defendant with a belt and he was sent to her sister’s house for the night after the expulsion. On June 19, 2009, custody of the defendant was given to DSS as the case was substantiated for neglect, domestic violence, and injurious environment.”

[J.A. at 115-16.]

The PSR also details a significant history of mental health issues for Mr. Kelly.

52. The following information was obtained from the defendant's prior federal presentence report: "Defendant Kelly endorsed a history of mental health problems and treatment. He reported being diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) at approximately age 12/13, and received treatment through his pediatrician. The defendant reported being prescribed various medications to treat his ADHD. He also reported undergoing counseling for abuse issues and aggression while in placement at various group homes through DSS. The defendant further stated, 'I was the middle child and often put on the back burner. I think I went through some depression when I was younger, I'm starting to understand a little more now.'"

53. "Medical records received from Cleveland Pediatrics reflect the defendant was referred for an ADHD evaluation on June 21, 2006, due to failing two grades, recent poor grades, poor weight gain, and becoming argumentative. The defendant was diagnosed with ADHD and prescribed Concerta. A psycho-educational evaluation was conducted by the Rowan-Salisbury School System on November 20, 2006; and December 12, 2006. The defendant was found to be very polite during the evaluation. He obtained a full scale IQ score of 92, placing him in the range of overall intellectual functioning. The defendant was found to have clinically significant findings in that he acted out of control, displayed poor self control, was disruptive and aggressive, had difficulty recovering from stressful situations, and had difficulty in adapting to changing situations. (The evaluation further reflected the defendant was initially evaluated in May of 2003. During that evaluation, the defendant was found to have average overall intellectual skills; however, his achievement levels in reading fell within the borderline range.)"

54. "Medical records dated October 21, 2008, reflect the school counselor contacted the doctor's office as the defendant's mother had not signed the paperwork for the school to administer the defendant's medication and the defendant was having difficulties at school.

The records also noted the defendant was having difficulties getting along with his father and stepmother and that the defendant was not taking his medications for a lengthy period of time. In November of 2008, the defendant was placed back on Concerta, and was referred to family counseling. The doctor noted the importance of the defendant finding friends that were good influences."

55. "The defendant was admitted to Timber Ridge Treatment Center, Uwharrie, NC, from juvenile detention on June 24, 2009 (after being

placed in DSS custody on June 19, 2009). The defendant was discharged on October 22, 2009, due to physically aggressive behavior displayed in an incident in which he destroyed property and injured peers and staff. The discharge summary reflected the defendant 'displayed intermittent moments of commitment to being successful within this program; [however], his episodes of rage were unpredictable and represented severe power struggles which placed both he and his peers in an unsafe environment. He would describe these moments as 'blacking out,' and they would last in the range of 10 minutes to an hour.'" The discharge summary further reflected the defendant developed positive peer relationships 'which enabled him to give his peers feedback which was both encouraging and insightful,' and he demonstrated willingness to accept responsibility. Records also reflected that although the defendant's mother indicated a willingness to support the defendant's placement, she often failed to follow through on court-ordered or DSS mandated tasks."

56. "Medical records dated July 15, 2010, reflect the defendant had been previously placed in DSS custody. He was seen by a psychiatrist due to behavioral and legal issues. The defendant was housed at Nazareth Children's Home, Rockwell, NC, as his mom 'could not deal with him.' The defendant was prescribed Topamax and Thorazine. He was diagnosed with ADHD, Conduct Disorder, Mood Disorder, and Rule Out Bipolar. The records further reflected the defendant had been using alcohol and marijuana since age eleven, and that he was on probation for 'bad behavior in school.' The defendant was referred for psychotherapy and a psychology consult."

57. As previously noted, the defendant failed to obtain a court-ordered psychological assessment during one of his previous terms of probation. As noted in the *Physical Health* section, the defendant intentionally injured his own body at the age of 23. As reflected in the *Criminal History* section, the defendant has a history of committing violent offenses.

