

Case No. 23-_____

SUPREME COURT OF THE UNITED STATES

Justin D. Martin,

Petitioner,

vs.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

Whether the Fifth and Sixth Amendments prohibit a federal court from basing a criminal defendant's sentence on conduct for which a jury has acquitted the defendant?

II. Related Proceedings

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

United States v. Brandon Sheridan and Justin Martin, No. 5:18cr00525-CAB (October 29, 2021); N.D. Ohio, at Akron.

United States v. Justin Martin and Brandon Sheridan, United States Court of Appeals, Sixth Circuit, Nos. 21-4019/4081 (November 18, 2022).

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V. Petition for Writ of Certiorari

Justin D. Martin (“Martin”), an inmate in the Federal Bureau of Prisons, by and through counsel appointed under the terms of the Criminal Justice Act, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

VI. Opinion Below

The decision from which this appeal is being taken was entered on November 18, 2022, by the United States Court of Appeals for the Sixth Circuit in *United States v. Justin Martin*, case No. 21-4019, and *United States v. Brandon Sheridan*, case No. 21-4081, unreported. Said Opinion and Judgment are attached at Appendix pp. 1 – 12.

VII. Jurisdiction

The decision denying Martin’s direct appeal was entered on November 18, 2022. Martin invokes this court’s jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for a writ of certiorari within ninety days of the judgment of the court of appeals.

VIII. Constitutional Provisions Involved

United States Constitution, Amendment 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.

United States Constitution, Amendment 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 the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

IX. Statement of the Case

This case concerns the constitutionality of a common sentencing practice that has long troubled jurists: whether sentencing judges can enhance a defendant’s sentence based on conduct of which the jury acquitted him?¹

Martin and his co-defendant, Sheridan, were indicted and tried in the district court for possession with intent to distribute “at least 500 grams or more”

1. Currently pending before this Court is the petition of Dayonta McClinton, *McClinton v. United States*, U.S. Sup. Ct. case No. 21-1557, which presents the identical question as this case, and which has been distributed for conference.

of methamphetamine in violation of 21 U.S.C. § 841 and 18 U.S.C. § 2, and for the possession of firearms in furtherance of a drug trafficking crime in violation of 18 U.S.C § 924(c). Jurisdiction was vested in the district court by virtue of 18 U.S.C. § 3231, which grants original jurisdiction to United States District Courts of all offenses against the laws of the United States.

Martin and Sheridan shared a residence in the City of Akron, Ohio. They came to the attention of law enforcement on the basis of complaints of suspected illegal drug activities. After investigation, the police obtained a search warrant for the premises. Execution of the search warrant revealed the presence of firearms throughout the residence and large quantities of methamphetamine with a total weight of over 1000 grams. The case proceeded to jury trial. The jury found Martin and Sheridan guilty on all offenses. However, the jury returned special verdicts, finding Sheridan guilty of possession with intent to distribute “over 500 grams” of methamphetamine, and finding Martin guilty of possession with intent to distribute “less than 500 grams” of methamphetamine.

The presentence investigation report calculated Martin’s sentencing guidelines, in part, by attributing all of the methamphetamine discovered in the search to Martin as “relevant conduct.” *See* U.S.S.G. § 1B1.3. The district court overruled Martin’s specific objection to this enhancement and sentenced Martin

as if he had been found guilty of possessing “over 500 grams” of methamphetamine, resulting in a guideline range (not including the firearm count) of 210 – 262 months imprisonment, as opposed to the guideline range of 70 – 87 months imprisonment had Martin been sentenced in accordance with the jury’s findings. Martin ultimately received a sentence of 220 months on the drug charge (plus 60 months for the firearm).

The United States Court of Appeals for the Sixth Circuit, exercising jurisdiction under 28 U.S.C. § 1291, affirmed Martin’s sentence. The court of appeals explicitly rejected Martin’s argument that the district court’s consideration of acquitted conduct at sentencing for penalty enhancement is precluded by the Fifth and Sixth Amendments.

X. Reasons for Granting the Writ

Current precedent permits judges to find facts that increase the penalty to which a criminal defendant is subject even when those facts are not found, or rejected by, a jury, so long as the punishment meted out by the district court does not exceed the prescribed statutory maximum for a given offense. *See, United States v. Benson*, 591 F.3d 491 (6th Cir. 2010). This practice is uniform within the circuits.

