

DOCKET NUMBER: _____

IN THE SUPREME COURT OF THE UNITED STATES

BRIAN KEITH WELLS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether this honorable Court should grant *certiorari* to review whether Mr. Wells' request for new counsel should have been granted?

Whether this honorable Court should grant *certiorari* to review the Sixth Circuit's determination that a four-level role enhancement under USSG § 3B1.1(a) was appropriate?

Whether this honorable Court should grant *certiorari* to review the substantive reasonableness of Mr. Wells' sentence?

PARTIES TO THE PROCEEDING

The parties to the proceedings, both in the Federal District Court for the Eastern District of Kentucky, Southern Division, as well as in the United States Court of Appeals for the Sixth Circuit, included the United States of America, Respondent herein, and Brian Keith Wells, the Petitioner herein. There are no parties to these present proceedings other than those named in the Petition.

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PETITION FOR A WRIT OF CERTIORARI

Mr. Brian Keith Wells (hereinafter “Mr. Wells”) hereby respectfully petitions for a writ of certiorari to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit issued December 22, 2022.

OPINIONS BELOW

The Decision of the Sixth Circuit in this matter was issued on December 22, 2022. The Decision is published with the following citation *United States v. Wells*, 55 F.4th 1086, (6th 2022), and is reproduced at Petitioner’s Appendix A.

The relevant District Court Judgment underlying Mr. Wells’ conviction was not published, but is reproduced at Petitioner’s Appendix B.

STATEMENT OF JURISDICTION

Because the underlying cases involved a federal indictment against Mr. Wells for violations of federal law, the United States District Court for the Eastern District of Kentucky, Southern Division, had jurisdiction pursuant to 18 U.S.C. §3231. Because Petitioner Wells timely filed a notice of appeal from the final judgment of a United States District Court, the United States Court of Appeals for the Sixth Circuit had jurisdiction pursuant to 28 U.S.C. §1291. Because Petitioner Wells is timely filing this Petition for Writ of Certiorari within the time allowed by the Supreme Court Rules from the Sixth Circuit’s Decision on December 22, 2022, this honorable Court has jurisdiction pursuant to 28 U.S.C. §1254. *See also*, Supreme Court Rule 13.1.

STATUTORY PROVISIONS AND RULES OF COURT INVOLVED

The relevant Rules and statutory provisions are Federal Rule of Criminal Procedure 11(d), USSG § 3B1.1(a), and 18 U.S.C. §3553(a), all of which are set forth, respectively, in the attached Petitioner's Appendix C, D, and E.

STATEMENT OF THE CASE

On March 5, 2020, Brian Keith Wells (hereinafter “Mr. Wells”) was one of two named defendants in a one count Indictment issued by a federal grand jury in the United States District Court for the Eastern District of Kentucky. (Indictment, RE 1, PAGEID #1-3). Mr. Wells was charged with Conspiracy to Distribute 500 grams or More of a Mixture or Substance Containing Methamphetamine in violation of 21 U.S.C. §846. *Id.* The parties ultimately entered into a plea agreement which was filed in the District Court. (Plea Agreement, RE 77, PAGEID# 201-204). On April 26, 2021, Mr. Wells appeared before the District Court and pursuant to the plea agreement, Mr. Wells entered a plea of guilty to the sole count contained in the indictment and the guilty plea was accepted by the Court. *See* Transcript of Hearing 4/26/21, RE 100, PAGEID# 58-59).

On June 23, 2021 Mr. Wells wrote a letter to the Court requesting to withdraw his guilty plea and further requesting dismissal of counsel; the letter was filed on June 28, 2021. (Letter, RE 96, PAGEID# 247-248). On July 9, 2021, Mr. Wells appeared before the District Court in response to the June letter. (*Id.*, *See also* Transcript of Hearing dated 7.9.21, RE 125, PAGEID# 541-555 and Sealed Transcript, RE 126, PAGEID# 556-579). The Court denied both of Mr. Wells’ requests. (Minute Entry, RE 102, PAGEID# 321-322; Transcript of Hearing dated 7.2.21, RE 125, PAGEID # 550).

