

No. _____

In The
Supreme Court of the United States

GARFIELD D. CAMPBELL,

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

J. Edward Yeager, Jr.
Counsel of Record
ATTORNEY AT LAW
P. O. Box 1656
Cornelius, NC 28031
(704) 490-1518 – Telephone
(866) 805-6191 – Facsimile
yeager@ncappeals.net

Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

- A. WHETHER THE FOURTH CIRCUIT COURT OF APPEALS ERRED BY DENYING MR. CAMPBELL'S MERITORIOUS ARGUMENT THAT THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY FINDING THAT MR. CAMPBELL WAS GUILTY OF VIOLATING THE TERMS OF HIS SUPERVISED RELEASE BASED ON EVIDENCE THAT HE HAD USED MARIJUANA A SINGLE TIME.

LIST OF PARTIES

GARFIELD D. CAMPBELL, *Petitioner*

UNITED STATES OF AMERICA, *Respondent*

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Garfield D. Campbell respectfully prays for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The decision of the Fourth Circuit Court of Appeals affirming the judgment entered against Mr. Campbell is reported at *United States v. Garfield D. Campbell*, 2022 WL 1261755, No. 21-4429 (4th Cir., 28 April 2022). (App A). Pursuant to Federal Rules of Appellate Procedure 32.1, the decision is unpublished.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit issued an unpublished decision on April 28, 2022. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), and this Petition is timely filed within ninety days of the underlying Judgment of the Fourth Circuit pursuant to United States Supreme Court Rule 13(1) and 28 U.S.C. § 2101.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S. Code § 3553 – Imposition of a Sentence

(a) Factors To Be Considered in Imposing a Sentence.—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; and

(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 sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.¹

(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.

(b) Application of Guidelines in Imposing a Sentence.—

(1) In general.—Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.—

(A) Sentencing.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) Statement of Reasons for Imposing a Sentence.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) **Presentence Procedure for an Order of Notice.**—Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) **Limited Authority To Impose a Sentence Below a Statutory Minimum.** — Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) **Limitation on Applicability of Statutory Minimums in Certain Cases.**—Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United

States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

- (1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;
- (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (3) the offense did not result in death or serious bodily injury to any person;
- (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and
- (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

U.S.S.G. § 7B1.1

- (a) There are three grades of probation and supervised release violations:
 - (1) Grade A Violations — conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device of a type described in 26 U.S.C. § 5845(a); or (B) any other federal, state, or local offense punishable by a term of imprisonment exceeding twenty years;
 - (2) Grade B Violations — conduct constituting any other federal, state, or local offense punishable by a term of imprisonment exceeding one year;
 - (3) Grade C Violations — conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment of one year or less; or (B) a violation of any other condition of supervision.

(b) Where there is more than one violation of the conditions of supervision, or the violation includes conduct that constitutes more than one offense, the grade of the violation is determined by the violation having the most serious grade.

STATEMENT OF THE CASE

The Defendant-Appellant, Garfield D. Campbell, was named in a Superseding Indictment filed on February 16, 2010, charging him with possession of a firearm by a felon. He entered a guilty plea on March 18, 2010, as part of a plea agreement. The case went to court for a sentencing hearing on May 17, 2011, the Honorable Frank D. Whitney, Judge Presiding. Judge Whitney sentenced Mr. Campbell to 120 months to be followed by three years of supervised release in a judgment entered on May 23, 2011. Mr. Campbell completed the active portion of his sentence on September 28, 2018.

On January 28, 2021, the probation officer filed a petition alleging that Mr. Campbell had violated the terms of his supervised release. The petition alleged: (1) “failure to comply with drug testing/treatment requirements (date violation concluded: 1/25/2021)” by his failure to report for drug testing on 1/22/2021 and his failure to report for a substance abuse treatment session on 1/25/2021; and (2) “drug/alcohol use (date violation concluded: 12/14/2020)” in that on 9/29/2020 Mr. Campbell “tested positive for marijuana and admitted the same by signing an admission statement” and on 12/14/2020 tested positive for marijuana and cocaine.

Judge David Cayer issued an arrest warrant which was served on February 26, 2021 in Clayton County, Georgia, Mr. Campbell’s new residence. On March 12, 2021, the probation office filed an addendum to the petition alleging a “new law

violation (date violation concluded: 2/24/2020.” The specifics of the allegation were that Mr. Campbell had been arrested by the Hampton (GA) police for a misdemeanor offense of theft by taking which remained pending.

Judge Whitney conducted a hearing on August 2, 2021. At the hearing the government announced that it was not proceeding on the addendum. Mr. Campbell denied the two allegations in the original petition. Probation Officer Dang Ly, from the Northern District of Georgia, testified that he first met Mr. Campbell in October 2020 and that Mr. Campbell admitted that he had used marijuana because of “stress with his girlfriends.”

During the hearing there was significant confusion because of typos on the government’s exhibits. Government’s exhibit 1 was an admission of drug use for “weed” which was signed by Mr. Campbell on October 29, 2020. After hearing testimony about the dates used on the various documents, the court ruled that “the admission occurred on October 29th, the use was September 23rd.” The government announced that it was not proceeding with the final two sentences of violation two – the allegation of testing positive for marijuana and cocaine – and was only proceeding on the allegation of marijuana usage.

The government also provided evidence regarding the alleged violation one – failure to comply with drug testing and/or treatment requirements. The petition contained two specific allegations – failure to report for a drug test on January 22, 2021 and failure to attend a treatment session on January 25, 2021. The government’s exhibit 2 was an email from a counselor in the facility that Mr.

