

No. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

CURTIS BRADLEY,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Was the sentence imposed on Petitioner substantively reasonable?

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TO MR. BRADLEY’S CASE IN A SUBSTANTIVELY
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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Curtis Bradley, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The Sixth Circuit’s unpublished opinion is reproduced in the Appendix (App.)
See United States v. Bradley, No. 22-5218, December 7, 2022, App. A; ___ F.App’x
___ (6th Cir. 2022); 2022 WL ____.

JURISDICTION

The Sixth Circuit issued its opinion on December 7, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

NO CONSTITUTIONAL PROVISION INVOLVED

There is no constitutional provision involved. The asserted error consists of the misapplication of a properly stated rule of law, specifically 18 U.S.C. §§ 3553 (a) and 3553(b). *See* United States Supreme Court Rule 10(c).

STATEMENT OF THE CASE

Petitioner, Curtis Bradley (Mr. Bradley) was arrested on August 1, 2019, in Jefferson County, Kentucky, on state charges of Human Trafficking, Promoting Sex Performance By Minor Under 16 Years Of Age, Sexual Abuse (First Degree), Rape (Third Degree), Sodomy (Third Degree), and Possession or Viewing of Matter Portraying Sexual Performance By Minor, all in relation to his niece by marriage to Monica Bradley, his eventual co-defendant.

The Jefferson County Grand Jury subsequently indicted both Mr. and Mrs. Bradley (Case No. 19-CR-2176-001). Mr. Bradley remained in state pretrial custody under a bond of \$750,000.00.

On August 24, 2020, a sealed Complaint and accompanying Affidavit against Mr. Bradley was filed in the United States District Court for the Western District of Kentucky, charging Mr. Bradley with Production of Child Pornography pursuant to 18 U.S.C. §§ 2251(a) and 2251(e) (Counts 1-2, 3) and Possession of Child Pornography, pursuant to 18 U.S.C. §§ 2252A(a)(5)(B) and 2252A(b)(2). R. 1, PageID ## 1-6.

On December 14, 2020, Mr. Bradley appeared pursuant to a writ of habeas corpus *ad prosequendum*, the Complaint was unsealed, and he was ordered detained on federal charges and was appointed counsel. R. 9, 10.

On February 23, 2021, Mr. Bradley was indicted on three counts of Production of Child Pornography (Counts 1-2, 3) and one count of Possession of Child Pornography. R. 16, PageID# 37-41.

On May 24, 2021, Mr. Bradley entered an open plea to Counts 1 through 4 of the Indictment. R. 31; Transcript, R. 43, PageID## 158-194.

On September 3, 2021, prior counsel for Mr. Bradley moved to withdraw from the case. R. 36, Page ID## . This Motion was granted after *ex parte* hearing on October 29, 2021. Order, November 1, 2021, R. 40, Page ID# 155.

On January 14, 2022, the Final Presentence Report was filed. R. 49 (restricted), Page ID ##219-247.

The final PSR initially calculated a Base Offense Level of 32 as a result of the guilty plea for the violation of 18 U.S.C. § 2251(a) [¶ 21; 30; 39]. There were three separate two-level increases to the calculated Offense Level for

- (1) an offense involving a minor victim between 12 and 16 years of age pursuant to U.S.S.G. § 2G2.1(b)(1)(B) [¶ 22; 31; 40];
- (2) an offense for which the minor was in the “custody, care, or supervisory control of the Defendant pursuant to U.S.S.G. § 2G2.1(b)(5) [¶ 24; 33; 42]; and
- (3) for using a cell phone (which is considered a computer according to the Guidelines) to communicate with Monica Bradley, the minor victim’s biological aunt, in order to make arrangements for the victim to be taken to Mr. Bradley’s residence so that sexually explicit videos could be produced, pursuant to U.S.S.G. § 2G2.1(b)(6)(B) [¶ 25; 34; 43].

Mr. Bradley was also assigned two 4-level increases for engaging in sexual acts with the minor in violation of 18 U.S.C. § 2246(2), pursuant to U.S.S.G. § 2G2.1(b)(2)(B) [¶ 23 and 32].

Mr. Bradley's Offense Level was increased by another 3 levels when the method of adjusting multiple counts was utilized pursuant to U.S.S.G. § 3D1.4 [¶ 48 and 50]. Mr. Bradley was also assigned 5 more levels based upon the application of U.S.S.G. § 4B1.5(b)(1) to the offense conduct (engaging in a pattern of activity involving prohibited sexual conduct against a minor) [¶ 52].

