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IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

CHASTITY REANEE ORELLANA
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. 22-60162
consolidated with:
Fifth Circuit Case No. 22-60163

PETITION FOR WRIT OF CERTIORARI

Omodare B. Jupiter (MS Bar # 102054)
Federal Public Defender
N. and S. Districts of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510

Michael L. Scott (MS Bar # 101320)
Assistant Federal Public Defender

Attorney for Defendant-Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the district court erred by revoking Ms. Orellana's supervised release because its revocation decision relied on conduct that occurred after her term of supervised release ended.

PARTIES TO THE PROCEEDING

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

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I. OPINIONS BELOW

Federal Grand Juries for the Northern District of Mississippi returned two Indictments against Ms. Orellana. The first was for assaulting R.D., a Choctaw Indian, with a deadly weapon on the Choctaw Indian Reservation, on July 5, 2017, in violation of 18 U.S.C. §§ 113, 1151 and 1153. The Grand Jury returned this Indictment on December 14, 2017. The second was for assaulting J.N. with a deadly weapon on the Choctaw Indian Reservation, on January 26, 2017, in violation of 18 U.S.C. §§ 113(a)(3) and 1153. The Grand Jury returned this Indictment on February 21, 2018.

In a consolidated hearing on June 7, 2018, Ms. Orellana pled guilty to the charges stated in both Indictments. A consolidated sentencing hearing followed on October 10, 2018. The court sentenced Mr. Orellana to “[t]ime Served on Count 1 of the Indictment in Dkt. No. 1:17CR00140-001, and time served on Count 1 of the Indictment in Dkt. No. 1:18CR00065-001.” It also ordered a total of three years of supervised release. The court entered both Judgments on October 11, 2018.

On August 22, 2019, the Northern District of Mississippi transferred both cases to the Southern District of Mississippi for purposes of administering Ms. Orellana’s supervised release. About a month later on September 12, 2019, the terms of Ms. Orellana’s supervised release were modified as follows: Ms. Orellana “must reside in a Community Corrections Center located at Dismas Charities of

Hattiesburg, 5209 Hwy 52, Hattiesburg, MS 39401, and shall participate in community corrections program, abiding by all the rules and regulations of the center for a period of (8) months.”

On March 30, 2020, the Probation Officer filed a Warrant for Offender Under Supervision. The specifics of the supervised release violations are set forth below.

The court conducted a supervised release revocation hearing on March 9, 2022. It dismissed or partially dismissed two of the alleged violations, and Ms. Orellana pled guilty to the remaining violations. The court ordered the following sentences:

- 1) Six months in prison to run consecutively to the term of imprisonment imposed in case number 3:19cr226. Twelve months supervised release to run concurrently to the supervised release term imposed in case number 3:19cr226.
- 2) Six months in prison to run consecutively to the sentence imposed in case number 3:19cr227. Twelve months supervised release to run concurrently to the supervised release term imposed in case number 3:19cr227.

In summary, the district court ordered Ms. Orellana to serve a total of 12 months in prison followed by 12 months of supervised release. The court entered Revocation Judgments on March 16, 2022. The two Revocation Judgments are attached hereto as Appendices 1 and 2.

Ms. Orellana appealed the district court's rulings to the United States Court of Appeals for the Fifth Circuit. She filed the Notices of Appeal in both cases on March 21, 2022. The Fifth Circuit consolidated the two cases for appeal purposes. The Fifth Circuit case number is 22-60162, consolidated with case number 22-60163.

On September 29, 2022, the Fifth Circuit entered an Order affirming the district court's rulings. It entered a Judgments on the same day. The Fifth Circuit's Order and its Judgments are attached hereto as composite Appendix 3.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgments in this case on September 29, 2022. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, 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. STATUTE INVOLVED

A court may ...

revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release

18 U.S.C.A. § 3583(e)(3).

IV. STATEMENT OF THE CASE

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

These consolidated cases arise out of a supervised release revocation proceeding. The underlying criminal convictions were for violations of 18 U.S.C. §§ 113, 1151 and 1153. The courts of first instance, which were the United States District Court for the Northern and Southern Districts of Mississippi, had jurisdiction over the cases under 18 U.S.C. § 3231 because the criminal charges levied against Ms. Orellana arose from the laws of the United States of America.

