

No. 23-

IN THE
Supreme Court of the United States

ROSHUA MARQUISTON WHITE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Petitioner, ROSHUA MARQUISTON WHITE, pleaded guilty to conspiracy to possess with intent to distribute 500 or more grams of methamphetamine. He objected to the Presentence Investigation Report because he was given no reduction for minor or minimal party. The District Court denied the objection. On appeal, Mr. White argued to the Fifth Circuit Court of Appeals (“Fifth Circuit” or “Appellate Court”) that this was error. However, the Fifth Circuit disagreed and affirmed the District Court.

Mr. White submits that the action of the Fifth Circuit was done without any meaningful standard of review, as established by this Court. Thus, the Fifth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court. A compelling reason is thus presented in support of discretionary review. Mr. White therefore requests that this Honorable Court grant this Petition and allow this case to proceed to resentencing with a reduction for minor/minimal party status.

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the caption:

Roshua Marquiston White:	Petitioner (Defendant-Appellant in the lower Courts)
United States of America:	Respondent (Plaintiff-Appellee in the lower Courts)

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PETITION FOR WRIT OF CERTIORARI

Petitioner, ROSHUA MARQUISTON WHITE, requests this Court grant this petition and issue a Writ of Certiorari to review the decision of the Fifth Circuit . Mr. White respectfully submits the District Court committed reversible error by failing to grant a Guideline reduction to the sentencing Guideline range under U.S.S.G. § 3B1.2.

The Guidelines provide a 2-to-4-level reduction if the accused was a minor or minimal party. Based on the Government's arguments, the Fifth Circuit did not apply the law to the facts of the case and instead held that Mr. White was not entitled to relief without application of a standard of review. (Appendix A, page 2). More specifically, the Appellate Court directly accepted the Government's arguments on this claim. Thus, the Fifth Circuit did not apply any meaningful standard of review in this case. For the reasons set forth herein, Mr. White submits that this is reversible error. He further contends that, when the proper standard of review is applied to the facts of this case, the sentence imposed must be vacated and this matter reversed and remanded for resentencing with a reduction for minimal participation or minor party status.

REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

From the Federal Courts:

The Order of the United States Court of Appeals for the Fifth Circuit, *United States v. Roshua Marquiston White*, No. 21-10839 (5th Cir. Oct. 14, 2022), appears at Appendix A to this petition and is unreported.

The Judgment in a Criminal Case of the United States District Court for the Northern District of Texas, Fort Worth Division, appears at Appendix B to this petition and is unreported.

From the State Courts:

None.

GROUNDS FOR JURISDICTION

This Petition arises from a direct appeal which granted final and full judgment against Mr. White. This action is on a criminal prosecution initiated by the Government. Mr. White pleaded guilty to a conspiracy to posses with intent to distribute 500 grams or more of methamphetamine. Mr. White moved for a minor/minimal party pursuant to U.S.S.G. § 3B1.2. The District Court denied the reduction, and a copy of the District Court's denial appears at Appendix B. The Fifth Circuit affirmed that denial, and a copy of the opinion, dated October 14, 2022, appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS

U.S. CONST. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: to be confronted with witnesses against him; to have compulsory

process for obtaining witnesses in this favor; and to have Assistance of Counsel for his defense.

STATEMENT OF THE CASE

Background

Roshua Marquiston White was arrested on October 14, 2020, and charged with conspiring to possess with intent to distribute methamphetamine. ROA.101. On December 14, 2020, Mr. White signed a waiver of Indictment and the case proceeded pursuant to an Information. ROA.110-15.

The Guilty Plea Hearing

On December 14, 2020, Mr. White pleaded guilty before a United States Magistrate Judge to conspiracy to possess with intent to distribute methamphetamine. ROA.119. There was no plea agreement. ROA.119. A Factual Resume was executed, which provided the following Stipulated Facts:

Since at least the beginning of 2019, Johnny Ray RODRIGUEZ Jr. Has been receiving kilogram quantities of methamphetamine from various sources of supply, sometimes on consignment. Johnny Ray RODRIGUEZ Jr. directed Israel RODRIGUEZ, Christopher MAYO, Norma CASIO, James BECK, Jonathon RODRIGUEZ and others to distribute methamphetamine to customers in Fort Worth, Texas, as well as to collect US Currency from these customers. Christopher MAYO was a multi-ounce methamphetamine customer of Johnny Ray RODRIGUEZ Jr., and also worked at the direction of Johnny Ray RODRIGUEZ Jr. MAYO distributed the methamphetamine obtained from Johnny Ray RODRIGUEZ Jr. to Roshua WHITE, brokered methamphetamine deals to Michael [Todd] Johnson. In this manner, Johnny Ray RODRIGUEZ Jr., Christopher MAYO, Roshua Marquiston WHITE, and others conspired with each other and others to possess methamphetamine with intent to distribute it.