As noted in paragraph 28, while at the RRC, the defendant yelled, "I would hate to hurt somebody up in here, and catch a charge. "The defendant's father stated he is not aware of any current mental health issues pertaining to the defendant.

58. While on supervised release, the defendant was referred to mental health treatment. On August 19, 2015, the probation officer completed a substance abuse and mental health referral to Daymark Recovery Services (DRS) in Salisbury, NC. His intake was scheduled for August 27, 2015. On August 27, 2015, Defendant Kelly attended his intake

appointment at DRS and it was recommended that he attend weekly groups for treatment starting September 2, 2015. The defendant was diagnosed with Major Depressive Disorder, Recurrent Episode, Moderate. Defendant Kelly failed to attend his treatment group sessions on September 2 and 9, 2015. The defendant advised he missed these appointments due to “work” and transportation issues. The defendant stated he continues to suffer from depression. He reported his depression stems from disputes among his family members. He noted his family has shunned him due to his criminal record. He stated he often feels “alone” and does not have a primary support system. Defendant Kelly reported he also feels angry at times due to feeling like he has been “outcasted” by his family. He reported he would like to obtain prescribed medication to deal with his mental health concerns. He stated his prior medication was beneficial because it helped stabilize his mood. Defendant Kelly reported he never sought mental health treatment after completing his term of supervised release because he was “bouncing around” and did not have stability. Based on the defendant’s behavior during the instant offense, he was involuntarily committed to Rowan Regional Medical Center, Salisbury, NC. Medical records were requested; however, they were unable to be obtained. Defendant Kelly reported he would like to participate in mental health counseling.

[J.A. at 119-21.]

The PSR calculated Mr. Kelly’s Adjusted Offense Level at 14. After acceptance of responsibility, Mr. Kelly’s Total Offense Level was calculated at 12. [J.A. at 104.] Mr. Kelly’s criminal history score was calculated as seven, resulting in a criminal history category of IV. [J.A. at 113.] This resulted in an advisory United States Sentencing Guideline range of 21-27 months. [J.A. at 124.]

The Probation Officer, noting that Mr. Kelly had a prior federal conviction for which he was sentenced to 28 months imprisonment, recommended that the trial court vary upward. [J.A. at 126.]

Before and during the sentencing hearing, Mr. Kelly and his trial counsel did not present any objections to the PSR. [J.A. at 45, 131.]

THE COURT: And that's -- so I understand you trying, and I'm impressed. I mean, the job in Tennessee sounded like a very good job with a place to go and things to do. But you just can't have a gun. If you're scared, you have to find another way to feel safe, and if you're -- anyway, you're very articulate. I think you are trying. I'm impressed with what you said. But I've got to see it, too, if I'm going to give you the benefit of the doubt, and I don't mean that disparagingly toward you.

As many individuals say, you know, you're only looking at what's in the presentence report, Judge, and you don't really know me. Maybe. But make that presentence report different. Don't ever have another one done, for Pete's sake. But it's up to you to make it different, your life different and everything different.

You're 26 years old now, and things are only going to get worse, and I believe what I said. If you don't get these issues addressed, some day you're going to do something bad to somebody. You're going to lose your temper, act out, and it may be that you do something irrational, but you're going to do something bad to somebody if you don't get this stuff under control, or there's going to be a bad result here.

At the end of the day, I agree with Mr. Meinecke, in large part. When I looked at this, and I saw 28 months, plus six months, plus 12 months, and the fact that those prior sentences, the collective sentence total of 46 months, really not only failed to deter Mr. Kelly, but it also did not provide -- appear to provide any motivation to Mr. Kelly following through with the treatment that everybody agrees that Mr. Kelly needs to address the issues from a very -- from very compelling, in terms of difficulty, history and characteristics of the defendant.