An Initial Presentence Investigation Report was prepared and defense counsel made written objections. (Initial PSIR, RE 116, PAGEID# 409-433). Thereafter, a

Final Presentence Investigation Report (hereinafter “PSIR”) was prepared. (PSIR, RE 119, PAGEID# 439-463). Defense counsel filed a sentencing memorandum and seven character reference letters on behalf of Mr. Wells; the government did not file a response to Mr. Wells’ sentencing memorandum. (Defendant’s Sentencing Memorandum, RE 104, PAGEID# 327-343).

On September 13, 2021, Mr. Wells appeared for the Honorable Judge Robert E. Wier for a sentencing hearing, at which time Mr. Wells was sentenced to a term of imprisonment of one hundred and ninety-seven months to be followed by supervised release for a term of five years. (Judgment, RE 115, PAGEID# 402-408).

Mr. Wells is a forty-five-year-old educated entrepreneur, a caring dedicated father, and a contributing member of society. (PSIR, RE 119, PAGEID# 452-455; *See also* Exhibits to Defendant’s Sentencing Memorandum, RE 104, PAGEID# 337-343). Prior to his pretrial custody, he was successfully self-employed and caring for his four young children who lived in his home. *Id.* In addition, Mr. Wells is a charitable man and has aided under privileged children with the goal of not just helping underprivileged children but also keeping children out of the criminal justice system – a commendable act. *Id.* He is known in his community for his generosity, kindness, and positive attitude. *Id.*

The following information formed the factual basis for the Plea Agreement which was executed by the parties:

(a) Beginning in or about November of 2018 and continuing until on or about February 2020, in Pike County, Kentucky, which is located in the Eastern Judicial District of Kentucky, and elsewhere, the Defendant conspired with others to distribute 500 grams or more of a mixture or

substance containing a detectable amount of methamphetamine (meth), a Schedule II controlled substances.

(b) Specifically, during this timeframe, the Defendant was obtaining multiple ounces of methamphetamine from a source of supply based out of the Cincinnati, OH area, which he would then distribute to street-level drug dealers and end drug users in Pike County, KY and Mingo County, WV. At times, the Defendant would use runners or mules to travel to Cincinnati, OH to obtain the meth and bring it back to him. In addition, the codefendant, Christina Tidwell, assisted Wells in his distribution activities by selling to the Defendant's drug customers when he was not available. Moreover, the Tidwell maintained and continued the Defendant's distribution activities on his behalf whenever he was incarcerated.

(c) Through direct and relevant conduct, the Defendant is responsible for the distribution of between 1.5 kilograms to 5 kilograms of a mixture or substance containing a detectable amount of meth.

See, Plea Agreement, RE 77, PAGEID#202.

Mr. Wells came to the attention of the Kentucky State Police and Pike County Sheriff's office after a traffic stop and investigation involving Johnny Varney and Sherry Williamson. PSIR, RE 119, PAGEID# 441-442. During the course of the traffic stop and investigation, authorities found one pound of methamphetamine and the occupants admitted they were transporting the methamphetamine to Mr. Wells in Pike County. *Id.* The traffic stop was conducted on December 12, 2018 and on December 14, 2018 was arrested on unrelated charges in Mingo County West Virginia and remained in custody in Mingo County for the duration of the investigation of and pendency of the current case. *Id.* at PAGEID# 441-443, 459. On May 19, 2020, a writ issued for the current case in which it is alleged Mr. Wells conspired to traffic drugs from November 2018 through February 2020. *Id.*

Tidwell continued to traffic drugs while Mr. Wells was held in custody developing her own sources and operation. *Id* at PAGEID# 441-444. Recorded jail calls between Mr. Wells and Co-defendant Tidwell purported to prove that Wells was directing Tidwell's drug trafficking operation. *Id*. Varney admitted to transporting three pounds of methamphetamines for Wells, a total of 1.3608 kilograms, and Wells was held responsible for 169.7 grams of methamphetamine sold during a controlled transaction on October 18, 2019, while Wells was in custody in Mingo County. *Id*. Thus, Mr. Wells was accountable for total drug quantity for purposes of calculating his guidelines range was 1.5305 kilograms. *Id*.

