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IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

DUANE WILLIAMS
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 21-60500

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred by revoking Mr. Williams' supervised release status, and returning him to prison. This overall issue consists of the following two sub-issues:

- Whether the district court erred by finding that Mr. Williams had no right to confront witnesses concerning violations of Mandatory Conditions of Supervised Release 2, 3 and 5, and Standard Condition of Supervised Release 7.
- Whether the district court erred by ruling that the prosecution presented sufficient evidence to find Mr. Williams guilty of violating Standard Conditions of Supervised Release 2 and 5.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

This case involves a supervised release revocation proceeding. The case arises out of an underlying conviction entered by the United States District Court for the Western District of Louisiana for possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1). The Western District of Louisiana case number is 06-50140-01. The district court ordered Mr. Williams to serve 120 months in prison followed by eight years of supervised release. It entered an underlying Judgment reflecting this sentence on May 17, 2007.

After Mr. Williams' release from prison, the Western District of Louisiana transferred the case to the Southern District of Mississippi for supervised release purposes. The Southern District of Mississippi case number is 3:20cr129.

On September 18, 2020, the prosecution filed the subject petition to revoke supervised release. The alleged violations are:

Mandatory Condition – 2 The defendant shall not commit another federal, state or local crime.

Mandatory Condition – 3 The defendant shall not unlawfully possess a controlled substance.

Mandatory Condition – 5 The defendant shall not possess a firearm, ammunition, or a destructive device or any other dangerous weapon.

Standard Condition – 7 The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.

On September 16, 2020, officers with the Vicksburg Police Department Narcotics Division and other officers executed a search warrant at Williams' residence in reference to an ongoing narcotics investigation.

As a result of the search, officers recovered approximately 20 pounds of marijuana, 3 small bags of marijuana, 2,700 Ecstasy tablets, scales, two iPhones, and \$3,700. Officers also recovered a Mossberg .22 caliber AR 15 rifle, a TEC 9, 9mm pistol, a Smith & Wesson .45 caliber handgun, and a Sig Sauer 9mm handgun.

The defendant was subsequently arrested on drug charges and on an outstanding warrant for domestic violence against Sade Foster that reportedly occurred on August 16, 2019.

Standard Condition – 2 The defendant shall not leave the judicial district without permission of the court or probation officer.

Standard Condition – 5 The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.

As previously reported, Williams left the Southern District of Mississippi from December 2017 through February 201[8] without authorization. The defendant accepted a temporary job with LeTourneau Enterprise without prior approval from his probation officer.

After a supervised release revocation hearing on June 2, 2021, the district court ruled that Mr. Williams violated conditions of supervised release. It ordered him to serve 30 months in prison followed by 30 months of supervised release. It entered a Revocation Judgment reflecting this sentence on June 10, 2021. A copy of the Revocation Judgment is attached hereto as Appendix 1.

Mr. Williams appealed the Revocation Judgment to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit case number is 21-60500. On March 18, 2022, the Fifth Circuit entered an Order affirming the district court's

rulings. It entered a Judgment on the same day. The Fifth Circuit's Order and Judgment are attached hereto as composite Appendix 2.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on March 18, 2022. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Order as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL PROVISION INVOLVED

“No person shall be ... deprived of life, liberty, or property, without due process of law[.]” U.S. Const. amend. V, Due Process Clause.

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a Revocation Judgment entered in federal court because Mr. Williams purportedly violated conditions of supervised release. Regarding the underlying criminal conviction that this revocation proceeding is based upon, the court of first instance was the United States District Court for the Western District of Louisiana. The Western District of Louisiana had jurisdiction over the case under 18 U.S.C. § 3231 because the underlying criminal charge levied against Mr. Williams arose from the laws of the United States of America.

B. Statement of material facts.

1. Mr. Williams' background.

Mr. Williams is a 46-year-old African American man from Vicksburg, Mississippi. He was raised by his mother, who had seven other children. Mr. Williams also had siblings on his father's side. In part because of this less-than-ideal upbringing environment, Mr. Williams did not graduate from high school. Nevertheless, he furthered his education by achieving a GED.