B. Statement of material facts.

1. Ms. Orellana's background.

Ms. Orellana is a Native American member of the Choctaw Indian Tribe. As with many Choctaws, she suffers from alcohol addiction. Also, like many female Choctaws, she suffered sexual abuse as a child. A family friend began molesting Ms. Orellana when she was six. Beginning at age 11, her mother's live-in boyfriend began molesting her, and that went on for about 10 years. Even though Ms. Orellana reported the molestation, nothing was done about it.

Ms. Orellana has children with four different men. Of the four, three physically abused her, and were never punished for their wrongdoing. One of the abuse incidents caused her to miscarry. In summary, like many Native Americans,

Ms. Orellana has had few opportunities and has not experienced the “American dream” that many of us live.

2. The supervised release violations.

The Petition for Warrant alleges the following supervised release violations:

1) Mandatory Condition 1: Prohibition against committing another offense.

Officers arrested Ms. Orellana on January 25, 2019, for driving without a license, no insurance and DUI first offense. She pled guilty to the charges.

2) Standard Condition: Requirement to notify the probation officer within 72 hours of contact with a law enforcement officer. Ms. Orellana failed to report the January 25, 2019, arrest to her probation officer.

3) Standard Condition: Prohibition against leaving the district without prior permission from the probation officer. Ms. Orellana left the district without permission of her probation officer on January 25, 2019.

4) Standard Condition: Requirement to live at a place approved by the probation officer, and to notify the probation officer 72 hours before a change of residence is expected. Ms. Orellana was living with Eddie Scott Dixon on June 7, 2019, without her probation officer’s permission.

5) Standard Condition: Requirement to report to the probation officer, as instructed. Ms. Orellana failed to report to her probation officer, as instructed, on December 18, 2019, and January 22, 2020.

On the prosecution's oral motion at the revocation hearing, the court dismissed the second alleged violation. Also, the court found Ms. Orellana not guilty of the first portion of alleged violation four, i.e., that she did not report to her probation officer within 72 hours of her change of residence. She pled guilty to all other violations, and the court accepted her admission of guilt.

3. Sentencing.

After the court pronounced guilt but before it ordered a sentence, the court stated:

[T]he reason I called [Probation Officer] Simpson over here to the side a minute ago is because I have had conversations with him during the supervision about this defendant. There were efforts made to avoid revocation that I am aware of. And some of what, I guess, I've heard from Officer Simpson along the way is – *I can't erase from my memory and it probably is going to impact how I view things.* So I'm going to put him on the stand and I am going to ask him to sort of fill in some gaps here.

The court asked Mr. Simpson if Ms. Orellana had any arrests, other than those listed in the Petition for Warrant. He responded: "She had two DUI arrests and one was by the city of Louisville, and one was in the county of Winston. And there was a malicious mischief / burglary in Kemper County." On cross-examination, Mr. Simpson admitted that the malicious mischief arrest and one of

the two DUI arrests occurred after Mr. Orellana's term of supervised release ended.¹

As stated above, Ms. Orellana pled guilty to most of the alleged violations. The court ordered her to serve a total of 12 months in prison, followed by 12 months of supervised release.

¹ We note that a supervised release revocation hearing can occur after a defendant's term of supervised release ends, so long as the petition for warrant is filed before the supervised release period ends. *See United States v. Jimenez-Martinez*, 179 F.3d 980, 981-82 (5th Cir. 1999). That is what happened in Ms. Orellana's case.