ROA.123 (handwritten alterations included).

The Presentence Investigation Report:

A United States Probation Officer prepared and filed a Presentence Investigation Report (“PSR” or “the Report”). ROA.344-68. The PSR establishes that this case involves a conspiracy to distribute methamphetamine and cocaine in the Dallas-Fort Worth area. ROA.348. Johnny Ray Rodriguez, Jr. was the “leader” of the conspiracy. ROA.348. Alejandra Patricia Fannin was described as a “primary customer” of Mr. Rodriguez. ROA.349. Mr. White, on the other hand, was described as merely a “customer.” ROA.348. Mr. Rodriguez was also described as “fluid” and having “evolved over time” such that the members of the conspiracy were prevented from knowing other members of the conspiracy. ROA.349. Indeed, “members” of the conspiracy other than Mr. Rodriguez did not know the details of the operation. ROA.349.

According to the Report, on April 16, 2020, Ms. Fannin (the primary customer), was looking to purchase methamphetamine. ROA.349. She found Mr. White, who agreed to “broker” a deal to obtain the drugs. ROA.349. The deal took place at a car wash. ROA.350. Mr. White carried a Louis Vuitton bag on his shoulder as he walked from his own truck to another conspirator’s vehicle. ROA.350. Officers ultimately seized the Louis Vuitton bag and they found two latex gloves and methamphetamine inside the bag. ROA.350-51. One of the co-conspirators, Michael Todd Johnson, claimed that Mr. White was brokering the deal to obtain 2 kilograms of methamphetamine. ROA.352.

PSR: Calculations

The Probation Officer concluded Mr. White would be held accountable for 1,151.72 grams of methamphetamine (actual). ROA.252. Thus, the actual amount of methamphetamine resulted in Mr. White being assigned a Base Offense Level of 34. ROA.353. Two (2) levels were added as a result of a firearm found in a vehicle that belonged to Ms. Fannin, despite the fact Mr. White was not in the vehicle. ROA.353-54. Therefore, after 3 levels were deducted for acceptance of responsibility, Mr. White's Total Offense Level was set at 33. ROA.354.

The Probation Officer set Mr. White's criminal history score at 8, which resulted in a Criminal History Category of IV. ROA.354-60. With a Total Offense Level of 33, and a Criminal History Category of IV, Mr. White's Guidelines imprisonment range was set at 188 months to 235 months in the custody of the Bureau of Prisons. ROA.366.

Mr. White's Objections to the PSR

Mr. White filed two objections to the PSR. ROA.377. He first objected to the 2-level gun enhancement because he "was not aware of Fannin's possession of a firearm and it was not foreseeable that Fannin would have a gun because White was simply brokering the deal." ROA.377. The second objection involved Mr. White's objection that he only played a minor or minimal role in the offense. ROA.377. More specifically, Mr. White observed that "he was merely a broker for the transaction and therefore his role in the offense should be considered less involved than the others." ROA.377. Therefore, Mr. White argued for a reduction to his offense level under U.S.S.G. § 3B1.2. ROA.377.

Sentencing

Mr. White was sentenced on June 1, 2021. ROA.315. The District Court overruled the two objections filed by Mr. White. ROA.319. The Court overruled the objections for the reasons set out in the Probation Officer's record addendum. ROA.319. In that addendum, the Probation Officer concluded:

The defendant was an average participant during this conspiracy. He negotiated a multi-kilogram methamphetamine purchase between D. Fannin, Johnson, and Johnny Rodriguez. His participation included multiple telephone calls and messages with Johnny Rodriguez to set up the purchase, providing travel to the agreed meet-location, and on-site negotiation between D. Fannin, Johnson, and Mayo. The defendant was held accountable only for the limited quantity of methamphetamine he helped D. Fannin and Johnson to purchase. That the other participants may have played a more involved role in the offense does not diminish the defendant's culpability as an average participant. Thus, the probation officer supports the Presentence Report as written and no changes will be made unless otherwise directed by the Court.

ROA.381.