As the district court recognized at the supervised release revocation hearing, Mr. Williams has an impressive employment history. He worked as a brick mason in Vicksburg from 1992 through 2006. Prior to that, he worked as a body technician at Blackburn Motor Company in Vicksburg. Also, he worked while

attending high school. Mr. Williams' probation officer had so much confidence in his work ethic that he provided a written employment recommendation letter on Mr. Williams' behalf.

Prior to the underlying conviction for possession with intent to distribute cocaine, Mr. Williams had only one felony conviction. The prior conviction was for the nonviolent and nondrug distribution crime of possession of over one ounce of marijuana.

2. Summary of the supervised release violations.

The district court's finding of guilt on the alleged supervised release violations is at issue on appeal. The exact verbiage of the alleged supervised release violations is presented above in the section of this Petition titled "Opinions below." In summary, the alleged violations are:

- Mandatory Condition 2: Committing another crime. This allegation is based on the drug arrest resulting from the September 16, 2020, search of the residence where Mr. Williams was found.¹
- Mandatory Condition 3: Possessing a controlled substance. This allegation is based on the same facts as the previous bullet point.

¹ The Petition for Warrant also states that Mr. Williams committed another crime via his arrest for domestic violence. However, neither the arresting officer nor the probation officer knew anything about the domestic violence charge at the time of the revocation hearing. Also, the prosecutor agreed that the charge had been dismissed. Therefore, this alleged violation is not at issue.

- Standard Condition 7: Distributing of a controlled substance. This allegation is based on the same facts as the previous two bullet points.
- Mandatory Condition 5: Possessing a firearm. This allegation is based on the firearms found by officers during drug arrest resulting from the September 16, 2020, search of the residence where Mr. Williams was found.
- Standard Condition 2: Leaving the judicial district without the probation officer's permission. This allegation is based leaving the judicial district from December 2017 through February 2018 to productively work a job with LeTourneau Enterprise, without prior approval from the probation officer.
- Changing place of residence and changing jobs without prior approval from the probation officer. This allegation is based on the same facts as the previous bullet point.

3. Evidence and arguments presented at the supervised release revocation hearing.

Before delving into the evidence found during the September 16, 2020 search, we must consider how law enforcement obtained the warrant to search the residence. Donnie Heggens, a narcotics investigator with the Vicksburg Police Department, is the only police officer that testified at the revocation hearing. He testified that a confidential informant (hereinafter “CI”) made a controlled buy of controlled substances from Mr. Williams on June 18, 2020. It is important to note

that this controlled buy is not the basis of the subject supervised release violations. However, facts related to this controlled buy are the basis of the search warrant at issue.

Officer Heggens testified that after the controlled buy, the CI purportedly relayed information about a “large amount of narcotics at [Mr. Williams’] residence at 812 Central Avenue, Vicksburg, Mississippi.” Interestingly, the information about the purported drugs at Mr. Williams’ residence came from “a separate, different cooperating individual[.]”

Based on this roundabout information, law enforcement obtained the subject search warrant for the house at 812 Central Avenue. As further described below, the subsequent search revealed controlled substances and guns. That evidence is the basis of alleged supervised release violations stated in Mandatory Conditions 2, 3 and 5, and Standard Condition 7.

At the revocation hearing, the defense attacked the validity of the search warrant and the resulting search, because neither of the CIs that provided information justifying the warrant testified at the hearing. Therefore, argued defense counsel, Mr. Williams’ constitutional due process right to confront witnesses was violated regarding determining the validity of the search warrant.

The following facts are relevant to the confrontation issue:

- Neither of the two CIs described above testified at the revocation hearing.

- Officer Heggens, who gave hearsay testimony regarding information provided by the two CIs, knew little to nothing about either of them.
- Officer Heggens did not know how long the CIs had provided information to the Vicksburg Police Department.
- Officer Heggens did not know how many drug buys they had made, and he did not know them personally.
- All Officer Heggens could say is that Lieutenant Merritt with the Vicksburg Police Department communicated with the CIs.
- The prosecution did not call Lieutenant Merritt as a witness at the revocation hearing.

Officer Heggens executed the search warrant at 812 Central Avenue on September 16, 2020. He found four guns in the house. During the hearing, Officer Heggens continuously referred to 20 pounds of marijuana found at the residence. But when confronted with the lab report, he admitted that the actual amount was only 7.5 kilograms, which converts to 16.53 pounds. He also referred to purported ecstasy tablets found in the residence. But when faced with the true facts of the case, Officer Heggens had to admit that the pills were caffeine based, and not ecstasy.