After Mr. Wells entered a guilty plea to sole count of the Indictment, a Presentence Investigation Report (hereinafter "PSIR") was prepared and later revised. (PSIR, RE 119, PAGEID# 439-462). Mr. Wells was determined to have an offense level of 33, criminal history category of V, and guidelines range of 210-262 months. *Id*. at PAGEID#455; *See also* Transcript of Sentence, RE 124, PAGEID# 515-516. Mr. Wells was determined to have had a leader or organizer role and was given a four-point adjustment in his guidelines calculations. (PSIR, RE 119, PAGEID# 415). Trial counsel objected to this role enhancement and the objection was left unresolved in the final PSIR and thus the issue was raised in Defendant's Sentencing Memorandum and in arguments at the sentencing hearing. *Id*. at 459-462; *See also* Defendant's Sentencing Memorandum, RE 104, PAGEID# 333-335; Transcript of Sentence, RE 502-513. The Court overruled counsel's objections and applied the four-point role enhancement.

Trial counsel further argued for credit or a variance for a thirteen-month period during which Mr. Wells was in state custody for an unrelated offense, but also under writ for the current case. (Statement of Reasons, RE 120, PAGEID# 468). The government supported this argument and the Court varied downward thirteen months. *Id.*

Trial counsel further argued for a variance downward to the statutory minimum of 120 months under the factors in 18 U.S.C. §3553(a). (Defendant's Sentencing Memorandum, RE 104, PAGEID# 327-336). The court considered these factors, however, the court only varied downward for the pretrial custody time, a delay partially caused by COVID restrictions. The district court gave no variance for the Mr. Wells significant good behavior and contribution to society which the court itself found commendable. (Transcript of Sentencing, RE 124, PAGEID #531). The Government recommended a sentence of 197 months and that is sentence the Court gave Mr. Wells. *Id.* at 522, 533. On September 13, 2021, Mr. Wells was given a sentence of 197 months incarceration to be followed by five years of supervised release. *Id.* at 533; *See also* Judgment, RE 115, PAGEID# 402-408.

Mr. Wells codefendant, Christina Tidwell, plead guilty to a lesser included offense and was sentenced to 78 months. (Tidwell Judgment, RE 111, PAGEID# 390-396). Ms. Tidwell was not given a role adjustment, had a criminal history category of VI, and her guidelines range was 140-175 months. (PSIR, RE 119, PAGEID# 461; Sentencing Transcript, RE 124, PAGEID# 506).

Mr. Wells timely appealed this Judgment to the Sixth Circuit Court of Appeals. (Notice of Appeal, RE 117, PAGEID# 434-444). The Sixth Circuit affirmed the judgment of the District Court. *See*, Opinion Below at Appx. A. Mr. Wells now requests this Honorable Court grant *Certiorari* to review the decision of the Sixth Circuit.

REASONS FOR GRANTING THE WRIT

I. *Certiorari* is requested to review whether Mr. Wells request for new counsel should have been granted

In the proceedings below, Mr. Wells argued that the District Court abused its discretion when it denied his request for new counsel. When a defendant makes a request for new counsel in writing or otherwise, the court must then make an inquiry as whether there is good cause for substitution of counsel. *Benitez v. United States*, 521 F.3d 625, 632-633 (6th Cir. 2008). It is not necessary for a defendant to explicitly request new counsel, use any specific words, or make a motion in writing for such an inquiry to be required. *Benitez* at 634-635. When analyzing whether a court properly denied a Defendant's request for new counsel, the Sixth Circuit uses the following four factors.

