

NO. 22-__

IN THE

SUPREME COURT OF THE UNITED STATES

October Term,

MATTHEW POULIN

Petitioner,

UNITED STATES OF AMERICA,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF

APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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No. 22-_____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM,

MATTHEW POULIN,

Petitioner,

VS.

UNITED STATES OF AMERICA

Respondents.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Bart E. Beals, appointed counsel for the petitioner seeks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

x Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s): U.S District Court and U.S. Court of Appeals, Seventh Circuit

 Petitioner has not previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

/s/ Bart E. Beals
(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

I, Bart E. Beals, court appointed counsel for Matthew Poulin, who served a sentence of twelve (12) months in the U.S. Bureau of Prisons, is the petitioner on behalf of Mr. Poulin in the above-entitled case. In support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my client's poverty he is unable to pay the costs of this case or to give security therefor; and I believe he is entitled to redress.

I further swear that the responses I have made to the questions and instructions below relating to my client's ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? No.
2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources? No.
3. Do you own any cash or have a checking or savings account? No.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.
5. List the persons who are dependent upon you for support and state your relationship to those persons.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Bart E. Beals
(Signature)

QUESTIONS PRESENTED FOR REVIEW

- I. Whether the district court erred by sentencing Mr. Poulin to twelve (12) months considering the circumstances of the case?
- II. Whether the special condition of supervised release that strictly prohibited the consumption of alcohol was unreasonable?

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IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW POULIN

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

The Petitioner Matthew Poulin respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit which was entered in the above-entitled case on July 11, 2022.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, entitled *United States v. Matthew Poulin*, is reported at *United States v. Poulin*, 2022 U.S. App. Lexis 18955, and is attached hereto in the appendix A at 1a.

JURISDICTION

On July 11, 2022, the United States Court of Appeals for the Seventh Circuit affirmed the sentence of the district court. No petition for rehearing was sought.

Petitioner seeks review of the Seventh Circuit judgment in this Court pursuant to 28 U.S.C. § 1254 (1).

STATUTE INVOLVED

Title 18, United States Code, Section 3553, provides, in pertinent part:

(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—

STATEMENT OF THE CASE

On November 15, 2021, Mr. Poulin pleaded guilty to paragraph 1A of the petition to violate his supervised release that was filed on July 1, 2021. The presentence investigation report (“PSR”) stated that Mr. Poulin had a sentencing range of 8-14 months for 19-20030 and 4-10 months for 11-40116. Mr. Poulin admitted the violation in exchange for the dismissal of the other paragraphs in the violation reports and the understanding that the government would ask for a concurrent sentence at the low end of the ranges. The revocation hearing took place over two separate dates. The hearing began on November 15, 2021 and was continued to November 30, 2021.

On November 15, 2021, the government acknowledged that it was asking for a concurrent sentence at the low end of the guidelines range. Mr. Poulin accepted responsibility by pleading guilty to paragraph 1A of the violation report and presented mitigation with a request to be sentenced to approximately four (4) months, which would have been time served. The defense presented arguments in support of its objections to the violation report that had been filed prior to the hearing. After, the defense presented arguments in mitigation, the defense presented its objections to several conditions of supervised release. Mr. Poulin objected to the conditions of no contact with male minors and a strict prohibition of the consumption of alcohol as opposed to the prohibition of the excessive use of alcohol. The district court had questions regarding the objections and due to its questions scheduled a subsequent hearing to address those issues.

The new hearing was scheduled for November 30, 2021. During the second hearing the district court heard testimony from the supervised release officer, arguments from the government, and arguments from the defense. During the November 30, 2021, hearing, it was the supervised release officer that mentioned and effectively requested the consecutive sentence during her testimony to the court. After the district court heard all the testimony and arguments the district court sentenced Mr. Poulin to consecutive terms of incarceration of eight (8) months and four (4) months.

REASONS FOR GRANTING THE WRIT

THE SEVENTH CIRCUIT COURT OF APPEAL'S DECISION WAS INCORRECT FOR TWO REASONS

- A. Appellate Court Erred by Affirming the District Court's Decision Since the District Court's Sentence Was Unreasonable In Light of the Circumstances

Two factors define reasonable sentences: (1) is it reasonable in light of the 3553 factors, and (2) will the sentence “ultimately be deemed a reasonable one.” *United States v. Wallace*, 458 F.3d 606, 609 (7th Cir. 2006). The district court is required to follow the dictates of 18 U.S.C. § 3553(a). *United States v. Dean*, 414 F.3d 725, 728 (7th Cir. 2005). Section 3553(a) delineates seven (7) factors. The district court does abuse its discretion when it fails to consider a relevant factor(s) that should have received significant weight. *United States v. Long Soldier*, 431 F.3d 1120, 1123 (8th Cir.2005).