The above facts pertain to alleged violations of Mandatory Conditions 2, 3 and 5, and Standard Condition 7. The remaining two alleged violations are leaving

the district without permission from the probation officer (Standard Condition 2) and changing jobs and/or residences without prior permission from the probation officer (Standard Condition 5). Regarding these allegations, proof at the revocation hearing indicated that Mr. Williams went from Mississippi to Pennsylvania from December 2017 through February 2018 to work for LeTourneau clearing right of way for Entergy. At the time that Mr. Williams left Mississippi for Pennsylvania in December 2017, his probation officer was not aware of the new job at LeTourneau. However, in February 2017, he received permission from a probation officer to work offshore.

4. The district court's rulings.

The district court found Mr. Williams guilty of all the alleged supervised release violations. The court ordered a 30-month prison term followed by 30-month term of supervised release.² As Special Conditions of Supervised Release, the court ordered drug treatment and required Mr. Williams to submit to searches by the probation officer.

² The sentence range under the United States Sentencing Guidelines was 27 to 33 months in prison.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion.” This case presents a constitutional due process issue involving a defendant’s right to confrontation of witnesses at a supervised release revocation hearing. The district court denied Mr. Williams of this right. Certiorari should be granted to correct this error.

Also, the district court erroneously ordered two special conditions of supervision. This provides another reason to grant certiorari.

B. The district court erred by finding that Mr. Williams had no right to confront witnesses concerning violations of Mandatory Conditions of Supervised Release 2, 3 and 5, and Standard Condition of Supervised Release 7.

1. Applicable law.

The right to confront witnesses at a supervised release revocation hearing is governed by the Due Process Clause of Fifth Amendment, rather the Sixth Amendment’s right to confront witnesses. *United States v. Jimison*, 825 F.3d 260, 263 (5th Cir. 2016) (citation omitted). The Due Process clause states, “[n]o person shall be ... deprived of life, liberty, or property, without due process of law[.]” U.S. Const. amend. V, Due Process Clause.

“[A] balancing approach is used to determine whether the right to confront witnesses at revocation proceedings is violated.” *Jimison*, 825 F.3d at 263 (citation

omitted). A judge “[may] specifically find[] good cause for not allowing confrontation’ at a revocation hearing.” *Id.* (citation omitted; brackets in original). “Determining whether good cause exists requires ‘weigh[ing] the defendant’s interest in confrontation of a particular witness against the Government’s proffered reasons for pretermitted the confrontation.’” *Id.* (citation omitted; brackets in original). “[A] district court is required to make ‘an explicit, specific finding of good cause’ for not allowing confrontation of a particular witness.” *Id.* (citations omitted). “[F]ailure to articulate the reasons may be found to be harmless error where good cause exists, its basis is found in the record, and its finding is implicit in the court’s rulings.” *Id.* at 264 (citation omitted).

2. The district court erred by denying Mr. Williams’ Due Process right to confront witnesses.

The district court denied Mr. Williams’ constitutional right to confrontation based on an incorrect conclusion that “there’s no argument that the search warrant itself was invalid, and the petition here is based on what was found pursuant to the search.” But attacking the validity of the search warrant is exactly what defense counsel was attempting to do. That is, the defense sought to confront the two CIs so that the validity of the search warrant could be challenged. By denying Mr. Williams’ right to confront the two CIs that provided information supporting the search warrant, the defense could not determine whether the CIs’ information was sufficient to support probable cause for the search warrant.

“[A] warrant may issue only upon a finding of ‘probable cause[.]’” *United States v. Ventresca*, 380 U.S. 102, 107 (1965). In Mr. Williams’ case, the uncontested evidence is that the sole basis for probable cause to support the subject search warrant was information provided by the two CIs. The prosecution did not call either of the CIs as witnesses at the revocation hearing.