After hearing arguments, the Court denied any reduction for minor/minimal party. ROA.390. The Court sentenced Mr. White to serve 168 months in the custody of the Bureau of Prisons. (Appendix A, page 1). Mr. White filed a notice of appeal with the Fifth Circuit.

Appeal to the Fifth Circuit Court of Appeals

After the parties briefed the Court, the Fifth Circuit affirmed the District Court in a written opinion. (Appendix A). The Fifth Circuit observed that Mr. White was arguing to the Court "that the district court clearly erred by denying him a two-to-four level minor or minimal role reduction under U.S.S.G. § 3B1.2." (Appendix A, page 2). The Appellate Court also noted that Mr. White "points to the fact he brokered only one transaction and that there

was no evidence that he benefitted financially or was essential or indispensable to the wider conspiracy.” (Appendix A, page 2).

The Fifth Circuit first held that Mr. White had preserved his argument for review. (Appendix A, page 2). Thus, the Appellate Court explained:

[W]e review “the district court’s interpretation and application of the Sentencing Guidelines *de novo*” and its “findings of fact and its application of the Sentencing Guidelines to those findings of fact . . . for clear error.” *United States v. Cedillo-Narvaez*, 761 F.3d 397, 401 (5th Cir. 2014). Whether a defendant is a minor or minimal participant under [U.S.S.G.] § 3B1.2 is a factual question reviewed for clear error. *United States v. Gomez-Valle*, 828 F.3d 324, 327 (5th Cir. 2016).

(Appendix A, page 2).

Without any further explanation, the Fifth Circuit rejected Mr. White’s argument and concluded:

Although White did not receive any financial benefit from the transaction, the district court could plausibly find that White’s conduct was not peripheral to the advancement of the illegal activity and did not warrant a reduction. *See id.* White knew he was brokering a methamphetamine transaction. Moreover, brokering the transaction was not a peripheral activity. Despite that White’s actions may have been peripheral to the overall drug conspiracy, they were not peripheral to this particular transaction, and he was sentenced only for participating in it. *See United States v. Bello-Sanchez*, 872 F.3d 260, 264 (5th Cir. 2017).

(Appendix A, page 2). Thus, the Appellate Court affirmed the District Court. (Appendix A, page 2). Mr. White files this Petition for Writ of Certiorari challenging that decision.

**ARGUMENT AMPLIFYING REASONS RELIED
ON FOR ALLOWANCE OF THE WRIT**

I.
Overview

This Court has developed a straightforward formula to prevent constitutionally infirm and inconsistent sentencing outcomes. To this end, the Guideline range must first be determined. *Kimbrough v. United States*, 552 U.S. 85, 108-10 (2007); *Gall v. United States*, 552 U.S. 38, 51 (2007); *Rita v. United States*, 551 U.S. 338, 364 (2007). The various rules for determining the Guideline range to be applied by the District Court, and how this Court reviews those findings and conclusions, has been discussed by the Fifth Circuit on numerous occasions. *See e.g., United States v. Acosta*, 619 F. App'x 403, 404 (5th Cir. 2015); *United States v. Alaniz*, 726 F.3d 586, 618-19 (5th Cir. 2013); *United States v. Longstreet*, 603 F.3d 273, 275-76 (5th Cir. 2010). This process is important because, although the Fifth Circuit presumes sentences within the Guideline range are reasonable, the reasonableness of the sentence is the next consideration for sentencing. *Gall*, 552 U.S. at 51; *Rita*, 551 U.S. at 364.

Thus, after consulting and considering the Guidelines, the sentencing Judge must impose a “reasonable” sentence. *Gall*, 552 U.S. at 51. Whether a sentence is reasonable depends not only on the advisory sentencing range, but also on the numerous other factors listed under 18 U.S.C. § 3553(a), including, for example, “the need for the sentence imposed . . . to provide just punishment for the offense,” *id.* at § 3553(a)(2)(A), “to afford adequate deterrence to criminal conduct,” *id.* at § 3553(a)(2)(B), and “to protect the public from

further crimes of the defendant.” *id.* at § 3553(a)(2); *see also Booker v. United States*, 542 U.S. 220, 261 (2005) (explaining that § 3553(a) “factors in turn will guide appellate courts, as they have in the past, in determining whether a sentence is unreasonable”). It should be noted at this juncture that, in light of so much emphasis on the continued viability of the Guidelines, Sentencing Judges are nonetheless required by the Sixth Amendment to refrain from treating the Guidelines as mandatory whether out of “ignorance, negligence . . . defiance” or for any other reason. *United States v. Rodriguez*, 406 F.3d 1261, 1273 (11th Cir. 2005).