So that 46 months, as I've often said, is my starting point. I'm very reluctant to go backwards in terms of a sentence. Here I do think that Mr. Kelly is older. I'm hopeful that with the employment history that's listed as well as the input from his -- apparently the input from his grandmother that he will follow through on the treatment that's offered during supervision on this particular term of supervised release. I'm also, to some degree, hopeful -- I'll say heartened by the fact that Mr. Kelly chose to toss the firearm before attempting to flee from officers. Not that fleeing is excusable, but at least Mr. Kelly didn't do anything that might cause the officers to feel like -- reasonably feel like they had to defend themselves.

So what's the sentence? I agree that a variance is appropriate. I'm going to vary upward to 36 months. If you start at the 46 months, I find that

much of this particular offense in terms of Mr. Kelly's conduct on the day of the offense was, in large part, caused by various mental health and other issues that Mr. Kelly has had. Those issues are of substantial concern to the Court because of the number of what I would consider to be -- well, senseless violence. Now, I understand we're talking about generally simple assaults here, but senseless violence that Mr. Kelly has engaged in as is reflected by his criminal history. Therefore, I find that a sentence within the advisory guideline range would not afford adequate protection to the public in terms of further crimes of the defendant.

As I indicated, Mr. Kelly's comments here today suggest to the Court that perhaps Mr. Kelly's at a point in his life where he will not be so difficult in terms of rejecting assistance from Probation while he is on supervision on this -- as a result of this particular conviction as he's done -- as he did in the past, but I have also have to consider Mr. Kelly's history and track record and what he's done in the past in an effort to determine what sentence is sufficient but not greater than necessary, and at this point I am satisfied with a variance upward of 36 months for all the reasons set out in the presentence report by the probation officer, but at least in my mind predominantly the need to protect the public and the need to deter the defendant from the commission of further offenses. So I will impose that sentence. Three years of supervised release. In terms of providing the defendant with needed educational and vocational training as well as medical care, there is a condition of supervision in terms of mental health counseling and treatment or participation in a mental health program.

[J.A. at 65-68.]

On appeal, Petitioner argued that the trial court erred procedurally by adopting an unofficial alternate procedural mechanism for determining the sentencing which superseded and replaced the role of the United States Sentencing Guidelines. Specifically, instead of using the United States Sentencing Guidelines as the starting point, the trial court in this case determined that it should add Mr. Kelly's time imposed on previous sentences from his prior federal offense and supervised release violations together as the "starting point" for calculating Mr.

Kelly's sentence, and from there considered various other § 3553(a) factors to arrive at the sentence. Petitioner argued that this procedure violated controlling case law of this Court and rendered irrelevant the balance involved in the design of the United States Sentencing Guidelines to account for previous criminal activity in the calculation of an advisory sentencing guideline range, thereby improperly downplaying or skewing a number of the sentencing factors, including those referenced in 18 U.S.C. § 3553(a)(1), 18 U.S.C. § 3553(a)(4), 18 U.S.C. § 3553(a)(5), and 18 U.S.C. § 3553(a)(6). See Appellant's Opening Brief at 15-24.

The Fourth Circuit Court of Appeals, in an unpublished per curiam order, upheld the District Court's procedure and result. See Appendix A. This Petition follows.

REASONS CERTIORARI SHOULD BE GRANTED

I. The Court Should Grant Certiorari to Clarify Whether its Precedent in *Gall v. United States*, 552 U.S. 38 (2007) and Other Cases is Violated When a District Court Chooses an Alternate Starting Point Other Than the United States Sentencing Guidelines for Determining a Federal Felony Sentence.

When determining a sentence, the district court must calculate the appropriate advisory guidelines range and consider it in conjunction with the factors set forth in 18 U.S.C. § 3553(a). Gall v. United States, 552 U.S. 38, 49 (2007). In reviewing a sentence, the Court of Appeals must first "ensure that the district court committed no significant procedural error." Id. at 51. Procedural errors include "failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on

clearly erroneous facts, or failing to adequately explain the chosen sentence--including an explanation for any deviation from the Guidelines range." Gall v. United States, 552 U.S. 38, 49 (2007). "[A] major departure should be supported by a more significant justification than a minor one." Gall, 552 U.S. at 50. In Gall, the Court held that in reviewing substantive reasonableness, the Court "may consider the extent of the deviation [from the guidelines range], but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance." Gall, 552 U.S. at 51.

