

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DOMINIQUE LAMAR JOHNSON,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Respectfully submitted,

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QUESTION PRESENTED FOR REVIEW

Whether the District Court acted excessively by sentencing Petitioner to a sentence two and half times above the supervision guideline range for administrative violations and deprived the Petitioner of liberty within the terms of 18 U.S.C. 3583 (c) and (d).

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IN THE SUPREME COURT OF THE UNITED STATES

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v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

The Petitioner, DOMINIQUE LAMAR JOHNSON, Appellant in the United States Court of Appeals for the Fifth Circuit in Case No. 21-51189 and the Defendant in Case No. MO-11-CR-330, submits this Petition for Writ of Certiorari and respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on September 09, 2022.

OPINION BELOW

On September 09, 2022, the United States Court of Appeals for the Fifth Circuit entered its Opinion affirming the verdict guilty returned against Petitioner. A copy of the Opinion is attached as Appendix A.

The District Court's Criminal Judgment is attached as Appendix B. A copy of the Judgment from Case No. MO-11-CR-330 is included within Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code sec. 1254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states, in pertinent part to the case *sub judice*:

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

18 U.S.C. sec. 3583(d) provides, in part: The Court may order, as a further condition of supervised release, to the extent that such condition-

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); ...

STATEMENT OF THE CASE

On or about March 28, 2012, the Petitioner was sentence by the Hon. Robert Junell, United States District Judge, Western District of Texas, to 84 months incarceration and five years of supervised release for the conviction of Conspiracy to Distribute and Possess with Intent to Distribute Cocaine Base "Crack". Subsequently, Petitioner's sentence was reduced to 70 months pursuant to 18 U.S.C. Sec. 3582(c)(2).

Petitioner's supervision commenced on or about December 23, 2018. The District Court had revoked Petitioner's supervised release twice prior to the case *sub judice*. He had been re-sentenced for 24 months based on an arrest for Possession of a Controlled Substance.

In 2020, the District Court re-sentenced Petitioner to 13 months incarceration.

On or about September 07, 2021, the United States Probation Office for the Western District of Texas, Midland Division filed a Petition for Warrant for Offender Under Supervision. The alleged violations were administrative. Petitioner had provided urine samples positive for mari-

juana on three occasions and had also failed to complete a life skills substance abuse course.

On or about April 07, 2021, Petitioner entered a true to the allegations in the Petitioner for Warrant for Offender Under Supervision. The United States District re-sentenced Petitioner to 36 months, but discontinued supervised release post incarceration.

Petitioner appealed to the United States Court of Appeals for the Fifth Circuit. On or about September 09, 2022, the Court of Appeals rendered a decision affirming the District Court. The Court of Appeals concluded that the District Court had not abuse its discretion or imposed a substantively unreasonable revocation sentence by departing upward from the sentencing guideline.

REASON FOR GRANTING THE WRIT

The District Court erred by imposing punishment involving a greater deprivation of liberty than is reasonably necessary to achieve the goal of deterrence, incapacitation and rehabilitation. With the Sentencing Reform Act of 1984, Congress eliminated most forms of parole for a system of supervised release. Johnson v. United States, 529 U.S. 53, 59-60 (2000). Post confinement monitoring is overseen by the sentencing court, rather the Parole Commission. Gozlon-Peretz v. United States, 498 U.S. 395, 400-401 (1991). The sentencing court is authorized to impose a term of supervised release following imprisonment under 18 U.S.C. sec. 3583(a).

The offender is required to abide by certain conditions, some specified and some discretionary. 18 U.S.C. sec. 3583(d). Upon violation of a condition, the sentencing court may revoke supervised release and require the person to serve in prison for all or part of a term. 18 U.S.C. Sec. 3583(e)(3).

The purpose of supervised release has been variously described as rehabilitation, deterrence, training, treatment, protection of the public and reduction of recidivism. Johnson, 529 U.S. at 59-60. Supervised release was not intended to be imposed for the purposes of punishment or incapacitation, since those purposes will have been served to the extent necessary by the term of imprisonment. Id. at 59. It is the decompression stage between prison and full release. Conditions of supervised release can not involve a greater deprivation of liberty than is reasonably necessary to achieve goals of deterrence, incapacitation and rehabilitation.

A hearing was had in the United States District Court, Western District of Texas, sitting in Midland, Texas. The District Judge read into the record the allegations from the Petition for Warrant for Offender Under Supervision. Petitioner pleaded “true” to the allegations

In applying the plainly unreasonable standard, the United States District Court imposed a greater imposition on liberty than was necessary to meet the objectives of 18 U.S.C. sec. 3583. United States v. Olano, 507 U.S. 725 (1993); Puckett v. United States, 556 U.S. 129, 135 (2009). Error was further compounded by the affirmance of the United States Court of Appeals for the Fifth Circuit.

A district court is directed by 18 U.S.C. sec. 3553(a)(3) and (a)(4)(B) to consider the kinds of sentence available and the applicable sentencing range of the Guidelines or Commission policy statements. United States v. Garza, 706 F.3d 655 (5th Cir. 2013). A special condition must comport with the limits provided in 18 U.S.C. sec. 3583(a). Factors are (1) nature and circumstances of the offense; (2) deterrence; (3) protection of the public; and (4) provision for training, medical treatment and correctional treatment. A revocation sentence must involve no greater deprivation of liberty than is reasonably necessary to serve the purposes of section

3553; United States v. Ellis, 720 F.3d 220, 225 (5th Cir. 2013). The deprivation of liberty implicates constitutional protection. See Calder v. Bull, 390 Dall. (3 U.S.) 386 (1798).