In any event, the first step to determining the Guideline range is to determine an offense level. U.S.S.G. § 1B1.2(a). Basically, pursuant to the Guidelines Manual, determining the applicable Guideline begins with an initial score for the offense of conviction. This is calculated by adding points assigned to the offense of conviction, as well as any “relevant conduct” to the specifics of the offense. This number is then changed by any applicable adjustments under the Guidelines. These adjustments can include harm to a victim, the defendant’s role in the offense, and whether the defendant has cooperated or accepted responsibility. U.S.S.G. § 1B1.1(b)-(c).

Mr. White objected on the basis of lack of minor-minimal reduction. Thus, he preserved for review any argument that he was entitled to a 2 to 4 level reduction in his sentence on that basis. (Appendix A, page 2). Therefore, the Appellate Court should have applied an abuse of discretion standard of review, as was the recitation of the Fifth Circuit’s standard of review set forth above and at Appendix A, page 2.

II.

The Legal Error of the Appellate Court Necessitates Relief

A.

Background

The Fifth Circuit rejected Mr. White’s argument that the District Court’s failure to grant Mr. White a mitigating role reduction was reversible error. (Appendix A, page 2). However, Mr. White argues the rule applied by the Fifth Circuit was essentially contrary to the appropriate standard of review and resulted in the categorical affirmation of the decision of the District Court. Thus, the Fifth Circuit did not apply a meaningful standard of review in this case and a compelling interest is presented to encourage this case to proceed further.

B.

Lack of Meaningful Review by the Fifth Circuit

The standard of review establishes there was plain error as argued to the Fifth Circuit. According to the United States Sentencing Commission Guidelines Manual, a “minimal” participant finding “is intended to cover defendants who are plainly *among the least culpable* of those involved in the conduct of a group.” U.S.S.G. § 3B1.2, n.4 (emphasis added). A “minor” participant finding applies to a defendant who is “less culpable than most other participants, but whose role cannot be described as minimal.” *Id.* at § 3B1.2, n.5. While the Guidelines do indicate that a “minimal” participant finding will be used “infrequently,” they suggest no such limitation on findings of a minor participant role. *Id.* at § 3B1.2, n.4 & n.5. Accordingly, if the facts support an adjustment in this case, the next step would be for the Court to determine whether a 2, 3 or 4-level reduction should be granted.

The determination of whether to apply the minimal or minor participant label “involves a determination that is heavily dependent on the facts of the particular case.” *Id.* at § 3B1.2 n.5. Specifically, “[d]etermining participant status is a complex fact question, which requires a court to consider the broad context of the defendant’s offense.” *United States v. Brown*, 54 F.3d 234, 241 (5th Cir. 1995) (citing *United States v Melton*, 930 F.2d 1096, 1099 (5th Cir. 1991)); *see also United States v. Mejia-Orosco*, 868 F.2d 807 (5th Cir.), *clarified on reh’g* 867 F.2d 216 (5th Cir.), *cert. denied*, 492 U.S. 924 (1989)). Bearing these authorities in mind, it is appropriate to examine the limited role Mr. White played in this particular criminal offense and the low level of culpability under which he acted during the conspiracy to which he pleaded guilty.

As set forth below, a finding supportive of the reduction is the only possible conclusion based on the undisputed findings in the PSR. The minimal role adjustment is intended to be applied when a defendant is plainly among the least culpable of those involved in the conduct of the group. U.S.S.G. § 3B1.2, n. 4. The defendant’s lack of knowledge or understanding of the scope and structure of the conspiracy, and of the activities of others, is indicative of a role as a minimal participant. *Id.* at n. 5. A minor participant is one who is less culpable than most other participants but whose role cannot be described as minimal. *Id.*

The Fifth Circuit did not apply this rule to its analysis. Mr. White was not a “supervisor,” as was the defendant in *United States v. Broussard*, 882 F.3d 104, 111 (5th Cir. 2018). Likewise, he was not an “equal participant,” as was the defendant in *United*

States v. Anchundia-Espinoza, 897 F.3d 629, 634-35 (5th Cir. 2018). He was a broker of one deal and nothing more. Accordingly, Mr. White is entitled to a sentencing reduction based on his role in the offense.