In summary to this point, probable cause to issue the subject search warrant was based on information provided by two CIs. At the revocation hearing, the only evidence offered by the prosecution about the basis of the CIs knowledge was the hearsay testimony of Officer Heggens. As the Fifth Circuit held in *Jimison*, “the government may prevail in the balancing inquiry when the hearsay testimony has a strong indicia of reliability.” 825 F.3d at 265 (citation omitted). A nonexclusive list of factors that a court may consider to judge the reliability of a CI includes “how many arrests the informant had helped secure, the benefits he received, and if he continued to be an informant after” the case at issue. *Id.*

Officer Heggens provided the only evidence regarding information, or lack thereof, about the CIs. His testimony on this issue was woefully inadequate. Officer Heggens did not know how long the CIs provided information to the Vicksburg Police Department. He did not know how many drug buys they made in their roles as CIs. He did not testify about compensation received by the CIs. He did not even know the CIs at all. All Officer Heggens could say is that Lieutenant

Merritt with the Vicksburg Police Department, who did not testify at the revocation hearing, communicated with the CIs.

Mr. Williams had a substantial confrontation interest regarding the two CIs that provided the only information supporting the subject search warrant. This is true because without their testimony, neither the defense nor the district court could judge the reliability of the hearsay evidence supporting probable cause for the warrant. *See Jimison*, 825 F.3d at 265 (holding that “allowing such testimony through a police officer can be particularly damaging in light of an officer’s perceived credibility”) (citation omitted); *see also United States v. Ferguson*, 760 Fed. App’x 328, 330 (5th Cir. 2019) (under a plain error standard of review, finding that the district court erred by “failing to make a good-cause finding before revoking Ferguson’s probation based on hearsay evidence”).

In the balancing test, we must consider the prosecution’s interest in keeping the identities of the two CIs confidential. *See Jimison*, 825 F.3d at 264. The prosecution provided no evidence whatsoever on this issue. As the Fifth Circuit held in *Jimison*, “without any details about a need to keep the identity of this particular informant confidential, we are unable to infer a strong interest on the Government’s part.” 825 F.3d at 264.

Consistent with the court’s reversal and remand in *Jimison*, this Court should grant certiorari and rule that Mr. Williams had a substantial right to

confront the two CIs, and that no good cause exists to deny the right to confrontation. *See Jimison*, 825 F.3d at 265-266. This will require the Court to vacate the findings of guilt regarding violations of Mandatory Conditions of Supervised Release 2, 3 and 5, and Standard Condition of Supervised Release 7.

B. The district court erred by ruling that the prosecution presented sufficient evidence to find Mr. Williams guilty of violating Standard Conditions of Supervised Release 2 and 5.

The combined provisions of Standard Conditions of Supervised Release 2 and 5 required Mr. Williams to obtain the probation officer's permission before either leaving the judicial district, or changing his residence or employment. Based on a letter from Probation Officer Chris Whitver dated February 22, 2017, Mr. Williams had permission to leave the judicial district to "work in the transportation / offshore industries." About ten months later, he went from Mississippi to Pennsylvania from December 2017 through February 2018 to work for LeTourneau Enterprise clearing right of way for Entergy.

At the supervised release revocation hearing, Probation Officer Shameka Horton testified that Mr. Williams did not obtain permission to work in Pennsylvania.³ However, it is undisputed that he did have permission from Probation Officer Chris Whitver to work offshore a few months earlier. Also, Mr.

³ Chris Whitver was Mr. Williams' initial probation officer when he moved to Mississippi. Later, Shameka Horton became his probation officer.

Williams was not trying to hide the fact that he went to Pennsylvania to work. This is true because the only way Probation Officer Horton found out about his travel to Pennsylvania was through a report submitted to the Probation Office by Mr. Williams. Under these facts, the prosecution did not fulfill its burden to prove that Mr. Williams violated Standard Conditions of Supervised Release 2 and 5. Certiorari should be granted to correct this error.

VI. CONCLUSION

Based on the arguments presented above, Mr. Williams asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted June 10, 2022, by:



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CERTIFICATE OF SERVICE

I, Jacinta A. Hall, appointed under the Criminal Justice Act, certify that
today, June 10, 2022, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of
the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis
was served on Counsel for the United States by Federal Express, No. 7770 8709
1728, addressed to:

The Honorable Noel Francisco
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.



Jacinta A. Hall
Assistant Federal Public Defender