A sentence within the guidelines range is presumed to be reasonable. *Rita v. United States*, 551 U.S. 338, 347 (2007). “[D]istrict judges are at liberty to reject *any* Guideline on policy

grounds,” but “they must act reasonably when using that power.” *United States v. Corner*, 598 F.3d 411, 415 (7th Cir.2010). “[A]n individual judge should think long and hard before substituting his personal penal philosophy for that of the Commission.” *United States v. Higdon*, 531 F.3d 561, 562 (7th Cir. 2008).

The District Court appeared to presume that he guidelines ranges was reasonable and the Appellate erred by affirming the sentence under those circumstances. The circumstances of Mr. Poulin’s case lend itself to a much lower sentence for several reasons. Mr. Poulin was charged with nonviolent drugs related conduct. Mr. Poulin pleaded guilty to Paragraph 1A of the violation report. He accepted responsibility. He also acknowledged the extreme hardship he had already endured by being detained four months prior to the hearing. Mr. Poulin lost his job , lost his housing due to the violation and the sentence imposed based on the violation. Under the circumstances his sentence was unreasonable.

B. The Prohibition of Alcohol As A Condition of Supervised Release was Excessive
A. Unreasonable Restrictions

There are three factors in *18 U.S.C. 18 U.S.C. §§ 3553(a)* and *3583(c)* and (d) defines the parameters of reasonableness for conditions of supervised release. First, the conditions of supervised release "must be reasonably related to (1) the defendant's offense, history and characteristics; (2) the need for adequate deterrence; (3) the need to protect the public from further crimes of the defendant; and (4) the need to provide the defendant with treatment." *United States v. Angle*, 598 F.3d 352, 360-61 (7th Cir. 2010); *see 18 U.S.C. § 3583(d)(1)*.

Second, the conditions "cannot involve a greater deprivation of liberty than is reasonably necessary to achieve the goal of deterrence, incapacitation, and rehabilitation." *United States v. Goodwin*, 717 F.3d 511, 522 (7th Cir.). Third, the conditions must be consistent with any pertinent statement that the United States Sentencing Commission issues. 18 U.S.C. § 3583(d)(3).

The district court's strict prohibition of the consumption of alcohol is excessive since it is not necessary to protect the public from further crimes and is not required for Mr. Poulin to receive treatment. The excessive restriction effectively created a "greater deprivation of liberty" of Mr. Poulin than is necessary to achieve the goal of deterrence. Mr. Poulin has eight (8) more years of supervised release that he must serve. This means that he will be judicially prohibited from ever consuming alcohol, regardless of the quantity or festive time of the year for nearly another decade based on alleged conduct from 2006 and 2018. This restriction of Mr. Poulin's liberty is excessive and unnecessary.

CONCLUSION

WHEREFORE, for the reasons stated above, Petitioner Matthew Poulin respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States of Appeals for the Seventh Circuit entered on July 11, 2022.

Respectfully submitted,

/s/ Bart E. Beals
Bart E. Beals
Petitioner for Matthew Poulin

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No. 22- _____

IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW POULIN

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondents.

PROOF OF SERVICE

I, _____, do swear or declare that on this date, October 8, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to the Solicitor General of the United States with first-class postage prepaid and via hand delivery to the Clerk of the Supreme Court of the United States.

The name and addresses of those served are as follows:

Clerk	Solicitor General of the United States
Supreme Court of the United States	Room 5614
Washington, D.C. 20543	950 Pennsylvania Ave., NW
	Washington, D.C. 20530

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 8, 2022

(Signature)

APPENDICES

Opinion Below

Appendix A

United States v. Poulin, 2022 U.S. App. Lexis 18955

1a

APPENDIX A

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued July 7, 2022
Decided July 11, 2022

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

Nos. 21-3293 & 21-3294

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MATTHEW POULIN,
Defendant-Appellant.

Appeals from the United States District
Court for the Central District of Illinois.

Nos. 19-cr-20030-001 & 11-cr-40116

Michael M. Mihm,
Judge.

O R D E R

Matthew Poulin comes before us after his supervised release in two separate cases was revoked because he had used cocaine. He appeals two aspects of his revocations: the overall length of his term of reimprisonment and the condition that he abstain entirely from the use of alcohol while he is on a renewed term of supervised release. Because the judge adequately justified both aspects, we affirm.

I

In 2011, Poulin pleaded guilty to receiving and possessing child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A), (a)(5)(B), (b)(1)–(2). After two appeals, the

Nos. 21-3293 & 21-3294

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district court ultimately sentenced Poulin to 84 months' imprisonment and 10 years of supervised release. Among other conditions, the court required Poulin to register as a sex offender.