As the late Justice Scalia indicated in his dissent to the denial of a writ of certiorari in *Jones v. United States*, 574 U.S. 948 (2014) (joined by Thomas and Ginsburg, JJ),

We have held that a substantively unreasonable penalty is illegal and must be set aside. *Gall v. United States*, 552 U.S. 38, 51 (2007). It unavoidably follows that any fact necessary to prevent a sentence from being substantively unreasonable – thereby exposing the defendant to the longer sentence – is an element that must either be admitted by the defendant or found by the jury. It *may not* be found by a judge. . . . This [process of judicial fact-finding at sentencing] has gone on long enough.”

Jones v. United States, 574 U.S. 948, 135 S. Ct. 8, 8 (2014) (Scalia, J., dissenting from the denial of certiorari) (joined by Thomas and Ginsburg, JJ.) (quoting *Alleyne v. United States*, 570 U.S. 99, 104 (2013)). Martin agrees, and asserts that it is time to either “put an end to the unbroken string of cases disregarding the Sixth Amendment – or to eliminate the Sixth Amendment difficulty by acknowledging that all sentences below the statutory maximum are substantively reasonable.” *Id.* Unfortunately, the circuits have effectively adopted the latter approach. Without this Court’s intervention, this practice is likely to continue.

A member of the court below once wrote,

Allowing a court to find a defendant responsible for the maximum quantity of drugs that can plausibly be found could result in defendants receiving excessive sentences based on a finding of quantity that is more likely than not excessive. Such a result would violate a defendant’s due process rights. While this may result in an underestimation of the quantity of drugs

involved in some few cases, we believe it is nonetheless constitutionally required to prevent excessive sentences.

United States v. Walton, 908 F.2d 1289, 1302 (6th Cir. 1990) (citations omitted).

This concern continues to echo to this day, and is extant in this case. The jury specially found at trial that Martin possessed less than 500 grams of a controlled substance. The district court found at sentencing, in plain contravention of the jury's finding, that Martin possessed more than 500 grams of a controlled substance. Both cannot be true. "By flatly contradicting the jury's express factual finding, the sentencing judge in this case violated the Sixth Amendment rights of [defendant]. And if the jury system is to mean anything, this outcome is a problem." *United States v. Saunders*, 826 F.3d 363, 378 (7th Cir. 2016) (Manion, J., concurring in part and dissenting in part).

Martin submits that the Sixth Amendment flatly prohibits such second-guessing by a judge. Martin further submits that the current sentencing regime which allows for judge-made fact-finding that contradicts a jury's verdict violates the Fifth Amendment's guaranty of due process, as a defendant cannot be fully aware of his exposure to punishment based solely on the jury's verdict but must engage in a second round of combat whereby the government gets a second chance to try its case – with a lower burden of proof – in the event it can't make its case the first time to the jury, and where the judge gets to decide what he or

she should be held accountable for. *See United States v. Canania*, 532 F.3d 764, 776 – 777 (8th Cir. 2008) (Bright, J., dissenting). “[W]e must be especially careful when reviewing a district court’s determination that a sentencing fact was proven by a preponderance of the evidence in cases in which a jury has found that the prosecution failed to establish that fact beyond a reasonable doubt. Otherwise, our sentencing regime would create ‘a shadow criminal code under which, for certain suspected offenses, a defendant receives few of the trial protections mandated by the Constitution.’ *United States v. Grier*, 475 F.3d 556, 574 (Ambro, J., concurring).” *United States v. McReynolds*, 964 F.3d 555, 565-566, (6th Cir. 2020).

Martin submits that the Fifth and Sixth Amendments do not permit district court judges to use acquitted conduct when fashioning criminal sentences. Such a practice violates the due process clause of the Fifth Amendment and the right to trial by jury guaranteed by the Sixth Amendment. Accepting this as true, then Martin’s sentence is procedurally unreasonable, because the district court used acquitted conduct in fashioning its sentence (in other words, it did not properly calculate the guideline range), and it is substantively unreasonable because the district court grounded the sentence on an impermissible factor (the acquitted

conduct), resulting in a much longer sentence than Martin was exposed to by the jury's special verdict.

XI. Conclusion

Wherefore, Petitioner Justin D. Martin respectfully requests this court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

/s/Jeffrey P. Nunnari
Jeffrey P. Nunnari
Counsel for Petitioner

Dated: February 3, 2023.

XII. Appendix

Opinion and Judgment, *United States v. Justin Martin*, No. 21-4019 and *United States v. Brandon Sheridan*, No. 21-4081 (6th Cir. 2022).