

22-7296

No. 22-1863

ORIGINAL

Supreme Court, U.S.
FILED

FEB 15 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Nathan Karl Thomas PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for The Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Nathan Karl Thomas
(Your Name)
Federal Correctional Institution Marianna
P.O. Box 7007
(Address)

Marianna, Florida, 32447
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- ① Did the Government Breach Petitioner's Plea Agreement?
- ② Did the Sentencing Court give Petitioner a substantively unreasonable sentence?
- ③ ^{Did} Was a Double Jeopardy violation arise when Petitioner was convicted of two crimes that are "in law and fact the same offense"?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v. Feemster 572 F.3d (8th Cir. 2009)
United States v. Bruno 819 Fed. Appx. 454
United States v. Roy, 408 F.3d 484, 491 (8th Cir. 2005)
North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 56 (1969)
Glockburg v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed (1932)
Miller-El v. Cockrell, 537 U.S. 322 (2003)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A September 26th 2019 - Court of Appeals for the Eighth Circuit Affirmed Sentence but vacated restitution

APPENDIX B January 19th 2022 - United States District Court for the Eighth Circuit Denied Petitioner's 2255 motion in its entirety

APPENDIX C May 31st 2022 - Court of Appeals for the Eighth Circuit denied a Certificate of Appealability and dismissed the Appeal

APPENDIX D November 21st 2022 Court of Appeals for the Eighth Circuit denied petition for rehearing

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A, C, D to the petition and is

☒ reported at Sept. 26th 2019, May 31st 2022, Nov 21st 2022; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at Jun. 19th 2022; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3553(a)

Federal Rules of Criminal Procedure Rule 11

18 U.S.C. § 2255

Fifth Amendment / United States Constitution ✓

Most of the Constitutional and Statutory Provisions involved occurred during Petitioners' Sentencing in 2018

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 21st 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix N/A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

XII. STATEMENT OF CASE

AND

XIII. REASONS FOR GRANTING PETITION

A. Breach of the Plea Agreement

The government breached the plea agreement because in the plea agreement, the Government stipulated to an appropriate sentence and guideline calculations of a base level of thirty-five; (base level drops down to thirty-two after Petitioner accepts responsibility).

Under the U.S. Sentencing Guidelines Manual, the Government stipulated that Petitioner's base level offense starts off at twenty-two pursuant to USSG 2G2.2 then the enhancements apply. Two level enhancement pursuant to USSG 2G2.2(b)(2); four level enhancement pursuant to USSG 2G2.2(b)(4); two level enhancement pursuant to USSG 2G2.2(b)(6); and a five level enhancement pursuant to USSG 2G2.2(b)(7) totalled to a base offense level of thirty-five. Yet in the Government's Sentencing Memorandum, the Government contended that the total offense level (before a three-level adjustment for acceptance of responsibility) is 45, resulting in an advisory guideline range of 360 to LIFE. The Government also contended that "A 480-month sentence of imprisonment is an entirely reasonable sentence in light of the sentencing considerations pursuant to 18 U.S.C. § 3553(a)."

There is a reasonable probability that the district court would have imposed a lesser sentence had the government maintained the stipulations that were calculated in the Petitioner's plea agreement which provided the correct advisory range of 121 to 151 months based upon a total offense level of 32 and a crimi-

inal history category of 1.

B. Substantively unreasonable sentence

The district court abused its discretion when it (1) 'failed to consider a relevant factor(s) that should have received significant weight': (2) 'gave significant weight to an improper or irrelevant factor'; or (3) 'considered only the appropriate factors but in weighing those factors commits a clear error of judgment.' United States v. Feemster, 572 F.3d 455 (8th Cir. 2009).

In the instant case, the district court failed to: (1) adequately credit him for accepting responsibility, (2) adequately credit Petitioner for providing accurate information to the Petitioner's crimes as well as the information that led to the arrest and conviction of Haidy Branson and her crimes, (3) adequately credit Petitioner for a downward variance because Petitioner has no criminal history. (In United States v. Bruno, 819 Fed. Appx. 454 (8th Cir. 2020), "the court further noted that Bruno's lack of criminal history was reflected in the Guidelines range. Bruno pled guilty to possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B), (b)(2) and was sentenced to 97 months imprisonment.)

The district court sentencing was substantively unreasonable when the court "placed too much weight on some of the 18 U.S.C. § 3553(a) factors and too little on others in sentencing the Petitioner." United States v. Rayyan, 885 F.3d 436, 442 (6th Cir. 2020).

C. Double Jeopardy

A double jeopardy violation arises when a defendant is convicted of two crimes that are "in law and fact the same offense." United States v. Roy, 408 F.3d 484, 491 (8th Cir. 2005).

One of the distinct purposes of the Double Jeopardy Clause is to "protect against multiple punishments for the same offense." North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969). If "the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not." Blackburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932).

In the instant case, on December 6, 2014, a federal search warrant was executed at Petitioner's home in Lockesburg, Arkansas. An LG model cellular phone, a SCH-S720C Galaxy Proclaim cellular phone and a Toshiba 500 gigabyte hard drive were seized pursuant to the search warrant. Among these devices, images and videos of minors engaging in sexually explicit conduct were recovered. The LG model cellular phone was forensically examined which resulted in the recovery of the KiK Messenger App. From this specific App, law enforcement were able to recover nude images that were sent from a minor to Petitioner's phone that charge him for Count 1 of the indictment Petitioner pled to (2252(a)(2) and (b)(1)).

Additionally, law enforcement located the video charged in Count 2 of the Indictment (2252(a)(2) and (b)(1)), which had been sent to Petitioner via KiK Messenger App. The same App utilized in Count 1. Law enforcement did not recover the images and videos

on two separate occasions, yet it was the same day, utilizing the same device(s) (KiK Messenger App), which resulted to the Petitioner's convictions from the "same act or transaction"

Blockburger, 284 U.S. at 304.

The Double Jeopardy violation constitutes a violation of the Petitioner's Fifth Amendment right to the Constitution. Petitioner submits a substantial showing of the denial of a constitutional right. Petitioner believes "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322 (2003). Petitioner requests that this Court issue a certificate of appealability or any other appropriate remedy resolving the Petitioner's claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Alvin Moore

Date: *February 17th, 2023*
