

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM 2022

DANIEL DIETZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTION PRESENTED

The Ninth Circuit failed to apply this Court's decisions delineating the purpose of supervised release as set forth in *Johnson v. United States*, 529 U.S. 694, 709 (2000) and *Gall v. United States*, 552 U.S. 38, (2007) when it affirmed the district court's ruling increasing Petitioner's term of supervised release from ten years to life.

Against this background the question presented is:

Whether imposition of a lifetime term of supervised release upon revocation of supervised release when the previously imposed term was 10 years is constitutional?

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Petitioner, Daniel Dietz, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINION BELOW

1. The memorandum disposition of the Ninth Circuit Court of Appeals styled as *United States v. Dietz*, No. 22-30011, 2022 WL 16958624 (9th Cir. November 16, 2022) is unreported. A copy of it is attached in the Appendix to this petition at pages 1a-3a.

2. The judgement that was affirmed by the Ninth Circuit is attached in the Appendix to this petition at pages 4a-9a.

JURISDICTION AND TIMELINESS OF THE PETITION

The Ninth Circuit's memorandum disposition was filed on November 16, 2022 (Appendix at pages 1a-3a). This Court's jurisdiction arises under 28 U.S.C. §1254(1). Petitioner's petition is timely because it was filed electronically and placed in the United States mail, first class postage pre-paid, on February 14, 2023, within the 90 days for filing under the Rule of this Court (see Rule 13, ¶1).

FEDERAL STATUTORY PROVISION INVOLVED

This case involves the term of supervised release component of 18 U.S.C. § 3583 which states at 18 U.S.C. § 3583(d)(2) that a term of supervised release:

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

(A) General case overview.

1. Mr. Dietz was charged, plead guilty, and sentenced for an offense "against the laws of the United States," of Count I: Coercion and Enticement of a Minor, in violation of 18 U.S.C. § 2242(b), and Count II: Transfer of Obscene Material to a Minor, in violation of 18 U.S.C. § 1470. He was sentenced on September 23, 2008, to 196 months custody followed by ten years of supervised release, concurrent to a state case. Mr. Dietz successfully appealed the sentence to the Ninth Circuit Court of Appeals. On remand his custodial sentence was reduced to 174 months.

2. Mr. Dietz' term of supervised release began October 23, 2020. On October 4, 2021, a petition was filed by to revoke his supervised release. Two revocation hearings were held, one before the magistrate and an objection hearing before the district court.

3. The district court sentenced Mr. Dietz to 6 months custody and increased his term of supervised release from ten years to life. Mr. Dietz appealed the increase in the term of supervised release to the Ninth Circuit Court of Appeals.

(B) The Ninth Circuit's decision.

4. A Panel of the Ninth Circuit rejected Mr. Dietz' argument that the district court imposed a sentence that was substantively unreasonable. *Dietz*, at *1. (Appendix at pages 2a).

STATEMENT OF FACTS

1. Mr. Dietz was charged, plead guilty, and sentenced for an offense "against the laws of the United States," of Count I: Coercion and Enticement of a Minor, in violation of 18 U.S.C. § 2242(b), and Count II: Transfer of Obscene Material to a Minor, in violation of 18 U.S.C. § 1470. He was sentenced on September 23, 2008 to 196 months custody followed by ten years of supervised release, concurrent to a state case.

2. Mr. Dietz was released from the Bureau of Prisons and began his term of supervised release on October 23, 2020. On March 31, 2021, Mr. Dietz's supervised release was transferred to the District of Pennsylvania. On October 1, 2021, supervision was transferred back to the District of Montana.

3. The petition for warrant or summons that forms the basis of this case was filed on October 4, 2021. Mr. Dietz initially appeared for revocation hearing before the magistrate judge and consented to proceed before the same on December 14, 2021. During the course of that hearing Mr. Dietz admitted to the following violations contained in the petition: (1) not answering truthfully inquiries of the probation officer, (2) associating with convicted felon without first obtaining permission of the probation officer (3) being in the company of a child under the age of

18 without prior approval of the probation officer (5) failure to participate in sex offender treatment, (6) not answering truthfully inquiries of the probation officer, and (7) being terminated from sex offender treatment. The magistrate found that alleged violation (4) failure to report the contact with a child under the age of 18 had not been proven.

4. Through counsel, Mr. Dietz argued for a sentence of time served and made no specific request regarding supervised release. Counsel for the Government requested a guideline sentence and “continued supervision”.