(1) the timeliness of the motion, (2) the adequacy of the court's inquiry into the matter, (3) the extent of the conflict between the attorney and client and whether it was so great that it resulted in a total lack of communication preventing an adequate defense, and (4) the balancing of these factors with the public's interest in the prompt and efficient administration of justice.

United States v. Mack, 258 F.3d 548, 556 (6th Cir. 2001)

Mr. Wells wrote a letter to the court which was filed and docketed as a Motion to Withdraw Plea. (Letter, RE 96, PAGEID# 247-248). In his letter, he expressed dissatisfaction with his appointed counsel, requested to withdraw his plea of guilty, and requested new counsel. *Id.* In his letter, Mr. Wells stated he was "improperly misled," "there was a failure to properly communicate," and he "was given false information." *Id.* The matter came before the Court on July 9, 2021 at which time

the Court held an *Iles/Benitez* hearing under seal and outside the presence of the government. (Transcript of 7/9/21 Hearing, RE 125, PAGEID #541-555; Sealed Transcript of 7/9/21 Hearing, RE 126, PAGEID #556-579).

Throughout the hearing Mr. Wells stated he was misinformed as to the status of additional charges against him. *Id.* at 565-568, 570-575. Mr. Wells was hesitant to take the plea and wanted a trial from the beginning. *Id.* Mr. Wells explained that he only took the plea because he believed additional charges had been filed against him for coercion and materially false statements and those charges would be dismissed. *Id.* Mr. Wells later learned, after he entered his plea, there were never any charges filed or pending and there was only an investigation which Mr. Wells did not believe would come to fruition. *Id.* Mr. Wells maintained his desire for new counsel and his innocence throughout the hearing, while defense counsel was willing to continue representation. *Id.* at 556-579. The Court denied Mr. Wells' request for new counsel and his motion. (Transcript of 7/9/21 Hearing, RE 125, PAGEID# 550).

Later, during the sentencing hearing, Mr. Wells expressed he did not wish for his attorney to speak on his behalf during the portion of the hearing where counsel was asked to make arguments under the 18 USC §3553 factors. (Transcript of Sentencing, RE 124, PAGEID# 523-524). The Court inquired if that was Mr. Wells desire, but made no other inquiry. *Id.*

Mr. Wells' claims of innocence and of receiving false information from his attorney certainly constitute a conflict between the attorney and client so great that

it resulted in a total lack of communication preventing an adequate defense meeting the standard set forth by this Court in *Benitez*. *Benitez* at 632-633. Mr. Wells' complaints that he based his decision to plea on information he later learned to be false could have formed the basis for a withdraw of plea pursuant to Fed. Crim. R. 11(d)(2)(B). Fed. Crim. R. 11(d)(2)(B) requires a defendant to show a just and fair reason for requesting to withdraw a plea prior to sentence and Mr. Wells' arguments tend to show that his plea was not voluntary. Fed. Crim. R. 11(d)(2)(B).

Further, Mr. Wells' request that is attorney not speak at a portion of sentencing coupled with his earlier written request for new counsel should have triggered an additional *Iles/Benitez* inquiry by the court. This is similar to the *Benitez* case, where the defendant first expressed a desire to remove retained counsel at the commencement of the sentencing hearing and then acquiesced to the representation. *Id.* at 634-635. In that case, the defendant's acquiescence to counsel's representation did relieve the district court from its obligation to inquire as to the relationship between counsel and defendant. *Id.*

In analyzing the *Mack* factors as outlined above, the Sixth Circuit completely overlooked the substance of Mr. Wells' serious complaints about his counsel. First, the Sixth Circuit found that the timing factor weighed against Wells. *See, Opinion Below at Appx. A, page 6-7.* In so finding, the Court said that Mr. Wells had long been dissatisfied with counsel and waited until after sentencing to file his motion. *Id.* However, one important complaint Wells' stated was that after he entered his plea, he learned that there were not pending charges against him and that he only entered

a plea because he believed there to be pending charges. Sealed Transcript of 7/9/21 Hearing, RE 126, PAGEID #565-568, 570-575. Mr. Wells' motion cannot be said to be untimely where it was based upon information he obtained after having entered a plea.