Here the sentence above the sentencing guideline is a greater deprivation of liberty than is reasonably necessary to serve its purposes. Accord United States v. Booker, 543 U.S. 270 (2005).

The Section 7 sentencing guideline in this case was eight to 14 months (ROA.94-95). 18 U.S.S.G, Sec. 7B1.4. Defense counsel argued for the continuation of supervised release, so that Petitioner, who had positive urinalyses for marijuana, could complete course work and supervision programs for drug use (ROA.152).

The District Court re-sentenced Petitioner greater than double the Section 7 Guideline. The sentence was unreasonable on the ground that the guideline accounts for the misconduct. Petitioner was penalized excessively due to administrative violations, marijuana use and failure to complete an on-line course.

18 U.S.S. Sec. 3585 restricts the District Court on a supervision revocation proceeding to these factors: the nature and circumstances of the offense; the offense and characteristics of the defendant and the need to provide adequate deterrence to criminal conduct.

The District Court found that Johnson had a history of not complying with conditions (ROA.154).

This amount of incarceration is unreasonable as it fails to accord the imprisonment provided in the Bureau of Prisons exceeds the Section 7 guideline by more than twice the recommendation. North Carolina v. Pearce, 395 U.S. 711 (1969).

Therefore, Petitioner requests that the United States Supreme Court grant this Petition for Writ of Certiorari on the ground that the sentencing ordered by the District Court place a greater

deprivation on Petitioner's liberty than is necessary.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Petition for Writ of Certiorari should be granted and prays that the Order Revoking Supervised Release be reversed, and the case be remanded for re-sentencing pertaining to the supervision revocation.

Separately Petitioner prays for such relief, in law or in equity in which she is entitled.

PRAAYER FOR RELIEF

Petitioner, DOMINIQUE LAMAR JOHNSON, requests that the Petition for Writ of Certiorari be granted for the reasons stated and that the conviction entered against her be vacated and this case remanded for re-sentencing, and such other relief to which Petitioner would be entitled to receive in law or in equity.

Respectfully submitted,

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Attorney for Petitioner

APPENDIX A

(Opinion of the United States Court of Appeals, for the Fifth Circuit)

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 9, 2022

Lyle W. Cayce
Clerk

No. 21-51189
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DOMINIQUE LAMAR JOHNSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:11-CR-330-2

Before DAVIS, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Dominique Lamar Johnson appeals the 36-month term of imprisonment imposed following the revocation of his supervised release. Johnson asserts that his revocation sentence, which was above the range

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-51189

recommended by the policy statements of the Sentencing Guidelines, is substantively unreasonable.

We review his sentence under the plainly unreasonable standard. *See Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766-67 (2020); *United States v. Warren*, 720 F.3d 321, 326 (5th Cir. 2013); *see also United States v. Cano*, 981 F.3d 422, 427 (5th Cir. 2020). The record reflects that the district court's explanation for the chosen revocation sentence was reasoned, fact-specific, and consistent with the statutory sentencing factors relevant to revocation sentences. *See Warren*, 720 F.3d at 332-33. The district court did not abuse its discretion or impose a substantively unreasonable revocation sentence. *See id.* at 332.

The judgment of the district court is AFFIRMED.

APPENDIX B

(Order Revoking Supervised Release, and Resentencing of Defendant, United States District
Court for the Western District of Texas, Midland Division)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA
Plaintiff

VS

(2) DOMINIQUE LAMAR JOHNSON
Defendant

§
§
§
§
§
§
§

Case No. MO-11-CR-00330-DC

ORDER REVOKING SUPERVISED RELEASE and
RESENTENCING OF DEFENDANT

On this the October 29, 2021, came on to be heard the Government's Motion for Revocation of Supervised Release granted by virtue of Judgment entered on June 8, 2020, in the above numbered and styled cause.

Defendant appeared in person and was represented by attorney of record, Steve Hershberger. The United States was represented by Assistant United States Attorney, Shane Chriesman.

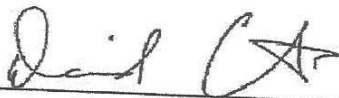
After reviewing the motion and the records in this case as well as hearing testimony and arguments of counsel, the Court is of the opinion that said Defendant has violated the provisions of his Supervised Release and that the ends of justice and the best interests of the public and of the Defendant will not be subserved by continuing said Defendant on Supervised Release. Further, the Court is of the opinion that the Motion for Revocation of Supervised Release should be, and it is hereby **GRANTED**.

IT IS THEREFORE ORDERED that the term of Supervised Release of Defendant named above granted by the Judgment entered on June 8, 2020, and it is hereby **REVOKED** and **SET ASIDE** and the Defendant is resentenced as follows:

The Defendant, **DOMINIQUE LAMAR JOHNSON**, is hereby committed to the custody of the United States Bureau of Prisons to serve a term of imprisonment of Thirty-Six (36) months. No further Supervised Release shall be imposed.

The Clerk will provide the United States Marshal Service with a copy of this Order and a copy of the Judgment entered on June 8, 2020, to serve as the commitment of the Defendant.

SIGNED this 9th day of November, 2021.



David Counts
United States District Judge