In this case, the trial court erred procedurally by adopting a procedural mechanism for determining the sentencing that in effect superseded and replaced the role of the United States Sentencing Guidelines. Specifically, the trial court determined that it should add Mr. Kelly's time imposed on previous sentences from his prior federal offense and supervised release violations together as the "starting point" for calculating Mr. Kelly's sentence, and then considered various other § 3553(a) factors to arrive at the result. [J.A. at 66-67.] Thus, as reflected in his comments, the trial judge essentially substituted the previous time served for the Sentencing Guidelines as the starting point of the sentence.

Respectfully, the trial court's procedure is erroneous under the controlling case law of the Court. It also improperly disregards the nature and circumstances of the instant offense and substitutes an arbitrary starting point based upon the nature and circumstances of a previous offense. Thus, the balance involved in the design of the United States Sentencing Guidelines to account for previous criminal activity in the

calculation of a range is rendered irrelevant in this unauthorized procedure. In other words, because federal sentences vary very significantly in their length, this alternate procedure will dictate numerous anomalous results, far more than would otherwise result under the procedure dictated by current controlling caselaw.

The trial court's procedure also improperly downplays or skews a number of the sentencing factors under 18 U.S.C. § 3553(a), which states:

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- 1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- 2) the need for the sentence imposed—
 - a. to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - b. to afford adequate deterrence to criminal conduct;
 - c. to protect the public from further crimes of the defendant;
 - d. to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- 3) the kinds of sentences available;
- 4) the kinds of sentences and the sentencing range established for – the applicable category of offense committed by the applicable category of defendant as set for in the guidelines...issued by the Sentencing Commission;
- 5) any pertinent policy statement...issued by the Sentencing Commission...;
- 6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- 7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

Here, the improper procedure, by its very nature, rendered the sentence substantively unreasonable in that it completely disregard a number of factors in

favor of the first factor, which requires the sentencing court to consider both the nature and circumstances of the offense and the history and characteristics of the defendant in tandem. 18 U.S.C. § 3553(a)(1). Privileging the history and characteristics of the defendant to the point where it alone is the de facto starting point creates a structural imbalance in the sentencing process which downgrades from consideration the nature and circumstances of the offense. The purpose of the sentencing guidelines is to give each of these aspects due consideration in federal criminal sentencing.

Further, the fourth, fifth, and sixth factors are also structurally undermined in by the trial court's aberrant procedure. The sentencing guidelines themselves are discarded from consideration, in violation of 18 U.S.C. § 3553(a)(4). The policy statements undergirding the sentencing guidelines are also rendered irrelevant, in violation of 18 U.S.C. § 3553(a)(5). Finally, the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct is also eviscerated by the procedure, in violation of 18 U.S.C. § 3553(a)(6). Instead of giving this factor its rightful place, the trial court's procedure classifies defendants by their records only, as opposed to their conduct in the instant offense.

For these reasons, the Court should grant a writ of Certiorari in this case in order to clearly and explicitly reject the trial court's anomalous procedure of starting with a defendants' prior federal sentence as a baseline instead of the defendant's advisory guideline range. The Court should clarify that this procedure is

fundamentally inconsistent with the sentencing procedure mandated by the Court's precedent. Accordingly, the Court should grant certiorari to address the procedural and substantive reasonableness of Mr. Kelly's sentence.

CONCLUSION

For the above stated reasons, Petitioner Kenyad Kelly hereby requests that the Court grant a writ of Certiorari in this case, reverse the courts below, order a resentencing, and grant whatsoever other relief may be just and proper.

This the 3rd day of June, 2022.

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