Further, the Sixth Circuit opined that the District Court was able to unearth the Mr. Wells was just looking to do the least amount of prison time. *See, Opinion Below at Appx. A, page 7.* In analyzing the extent of the conflict, the Sixth Circuit opined that Wells was unable to articulate that the alleged conflict affected the attorney client relationship. *Id.* However, Mr. Wells was actually making valid and substantive complaints about his attorney and his attorney's honesty regarding important details of this plea. Sealed Transcript of 7/9/21 Hearing, RE 126, PAGEID #565-568, 570-575. The Sixth Circuit's decision entirely ignores the important substantive basis of Mr. Wells' complaints about counsel and how it affected the knowing, voluntary nature of his plea.

Given the foregoing and as argued below, Mr. Wells submits that the Sixth Circuit erred in affirming District Court's denial of his request for new counsel. As such, Mr. Wells respectfully requests that *certiorari* be granted, that the judgment of the Sixth Circuit be reversed, and that this matter be remanded for the Court below for further proceedings, including a new analysis and weighing of the factors.

II. *Certiorari* is requested to review the Sixth Circuit’s determination that a four-level role enhancement under USSG § 3B1.1(a) was appropriate.

In the proceeding below, Mr. Wells argued that there was insufficient evidence for the application of the four-level leadership role enhancement. The Sentencing Guidelines provide a four-level enhancement to a defendant’s offense level if a defendant is found to be “an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.” *United States v. Bailey*, 973 F.3d 548, 571 (6th Cir. 2020) quoting U.S.S.G. §3B1.1(a). In assessing the application of a U.S.S.G. §3B1.1(a) enhancement a court should look at the following factors: “the exercise of decision-making authority, the nature of the defendant’s participation in the commission of the offense, the recruitment of accomplices, the degree of participation in planning or organizing the offense, and the degree of control exercised over others.” *Wright v. United States*, 182 F.3d 458, 466-67 (6th Cir. 1999).

In this case, the evidence that Mr. Wells had an organizer or leadership role is deficient. Notably, Mr. Wells was in state custody for all but one month of the period of time alleged in the indictment and stated in the facts contained in the plea agreement, specifically November 18, 2020 through February, 2020. (Indictment, RE 1, PAGEID# 1-3; Plea Agreement, RE 77, PAGEID# 202). Mr. Wells was taken into state custody on December 14, 2018 and has remained in custody (rather state or federal) from that time until the present. (PSIR, RE 119, PAGEID# 441-443, 459).

It is evident that while Mr. Wells was in state custody, there were many regular phone calls between himself and his codefendant, Christina Tidwell, who was

also the mother of Mr. Wells four young children. (Sentencing, RE 124, PAGEID# 503-504). During this entire period of time, there is one phone conversation in which Mr. Wells gives Ms. Tidwell advice on what to do if she is stopped by the police. *Id.* at 492-493. Notably, Mr. Wells was not directing drug trafficking in this call with Ms. Tidwell. *Id.* Further, there were not any phone calls played or presented at Sentencing in which Mr. Wells directed Ms. Tidwell (or anyone) to do anything during his time in state custody, there weren't any discussions about money or recruiting others to assist them, or otherwise making any decisions. *Id.* at 492-493; 503-504.

There is not any evidence in the record of any discussion of division of profits. Nor is there any evidence in the record that Mr. Wells ever paid anyone to assist him a drug trafficking conspiracy.