Poulin did not register as required, violating both the conditions of release and 18 U.S.C. § 2250(a). This led to (1) revocation of his supervised release and reimprisonment, and (2) a criminal conviction and sentence for the § 2250(a) offense. Combining the revocation sentence and the § 2250(a) sentence, the court sentenced Poulin to an aggregated 24 months in prison, followed by two concurrent ten-year terms of supervised release. (One term corresponded to his revocation—the "revocation term"—and the other corresponded to his conviction for failing to register as a sex offender—the "failure-to-register term.")

Seven months after Poulin began his new terms of supervised release, he used cocaine in violation of his release conditions. He admitted the violation, and the district court revoked the remainder of his two supervised-release terms. Poulin now faced two revocation sentences, and in return for his cooperation, the government recommended two concurrent sentences. The judge instead sentenced him to consecutive terms of imprisonment (four months for violating the revocation term and eight months for violating the failure-to-register term), followed by two concurrent eight-year terms of supervised release. The judge also imposed a special condition of release, under which Poulin is required to abstain entirely from alcohol.

The judge gave a thorough explanation of his sentencing rationale. He ran the revocation terms consecutively, he said, because he was "very worried" about the risk of recidivism. Poulin's failure to register and his cocaine use showed that he had "resist[ed] enforcement of the rules" of his supervised release and did not respect the law. Further, according to the probation office's report, which the court adopted, Poulin had failed to fulfill the requirement that he notify that office about his relationships with women living with minor children. This failure, which could have led to undisclosed, close contacts between Poulin and minors, confirmed Poulin's "attitude problem" and compromised the probation office's ability to monitor him and protect these children.

The court also explained why it rejected Poulin's objection to the restriction on his alcohol use. The judge observed that the record showed that any alcohol use "causes [Poulin] to act in a manner that's inappropriate." He gave the following examples: Poulin was diagnosed with an alcohol-induced mood disorder and alcohol dependence; he previously admitted that he responds to stress by drinking alcohol; Poulin had once supplied alcohol and money for an 18-year-old woman and her 15-year-old brother to

buy crack cocaine; and the probation office reported that Poulin was removed from sex-offender treatment because of alcohol use.

II

On appeal, Poulin first argues that his combined reimprisonment term of 12 months is unreasonably long. (He does not argue that the two terms *must* be concurrent.) He reasons that the offenses underlying his revocation were “nonviolent,” and he accepted responsibility by admitting guilt. But we normally will not upset a term of reimprisonment unless, under the factors set forth in 18 U.S.C. § 3583(e), the sentence is plainly unreasonable. *United States v. Raney*, 842 F.3d 1041, 1043 (7th Cir. 2016). Section 3583(e), governing revocations of supervised release, repeats most of the factors of 18 U.S.C. § 3553(a) that district courts routinely use at sentencing. *United States v. Phillips*, 791 F.3d 698, 701 (7th Cir. 2015).

We see nothing unreasonable about the 12-month term of reimprisonment imposed here. The judge furnished an “adequate statement of [his] reasons,” consistent with 18 U.S.C. § 3553(a), for the consecutive four-month and eight-month terms. *United States v. Jones*, 774 F.3d 399, 404–05 (7th Cir. 2014). First, based on Poulin’s repeated disrespect of the law (failure to register and cocaine use), see § 3553(a)(1), the judge thought that Poulin’s risk of recidivism was high, even though his offenses were not violent. See § 3553(a)(2)(A)–(C). Second, the judge also reasonably viewed Poulin’s failure to meet his obligation to disclose his romantic relationships—which created the risk of undisclosed contacts with minor children—as evidence of his “attitude problem,” his “ignor[ing] the rules,” and his potentially endangering children. Finally, the court found that Poulin was “not respectful of the process” and flouted the release conditions. *Jones*, 774 F.3d at 405.

Poulin next argues that the condition of supervised release requiring him to abstain from alcohol is “not necessary” to protect the public or to treat him. We review the ban on alcohol use for abuse of discretion by assessing whether that ban is “reasonably related” to the “adequate deterrence” of future crimes or providing Poulin “correctional treatment.” See *United States v. Armour*, 804 F.3d 859, 867 (7th Cir. 2015); 18 U.S.C. §3553(a)(2). The court permissibly found that a ban on alcohol use would serve both ends. As it explained, Poulin had shown alcohol dependence and stress-based alcohol use, he had supplied alcohol to two teenagers, and (based on the probation office’s report) he was removed from sex-offender treatment because of his use of alcohol. These factors adequately justify the complete ban on alcohol use. See *United States v. Poulin*, 809 F.3d 924, 933 (7th Cir. 2016).

We therefore AFFIRM the judgments of the district court.