Even after deducting a total of 3 levels for his timely plea of guilty, the Adjusted Offense Level was 47. Since this exceeded the maximum of 43, it was treated as a Total Offense Level of 43 [¶ 55].

The revised PSR calculated Mr. Bradley's criminal history score as zero, placing him in Criminal History Category I [¶ 61].

The minimum term of imprisonment for the three Production of Child Pornography counts is 15 years, and the maximum is 30 years, as to each count. The maximum term of imprisonment for the Possession of Child Pornography count is 10 years. A Total Offense Level of 43, even with a Criminal History of I, has a guideline imprisonment range of life [¶ 82].

Mr. Bradley argued in his Sentencing Memorandum (R. 50, filed under seal) that his age and medical issues were relevant factors to consider in determining

whether a departure from the Guideline life sentence was warranted. *See generally*, U.S.S.G. §§ 5H1.1 and 5H1.4. Specifically, Mr. Bradley had undergone double-bypass heart surgery in 2009 and was seen regularly by his heart doctors until shortly before his arrest in August 2019.

Mr. Bradley tendered with his Sentencing Memorandum recent United States Life Tables compiled by the Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System (National Vital Statistics Reports, Vol. 69, No. 12, November 17, 2020) (filed under seal). R. 50-2.

Those tables demonstrate that a non-Hispanic Black man between the ages of 60 and 65 years has a (decreasing) life expectancy between 19.3 and 16.1 years. National Vital Statistics Reports, Vol. 69, No. 12, November 17, 2020.¹ For Mr. Bradley, this number is also likely affected by the coronary artery bypass graft in 2009.

The Sentencing Memorandum also pointed out that Mr. Bradley had been sexually abused when he was approximately 5 years of age, along with one of his brothers, by a man that was in a relationship with his mother at the time. Sentencing Memorandum (filed under seal), R. 50 at 6; *see also* Final PSR, R. 49 at 14, PageID

¹ Petitioner notes that the most recent statistics available from the United States Government show that life expectancy for non-Hispanic Black men between ages 60 and 65 has further decreased to between 17.2 to 14.3, respectively. National Vital Statistics Reports, Vol. 71, No. 1, August 8, 2022, at 2-3.

232. Mr. Bradley had not received any past counseling or treatment for this sexual abuse, since it had not been reported.

Applying the standards of 18 U.S.C. § 3553(a), based upon Mr. Bradley's criminal history calculation, poor health, and support from family and friends, Mr. Bradley submitted that a sentence of eighteen (18) years would be

consistent with achieving a just punishment that reflects the seriousness of the conduct for which he was found guilty, but that would allow him to be released under supervision to join his children before his death, and if he is fortunate enough, before Mr. Bradley reaches an age or acquires an infirmity that results in him being a burden on his family and the community.

Id. at 6.

By contrast, the United States' Sentencing Memorandum (R. 52, PageID ## 300-311) asked for a sentence of 1,200 months, or 100 years. *Id.* at 10, 12; PageID# 309, 311.¹²

The Sentencing Hearing

Sentencing took place on March 4, 2022. *See, e.g.*, R. 59; Sealed Transcript, R. 68, PageID## 344-374; Transcript of Sentencing Hearing, R. 74, PageID ## 492-543. Mr. Bradley turned 63 years of age on the date of his sentencing.

¹² The parties had previously agreed on restitution of \$3,000.00. *See, e.g.*, Agreed Order of Restitution, March 7, 2022, R. 60.

The District Court discussed the Guidelines' application to each of the counts of the Indictment, finding that the maximum sentence would be 1200 months. *Id.* at 15-19, Page ID ## 506-510. The Court then heard the statements of three persons in support of Mr. Bradley. *Id.* at 20-28, PageID ## 511-519.

After arguments of counsel and Mr. Bradley's allocution, the Court pronounced the sentence:

As the prosecutor said, it's hard to sort of overstate the seriousness of what happened. The length of the offense, the number of instances, the extreme number of images and videos that we know about. The combination of the number of victims we heard about today, the age of the victim in this case, the offenses' obvious impact on her and others who are affected by the ripples in her life and, therefore, theirs, repetition of the offenses, the production of multiple sorts of pornography, the abuse of trust, the use of drugs and drug-addicted persons, the relationship between you and the victim, the solicitation using people and computer.