Both the District Court and the Sixth Circuit relied heavily on the agreed upon facts contained in the plea agreement. (Sentencing Transcript, RE 124, PAGEID# 508-513; *See*, Opinion Below at Appx. A, page 8-10). However, the facts in the plea agreement – directly quoted in the above statement of facts -do not support a role enhancement and the PSIR agreed the role enhancement was not contained in the plea agreement. (Plea Agreement, RE 77, PAGEID# 202; PSIR, RE 119, PAGEID# 456). The facts contained in the plea agreement and otherwise in the record, tend to indicate that codefendant Tidwell was more of an equal or a partner. *Id.* In fact, during Mr. Wells time in state custody Tidwell developed her own sources and

operation. PSIR at PAGEID# 441-444. However, and notably, Tidwell did not receive any role enhancement. (Sentencing Transcript, RE 124, PAGEID# 506.

The leadership role enhancement has been found to be appropriate where there is competent, but sparse evidence. *United States v. Robison*, 205 F.3d 1342, at *12 (6th Cir. 2000). However, this case differs from cases like *Robison*. In *Robison*, although sparse, there was evidence the defendant directed sales and was directly involved in negotiation of prices. *Id.* There is no such evidence in this case. This case is factually similar to *United States v. Walker*, 160 F.3d 1078 (6th Cir. 1998). In *Walker*, this Court found the district court improperly applied the leadership role where the record was lacking any evidence of an organizational role – i.e., there was not any evidence of the defendant setting up deals, keeping track of salaries, or directing anyone. The record in Mr. Wells case shows a similar lack of evidence to support the four-level enhancement.

In its opinion, the Sixth Circuit relies entirely on the testimony of the investigating officer and discounts the fact that Mr. Wells was incarcerated nearly the entire period of time covered by the indictment and the numerous jail calls lacking any evidence of a leadership role. *See*, Opinion Below at Appx. A, page 8-10.

Given the foregoing, Mr. Wells submits that the Sixth Circuit erred in its analysis and finding that the four-level leader or organizer enhancement was properly applied at Mr. Wells' sentencing. As such, Mr. Wells respectfully requests that *certiorari* be granted, that the judgment of the Sixth Circuit be reversed, and

that this matter be remanded for the Court below for further proceedings, including a new analysis.

III. *Certiorari* is requested to review the substantive reasonableness of Mr. Wells' sentence

In his proceedings below, Mr. Wells argued that his sentence was substantively unreasonable. The Sixth Circuit has held that “[a] sentence is substantively unreasonable if the district court selects the sentence arbitrarily, bases the sentence on impermissible factors, fails to consider pertinent 18 U.S.C. § 3553(a) factors, or gives an unreasonable amount of weight to any pertinent factor.” *See, United States v. Frei*, 995 F.3d 561, 567 (6th Cir. 2021); quoting, *United States v. Tristan-Madrigal*, 601 F.3d 629, 633 (6th Cir. 2010). The Sixth Circuit has also held that a sentencing review is conducted under the totality of the circumstances, and that there is a presumption of reasonableness for a sentence that falls within the Guidelines range. *Tristan-Madrigal, supra*, 601 F.3d at 633; quoting, *Gall v. United States*, 552 U.S. 38, 51 (2007); and, *United States v. Herrera-Zuniga*, 571 F.3d 568, 590 (6th Cir. 2009).

Ultimately, however, the panel below found Mr. Wells' failed to carry the heavy burden of showing his sentence was substantively unreasonable. *See, Opinion Below* at Appx. A, page 11. Mr. Wells submits that the Sixth Circuit erred in rejecting his claims on this basis and Mr. Wells therefore requests that certiorari be granted because his claims should have been reviewed based on the district court's failure to give a reasonable amount of weight to any factor other than the nature and circumstances of the offense.