5. The magistrate recommended a sentence of six months custody followed by lifetime supervision on Count I and thirty months of supervised release on Count II to run concurrently. (ER 61). Written findings and recommendations consistent with the oral pronouncement were issued on December 16, 2021. (ER 64-68). Mr. Dietz filed timely objections to the magistrate’s findings on December 28, 2021, objecting to the sentence imposed, including the term of supervised release to follow his term of imprisonment, requesting to appear before the district court judge for allocution and reconsideration of his sentence. (ER 69-70).

6. On January 5, 2022, Mr. Dietz appeared before the district court and made essentially the same argument as before the magistrate judge regarding a custodial sentence. (ER 76-77). As neither counsel had advocated for an increase of the term of supervised release before the magistrate counsel for Mr. Dietz addressed the issue with the district court. Counsel argued that Mr. Dietz’s admissions to Grade C violations did not support the imposition of lifetime supervised release. Mr. Dietz addressed the district court regarding his struggles to adjust to life on supervised release following 176 months of custody. The district court discussed Mr. Dietz’s violations of the terms of his supervised release. The district court imposed a term of lifetime supervised release. Its judgement was affirmed by the Ninth Circuit.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's decision failed to follow this Court's rulings in *Johnson v. United States*, 529 U.S. 694 (1983) and *Gall v. United States*, 552 U.S. 38, (2007) when it affirmed the district court's extension of Mr. Dietz' term of supervised release from 10 years to life. Neither was the decision consistent with prior Ninth Circuit caselaw.

“[T]he goal of supervised release is ‘to ease the defendant's transition into the community after the service of a long prison term for a particularly serious offense.’” *Johnson v. United States*, 529 U.S. 694, 709 (2000) (quoting S. Rep. 98-225 at 124 (1983)). “[I]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Gall v. United States*, 552 U.S. 38, 52 (2007) (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)).

A proper term of supervised release should involve “no greater deprivation of liberty than is reasonably necessary for the purposes set forth in [section 3553\(a\)\(2\)\(B\)](#), [\(a\)\(2\)\(C\)](#) and [\(a\)\(2\)\(D\)](#)” 18 U.S.C. § 3583(d)(2). The reasonableness of a sentence is measured by application of the factors in 18 U.S.C. § 3553(a) against the facts of the case. Section 3553(a) directs that “[t]he court shall impose a sentence sufficient, but not greater than necessary” to accomplish the purposes of the statute. Analysis under § 3553(a) involves considering the totality of the circumstances; “[n]o one factor should be given more or less weight than any other.” *United States v. Dunn*, 728 F.3d 1151, 1159 (9th Cir. 2013). The § 3553(a) factors include: “the nature and circumstances of the offense and the history and characteristics of the defendant; the purposes of sentencing; the kinds of sentences available; the sentences and ranges established by the Sentencing Guidelines; relevant policy statements issued by the Sentencing Commission; the need to avoid unwarranted sentencing

disparities among similarly situated defendants; and the need to provide restitution to the victims.” *Id.* at 1158 n.6 (internal quotation marks and citation omitted).

Specifically, in determining whether and for what term to impose a term of supervised release the court must consider the factors set forth in § 3553(a)(1), (2)(B), (C), and (D), and (a)(4) through (a)(7). 18 U.S.C. § 3583(c). And as noted above, the parsimony clause of 3553 applies with equal force to revocation sentences, providing that the court is to “impose a sentence sufficient, but not greater than necessary” to achieve the aims of sentencing. *United States v. Hammons*, 558 F.3d 1100, 1103 (9th Cir. 2009). The court is further to consider Chapter Seven of the United States Sentencing Guidelines prior to imposing sentence.

In Mr. Dietz’s case there is no evidence that an exponential increase in the term of supervised release is necessary to achieve the aims of sentencing. Nothing about Mr. Dietz’s violations indicate a need for lifetime supervision. This was Mr. Dietz’s first revocation. He was gainfully employed. His violations were all Grade C, the lowest level of violations. Perhaps if Mr. Dietz had a long history of noncompliance a lifetime term might be appropriate. That is simply not the case here. Had the district court followed the usual procedure of subtracting custody imposed from the term of supervised release Mr. Dietz would have term of nine- and one-half years of supervision. Such a term is sufficient to fulfill the aims of sentencing.

CONCLUSION

WHEREFORE, the Court should grant this petition and set the case down for full briefing.

Respectfully submitted,



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