I understand you're not the only person who bears blame for what happened, but Miss Bradley's case is a separate one, and yours is the one here today. You have admitted what you did when you entered your guilty plea and again today. We appreciate that. But given the seriousness of the -- of the actions, the offenses, the need for protection and deterrence, I agree with the government that a very, very substantial sentence is appropriate in this case, and as a result, we'll impose a sentence of 50 years for the offenses.

That is beneath what the guidelines recommends, but I don't think anyone here misunderstands the seriousness of that sentence, particularly in relation to your lifespan that we expect. That's based on our calculation of the guidelines, the sentencing factors we have discussed, the

testimony we heard today, arguments of the lawyers and yourself, all the factors we've considered carefully in the course of this case.

Sentencing Transcript, R. 71 at 48-49, PageID##: 538-539.

After pronouncing a total sentence of fifty (50) years, the Probation Officer asked the Court to specify the sentence to be imposed on each count, since the total punishment was greater than the statutory maximum of any single count. Thus, the Court sentenced Mr. Bradley to a term of 360 months imprisonment on Counts 1 and 2 of the Indictment, concurrently with each other; 240 months imprisonment on Count 3, consecutively to Counts 1 and 2; and 120 months imprisonment on Count 4, concurrently with Count 3, for a total of 600 months to serve, or fifty (50) years. Judgment and Commitment Order, DN 63, PageID## 326-334.

Notice of Appeal of the Judgment and Sentence was filed on March 22, 2022. R. 65, PageID## 339-340.

The United States Court of Appeal for the Sixth Circuit affirmed the conviction, stating that

...the court's sentence was based on its consideration of the Guidelines, the sentencing factors discussed above, the testimony offered at the hearing, and the arguments offered by counsel and Bradley regarding leniency.

The hearing transcript reveals that the district court weighed the factors favoring leniency against the serious nature of Bradley's crimes, the impact on his victim, and the need for deterrence...This balancing process is

“appropriately left to district courts so long as the decision is reasonable.”

United States v. Bradley, No. 22-5218 (Appendix A), slip op. at 8, *quoting United States v. Nunley*, 29 F.4th 824, 834-835 (6th Cir. 2022); *United States v. Phinazee*, 515 F.3d 511, 521 (6th Cir. 2008).

This Petition follows.

REASONS FOR GRANTING THE PETITION

THE COURT MISAPPLIED THE 18 U.S.C. §3553(a) FACTORS TO MR. BRADLEY’S CASE IN A SUBSTANTIVELY UNREASONABLE MANNER, SENTENCING HIM TO A TERM OF YEARS FAR IN EXCESS OF HIS LIFE EXPECTANCY.

A. Preservation for Review

“[D]efendants do not need to raise the claim of substantive unreasonableness before the district court to preserve the claim for appeal.” *United States v. Penson*, 526 F.3d 331, 337 (6th Cir. 2008) (*citing United States v. Vonner*, 516 F.3d 382, 385 (6th Cir. 2008) (*en banc*)). The Court of Appeal has acknowledged that the issue was properly before the Court. Slip op. at 5.

B. Standard of Review

"The question of whether a sentence is reasonable is determined using the abuse-of-discretion standard of review." *United States v. Webb*, 616 F.3d 605, 609 (6th Cir. 2010) (citation omitted). The burden is on the Petitioner to demonstrate

substantive unreasonableness. *See United States v. Woodard*, 638 F.3d 506, 510 (6th Cir. 2011).

C. Discussion

18 U.S.C. §3553(a) provides that a sentencing court

shall impose a sentence **sufficient, but not greater than necessary**, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines...

(Emphasis added).

However, "'even if a sentence is calculated properly, i.e. the Guidelines were properly applied and the district court clearly considered the § 3553(a) factors and explained its reasoning, a sentence can yet be unreasonable.'" *United States v. Husein*, 478 F.3d 318, 332 (6th Cir. 2007), *quoting United States v. Cage*, 451 F.3d 585, 591 (10th Cir. 2006).

"The essence of a substantive-reasonableness claim is whether the length of the sentence is greater than necessary to achieve the sentencing goals set forth in 18 U.S.C. § 3553(a)." *United States v. Tristan-Madrigal*, 601 F.3d 629, 632-33 (6th Cir. 2010) (internal quotations omitted).