Particularly relevant to the present case and to be further discussed below are the follows factors: nature and circumstances of the offense, history and characteristics of the defendant, and the need to avoid disparities among similarly situated defendants. As to the nature and circumstances of the offense, it should be noted that Mr. Wells plead guilty as charged to the single count in the indictment. (Plea Agreement, RE 77, PAGEID# 201). Mr. Wells did not receive any reductions nor were in charges dismissed in exchange for his plea as charged. *Id.* Further, Mr. Wells base offense level pursuant to the Sentencing Guidelines was 32 based upon a drug quantity of 1.5305 kilograms, an amount agreed upon in the plea agreement. (PSIR, RE 119, PAGEID# 444-446). The base offense level is determined by the drug quantity, in Mr. Wells case he fell in the range of 1.5 – 5 kilograms, Mr. Wells was at the low end of the range for this base offense level. Mr. Wells was .0306 kilograms away from a base offense level of 30 rather than 32.

Most notable is Mr. Wells' own history and characteristics. Mr. Wells is a loving and devoted father to six children and prior to his incarceration he was caring for four young children. (PSIR, RE 119, PAGEID# 452-455; Exhibits to Defendant's Sentencing Memorandum, RE 104, PAGEID# 337-343). Mr. Wells is an intelligent man making capable of running businesses and earning an income. *Id.* He is well liked and respected in his community and known for his generosity. *Id.* Even the District Court (and the government) noted, Mr. Wells has shown he is capable of being a contributing member of society with no history of violence. (Sentencing Transcript, RE 124, PAGEID# 520-521, 531).

While Mr. Wells was determined to have a criminal history category of V, this is a misrepresentation of his history which should be taken into account. Mr. Wells has a history of drug charges and admitted he could benefit from treatment. (Defendant's Sentencing Memorandum, RE 104, PAGEID# 332-333). Mr. Wells does not have any gang affiliations nor does he have a violent criminal history. *Id.*

Finally, Mr. Wells' codefendant received a significantly lighter sentence and did not receive a sentencing enhancement for her role in the offense. (Sentencing Transcript, RE 124, PAGEID# 506). The record reflects that codefendant Tidwell played more of an equal role to Mr. Wells and even developed her own operation while Mr. Wells was in state custody, yet Tidwell received a significantly lighter sentence. (PSIR, RE 119, PAGEID # 441-444). Tidwell plead guilty to a lesser included offense and was attributed a lower drug quantity. (Tidwell Judgement, RE 111, PAGEID# 390-396). Tidwell, however, had a higher criminal history category of VI and her Guidelines Sentencing range was determined to be 140-175 months. (PSIR, RE 119, PAGEID# 461). She was sentenced to 78 months, a significant downward departure from the guidelines range. (Tidwell Judgement, RE 111, PAGEID# 390-396).

18 U.S.C. §3553(a)(1) and (a)(6) instruct the Courts to look at "the nature and circumstances of the offense and the history and characteristics of the defendant" and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." In this case, as reflected by the record below, the district court's overriding concern was with the

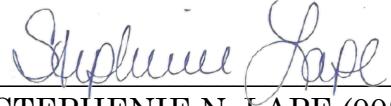
nature and circumstances of the offense. In its decision, the district court focused almost entirely on the nature of the offense and placed very little weight on other mitigating factors. The Sixth Circuit took no issue with this failure to weigh all the factors. *See, Opinion Below at Appx. A, page 10-11.* The Sixth Circuit noted that that District Court did in fact vary downward thirteen months when sentencing Mr. Wells. *Id.* However, this variance was not related to the factors discussed above. *Id.* The District Court found the variance fair in light of COVID delays which caused a pending state matter to be delayed in resolution after the time a writ had been issued in this current federal matter. *Id.* Essentially, Mr. Wells served time in state custody which was not necessarily time that he would normally receive credit for in his federal sentence, but under the circumstances, the District Court varied downward to compensate for this time served in State custody. *Id.* The government agreed such a variance was warranted and fair. *Id.*

Given the foregoing, and as set forth in the proceedings below, Mr. Wells submits that his sentence was substantively unreasonable. As such, Mr. Wells requests that *certiorari* in this matter be granted, and this case remanded for further proceedings.

CONCLUSION

Wherefore, and for all of the foregoing reasons, Petitioner Wells respectfully requests that this honorable Court grant certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit.

Respectfully Submitted,



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