Additionally, in determining whether to apply a mitigating adjustment, the Court should consider the following non-exhaustive list of factors:

- * the degree to which the defendant understood the scope and structure of the criminal activity;
- * the degree to which the defendant participated in planning or organizing the criminal activity;
- * the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
- * the degree to which the defendant stood to benefit from the criminal activity.

U.S.S.G. Manual, Supp. to App. C, amend. 794 at 116, 80 Fed. Reg. 25,782-01, 25,792-93, 2015 WL 1968941 (May 5, 2015). These factors establish the mitigating adjustment is appropriate in this case because Mr. White did not know the scope and structure of the offense, did not plan or organize the offense, did not make any decisions for the group, and he stood to benefit only minimally if at all from the conspiracy.

The undisputed record in this case shows that Mr. White was used strictly as a broker in a single deal. Mr. White did nothing more in this case and it is undisputed he had no knowledge of the operation and the extent of the conspiracy. Such involvement is substantially less than the very type of activity which has been found to be minor or minimal.

See United States v. Williams, 894 F.2d 208, 214 (6th Cir. 1990) (“The record indicates that

Blanton delivered messages, drove Davis to various meetings, and allowed his phone to be used for setting up drug deals, which is consistent with minor role.”).

Additional observations further establish this to be true. For example, as the Sentencing Guidelines provide, a defendant who did not have a significant propriety interest in the criminal activity, and who is simply being paid to perform certain tasks, should be considered for an adjustment under Guideline § 3B1.2, n.3. Moreover, the fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant can receive an adjustment under this Guideline if he or she is substantially less culpable than the average participant in the criminal activity. *Id.*

Here, the evidence clearly shows that Mr. White was entitled to a mitigating role reduction. There is no evidence he had any significant propriety interest in the conspiracy. There is no evidence his brokering of a single transaction can be considered essential or indispensable to the criminal activity. Accordingly, the minor or minimal deduction is applicable and supported by the undisputed facts.

Citing *United States v. Bello-Sanchez*, 872 F.3d 260, 264 (5th Cir. 2017), the Fifth Circuit acknowledged that Mr. “White’s actions may have been peripheral to the overall drug conspiracy,” but he was not entitled to a role reduction because “they “were not peripheral to this particular transaction, and he was sentenced only for participating in it.” (Appendix A at page 2). In *Bello-Sanchez*, the probation officer replied to the defendant’s U.S.S.G. § 3B1.2 objection “with an addendum to the PSR stating that ‘Bello-Sanchez’s participation was not sufficiently peripheral to the advancement of the criminal activity’ to warrant a

mitigating-role adjustment.” 872 F.3d at 262. Here, there has been no such finding in the PSR.

Moreover, the Fifth Circuit made clear in *Bello-Sanchez* that the defendant admitted she was an “indispensable part of the drug dealing network,” and therefore her actions could not be peripheral to the goal of the overall criminal conspiracy. *Id.* at 862. Here, the Appellate Court specifically found that Mr. White’s actions were “peripheral to the overall drug conspiracy.” (Appendix A at page 2). And, he was not involved in the drug dealing network, only a single transaction. Accordingly, the holding in this case is contrary to Fifth Circuit precedent and decisions of other Appellate Courts which have considered the issue. *See United States v. Russell*, 852 F. App’x 834, 834 (5th Cir. 2021) (finding defendant’s involvement in various aspects of enterprise belied his claim that his actions were peripheral to goal of overall criminal conspiracy); *United States v. Carranza*, No. 21-11101, 2022 WL 3230451, at *1 (5th Cir. Aug. 10, 2022) (finding that defendant’s participation in overall conspiracy did not warrant finding that his actions were peripheral); *United States v. Martin-Sosa*, 818 F. App’x 351, 352 (5th Cir. 2020) (finding that defendant’s actions demonstrated that he was peripheral to advancement of underlying conspiracy to traffic methamphetamine).

CONCLUSION

For the reasons set forth above, Mr. White respectfully submits, on the important issue of federal sentencing concerns, compelling reasons are presented in support of discretionary review by this Honorable Court.

WHEREFORE, PREMISES CONSIDERED, Petitioner, ROSHUA MARQUISTON WHITE, respectfully requests that this Honorable Court grant this Petition and issue a Writ of Certiorari and review the decision of the United States Court of Appeals for the Fifth Circuit which affirmed the sentence imposed by the District Court. Mr. White also respectfully requests any further relief to which he may be entitled under the law and in equity.

Respectfully Submitted,

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