"A sentence is substantively unreasonable if the district court selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor." *United States v. Hall*, 632 F.3d 331, 335 (6th Cir. 2011), *quoting United States v. Baker*, 559 F.3d 443, 448 (6th Cir. 2009); *United States v. Conatser*, 514 F.3d 508, 520 (6th Cir. 2008).

U.S.S.G. §5H1.1, Age (Policy Statement), states that

[a]ge...may be relevant in determining whether a departure is warranted, if considerations based on age, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines. Age may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement

might be equally efficient as and less costly than incarceration...

U.S.S.G. §5H1.4 sets out the policy of the United States Sentencing Commission with respect to the defendant's physical condition. It states in pertinent part that

[p]hysical condition or appearance, including physique, may be relevant in determining whether a departure is warranted, if such conditions, individually or in combination with other offender characteristics, are present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines...

Here, the District Court did depart downward. Nonetheless, it sentenced a sixty-three-year-old man with serious heart problems to six hundred months -- fifty years -- in prison.

The Sixth Circuit correctly stated that in this situation,

‘rather than asking whether considerations based upon § 3553(a) are sufficiently compelling to justify the sentence, this court must determine whether the considerations based upon § 3553(a) are so compelling as to necessitate a shorter sentence...Although it is not impossible to succeed on a substantive-reasonableness challenge to a below-guidelines sentence, defendants who seek to do so bear a heavy burden.’

Slip op. at 6, *quoting inter alia United States v. Nunley*, 29 F.4th at 834 (internal citations omitted).

During the entire hearing, the trial court emphasized the “seriousness of the offense,” the “protection” of the public from further crimes of the Petitioner, and

affording “adequate deterrence to criminal conduct,” all of which are factors to be considered in determining a particular sentence. 18 U.S.C. § 3553(a)(2)(A), (B), (C).

When counsel for the Petitioner raised the issue of the practical impossibility of any general public deterrence arising from Mr. Bradley’s ultimate sentence, the trial court responded:

THE COURT: It's not up to you and me, is it? Congress said we consider a deterrence, right? And so that's what we'll do. Go ahead.

Transcript, Sentencing Hearing at 32, DN 74 (sealed), PageID #523.

The trial court did enumerate all of the relevant §3553(a) factors; however, its ultimate focus in fixing a sentence was on the “seriousness of the offense, protection and deterrence.” *Id.* at 49, PageID #540.

Although there is no precedent that a defendant’s actual life expectancy must be considered by a sentencing judge, the trial court failed to address the deterrent value, either generally to the public or specifically to Mr. Bradley, of fixing a sentence of more than thirty (30) years beyond his life expectancy.

It has long been established that elderly offenders have the lowest rate of recidivism of all types of offenders. Miller, D. (2011) “Sentencing Elderly Criminal Offenders,” NAELA Journal, VII(2), p. 232.

In Mr. Bradley’s case, significant reductions of the fifty-year sentence that was imposed would have no practical impact on deterring Petitioner from engaging

in future misconduct or protecting the public should Mr. Bradley be lucky enough to reach 108 years of age, 98 years of age, or even 93 years of age.

In sum, a sentence of imprisonment that significantly exceeds an offender's actual life expectancy has no utilitarian benefit because even if the offender "beats the odds" and makes it out of prison alive at such an advanced age, the risk to the public is essentially infinitesimal.

The sentencing court is required to apply the provisions of 18 U.S.C. §3553(a) in order to impose a sentence that is sufficient, but not greater than necessary, in order to accomplish the goals of sentencing. The Sentencing Guidelines permit the court to depart downward from the recommended Guideline sentence based upon an individual's age and physical condition. U.S.S.G. §§5H1.1, 1.4. Although the court made the decision to significantly depart downwards, numerically speaking, the departure was for all practical purposes meaningless.

The imposition of the 600-month sentence on Mr. Bradley was so far in excess of his life expectancy that it should be considered arbitrary and a misapplication of the laws of sentencing, which merits the granting of the Writ.

CONCLUSION

Mr. Bradley asks that this Court grant the writ of certiorari to the United States Court of Appeals for the Sixth Circuit and remand his case for resentencing.

Respectfully submitted,

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