Campbell “did not show on Friday, January 22, 2021, for UA.” The probation officer testified that he “received information” that Mr. Campbell failed to call in to speak with a counselor on January 25th. The officer admitted that he had spoken with Mr. Campbell and that Mr. Campbell had an appointment with his attorney on a separate case, as well as a court date, on January 21st, and that following the missed appointment on the 25th he had a subsequent telephone treatment session on the 30th.

Judge Whitney found violation one a “close call because of the possible attorney - - meeting with the attorney and the possible rescheduling of that drug treatment...and because it’s a close call I think the defense prevails since the Government has the burden of proof by preponderance, so the Court finds the defendant did not commit violation number one.” The court found that violation two was established by the admission to using marijuana. However, Judge Whitney’s finding on violation number two was limited by the government’s statement that it was not proceeding on the last two sentence. So, the finding amounted only to a finding that Mr. Campbell tested positive for marijuana one time and admitted that usage on October 29, 2020.

Judge Whitney determined that it was a Grade C violation pursuant to U.S.S.G. § 7B1.1 which, considering the relevant criminal history resulted in a sentencing range of seven to thirteen months. The court revoked supervised release and imposed a sentence of seven months.

Mr. Campbell entered notice of appeal on August 18, 2021 and filed a brief and Joint Appendix with the Fourth Circuit Court of Appeals on November 30, 2021. The government filed a response brief on January 31, 2022. The Court issued an unpublished *per curiam* opinion affirming the district court's judgment on April 28, 2022. (App A).

REASONS FOR GRANTING THE WRIT

Petitioner asserts that the Writ should be issued because the district court erred in its sentencing decision. Between the initial petition and the addendum, the government made several allegations against Mr. Campbell. However, at the hearing the government stated that it was not proceeding on the addendum. The government then struck the final two sentences of alleged violation two. After hearing the evidence Judge Whitney found that Mr. Campbell did not commit the allegations in violation one. As a result, the only evidence on which the district court could base a violation of supervised release was Mr. Campbell's admission on October 29, 2020 that he used marijuana on September 23, 2020.

Revocation is required by 18 U.S.C. § 3583(g) only if (1) a defendant possesses a controlled substance; (2) possesses a firearm; (3) refuses to comply with drug testing imposed as a condition of supervised release; or (4) when a defendant tests positive for illegal controlled substances more than 3 times over the course of the year. Clearly, sections (2), (3), and (4) are not applicable on the facts of this case.

Mandatory revocation is provided for by section (1) for possession of a controlled substance and there is case law that usage can support an allegation of

possession. *See, for example, United States v. Battle*, 993 F.2d 49 (4th Cir.1993).

However, in the case at bar the petition and the admission document were explicitly based on usage. Similarly, Judge Whitney stated that his determination of a violation was also because “defendant admitted that he *used* marijuana and that’s consistent with the fact that the - - the defendant tested positive for marijuana. So the Court would find the defendant did commit violation number two.” Therefore, possession by usage is not relevant to resolution of this matter because the government and the district court agreed that the case was based on the single positive drug test.

Because none of the conditions in § 3583(g) were applicable the evidence presented did not support mandatory revocation. At most it was within the court’s discretion to consider revocation under section (e)(3) which allows permissive revocation. To revoke supervised release and impose a seven-month sentence on these facts was an abuse of discretion. The original charges dated back to February 2010. Mr. Campbell accepted responsibility for his crime and entered a guilty plea. He served the bulk of a ten-year sentence. He was placed on supervised release on September 28, 2018, and had completed almost two and a half years of his three-year supervised release period before he was arrested on February 26, 2021.

Before this arrest there had been no prior revocations or modifications to his release. He was employed and was his grandmother’s caretaker. He presented numerous letters of reference to the court. Even the government stated that what he had done was “minor comparatively speaking what others have done.” The

government requested no particular sentence and no further term of supervised release. Judge Whitney acknowledged that “the defendant has performed generally very well up until recently on his supervised release. That’s shown through his certificates and letters of support that relates to his history and characteristics.” Still, the court characterized the positive test for marijuana as a “breach of trust with the Court” and imposed a sentence.

The standard of review for the Fourth Circuit was abuse of discretion. *United States v. Pregent*, 190 F.3d 279, 282 (4th Cir.1999). The Fourth Circuit has stated that a “district court has broad discretion when imposing a sentence upon revocation of supervised release.” *United States v. Webb*, 738 F.3d 638, 640 (4th Cir.2013).

The Fourth Circuit issued an unpublished *a per curiam* decision that the sentence “was not plainly unreasonable” given that the district court had explained how it weighed the violation.

The petitioner would respectfully assert, however, that imposing an active sentence for a single use of marijuana following a ten-year sentence and successful completion of two-thirds of a term of supervised release was an abuse of discretion.

Mr. Campbell was arrested in 2009 for possession of a firearm by a convicted felon. He entered a guilty plea and served his sentence. During that time, he took advantage of every opportunity to improve himself. When he was released, he became employed and was involved in drug treatment while caring for his grandmother. Mr. Campbell did well on supervised release in Georgia and was

close to completion of the term when he allowed the stress from relationship problems to lead him to make a bad decision and use marijuana. The sentence, however, was grossly disproportionate to his conduct. The district court erred in revoking his supervised release and imposing an active sentence.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits that his Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

/S/ J. Edward Yeager, Jr.
J. Edward Yeager, Jr.
P. O. Box 1656
Cornelius, NC 28031
Telephone: 704-490-1518
Facsimile: 866-805-6191
yeager@ncappeals.net

Counsel for Petitioner