V. ARGUMENT

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

When deciding whether to revoke a defendant's supervised release, district courts cannot consider conduct that occurs after the defendant's supervision ends. In Ms. Orellana's case, the district court did just that. It considered two arrests that occurred after her term of supervision ended. This Court should grant certiorari to correct the district court's error and establish definitive precedent on the issue. *See* Rule 10, Supreme Court Rules (stating certiorari should be granted when a court of appeals entered an order that "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power").

B. The district court erred by revoking Ms. Orellana's supervised release because its revocation decision relied on conduct that occurred after her term of supervised release ended.

Ms. Orellana's argument on appeal is straight forward and short. 18 U.S.C. § 3583 allows a court to terminate supervised release and order the defendant to return to prison, so long as a defendant "violates" the terms of supervision. Under Fifth Circuit law, the term "violation" refers to a "violation of a condition of supervised release occurring *during the supervision term*[".]” *United States v. Naranjo*, 59 F.3d 371, 383 (5th Cir. 2001). That is, if a revocation hearing occurs

after a defendant's term of supervised release ends, as in Ms. Orellana's case, then a court can consider only conduct that occurred during the supervised release term.

At the beginning of Ms. Orellana's revocation hearing, the district judge called the probation officer to the bench for an off the record conference. Soon after that, the court stated:

[T]he reason I called [Probation Officer] Simpson over here to the side a minute ago is because I have had conversations with him during the supervision about this defendant. There were efforts made to avoid revocation that I am aware of. And some of what, I guess, I've heard from Officer Simpson along the way is – I can't erase from my memory and it probably is going to impact how I view things. So I'm going to put him on the stand and I am going to ask him to sort of fill in some gaps here.

From this comment, we learn that the court wanted to avoid revoking Ms. Orellana's supervised release. It is also clear that the court's conversation with the probation officer "is going to impact how [the court] view[s] things."

This leads us to the content of the conversation between the court and the probation officer. Since the bench conference was off the record, we do not know the exact content of the conversation. However, the court called Mr. Simpson to the witness stand to elaborate on the conversation.

Mr. Simpson testified that Ms. Orellana had arrests other than those listed in the Petition for Warrant. He testified: "She had two DUI arrests and one was by the city of Louisville, and one was in the county of Winston. And there was a malicious mischief / burglary in Kemper County." On cross-examination, Mr.

Simpson admitted that the malicious mischief arrest and one of the two DUI arrests occurred after Mr. Orellana's term of supervised release ended.²

In summary, we know the following from the revocation hearing transcript:

- The court and the probation officer made efforts to avoid revoking Ms. Orellana's term of supervised release.
- The court's opinion on revocation was impacted by additional information provided by Mr. Simpson.
- The information provided by Mr. Simpson included two arrests that occurred after Ms. Orellana's supervision ended.


Under law set forth by the Fifth Circuit in *Naranjo*, a court cannot consider conduct outside the supervised release time period when it decides if supervision should be revoked. Based on the above facts, the district court's decision to revoke Ms. Orellana's supervised release was based on two arrests that occurred after her term of supervision ended. This error by the district court weighs in favor of granting certiorari in this case, and ultimately vacating the Revocation Judgment.

² See *supra*, footnote 1.

VI. CONCLUSION

Based on the arguments presented above, Ms. Orellana asks the Court to grant her Petition for Writ of Certiorari in this case.

Submitted January 5, 2023, by:



Michael L. Scott
Assistant Federal Public Defender
Office of the Federal Public Defender
Southern District of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510

Attorney for Defendant-Petitioner

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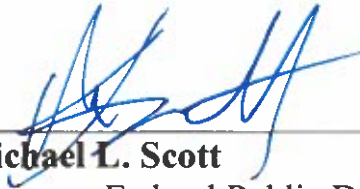
CERTIFICATE OF SERVICE

I, Michael L. Scott, appointed under the Criminal Justice Act, certify that today, January 5, 2023, 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. 770951520577, addressed to:

The Honorable Elizabeth B. Prelogar
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.



Michael L. Scott
Assistant Federal Public Defender