

IN the Supreme Court of the
United States

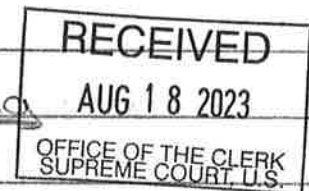
Nathan Karl Thomas

vs.

United States of America

ON Petition for Writ of Certiorari
to the United States Court of Appeals
For the Eighth Circuit

Petition for Rehearing



Now Comes Pro-se petitioner Nathan Karl Thomas. Appellant presents its petition for re-hearing of the above titled cause. Petitioner request a rehearing under the deferential abuse of discretion standard as well as a statutory Interpretation claim that would fall under a plain error review.

Petitioner will be raising the statutory Interpretation claim under plain error review for the first time under United States V Dubin U.S Lexis 2420 (2023) Considering Dubin was not available to petitioner
(D41)

during the appeal process. United States v. Dubin U.S. Lexis 2420 (2023) helps petitioner in his unreasonable sentence claim under the detrimental abuse of Discretion standard and Plain error standard which Both will coincide together for the argument of an Unreasonable sentence which was raised on appeal.

Ground for Rehearing

A rehearing of the decision in the matter is in the interest of Justice because Mr. Thomas's sentence exceeds the Statutory maximum of 20 years.

Mr. Thomas 360 month sentence is in fact Unreasonable. Mr. Thomas challenges the Substantial reasonableness of his sentence due to the fact that his sentence of imprisonment exceeds the Statutory maximum allowed under Title 18 U.S.C § 2252(A)(2) & (B)(1).

Title 18 U.S.C § 2252(A)(2) & (B)(1) in which petitioner is convicted and sentenced to imprisonment reads as follows: (B)(1); whoever violates, or attempts or conspires to violate paragraph (1), (2), or (3) of subsection (A) shall be fined under this Title and imprisoned not less than 5 years and not more than 20 years imprisonment.

Mr. Thomas has no prior offences that would categorize him under the second sentence of imprisonment requirement of Not Less than 15 years, no more than 40 years.

The court then recognizes that Mr. Thomas's sentence of imprisonment should not exceed the statutory maximum of 20 years imprisonment.

In petitioner's case the court applied a consecutive sentence also known as a cumulative sentence which ultimately enhanced his sentence of imprisonment from 180 months to 360 months imprisonment.

Mr. Thomas was sentenced to two counts under the same statute of Title 18 U.S.C. § 2252 (A)(2) & (B)(1) which has a maximum sentence of 20 years imprisonment. This was one conviction and one ultimate sentence of imprisonment. The Sentencing Court abused its discretion by enhancing Mr. Thomas' sentence by an additional 180 months imprisonment to where the statute does not require a consecutive sentence to be applied. There are some Title 18 statutes that require consecutive sentences such as Title 18 U.S.C. § 924(c) which states the statute shall not run concurrently with any other term of imprisonment.

Under 18 U.S.C. § 3584(A) multiple terms of Imprisonment clearly states that multiple terms of imprisonment imposed at the same time run Concurrently unless the court orders or the statute mandates that the terms are to run consecutively.

The court must also consider 18 U.S.C. § 3553(A) Factors within the scope of § 3584(B). If the court was to have took into consideration § 3553 factors then the factors would clearly weight in the favor of Mr. Thomas.

Mr. Thomas has no prior convictions whatsoever. He is a first time offender and has received a sentence as a career offender. When looking at the § 3553 factors the court also failed to consider § 3553(A)(6), The need to avoid unwarranted sentencing disparities among defendants with similar records.

For instance in United States v Rhodes, 828 F.2d 342; Rhodes, pled guilty to Three counts of coercion and enticement of a minor in violation of 18 U.S.C. § 2422(B) and one count of distribution of child pornography in violation of 18 U.S.C. § 2252(A)(2), (B)(1). A sentencing the district court sentenced Rhodes to three concurrent terms of 360 months in prison on the coercion and enticement and 240 months to be run concurrently.

on the distribution count.

United States v Niezen 834 F.ED Appx 533
2020. (8th cir)

FBI Executed a search warrant on his home. agents seized his computer, Hard Drive and other electronic Devices, forensic analysis of the Devices, revealed nearly 20,000 images and 808 videos depicting minors engaging in Sexually explicit acts including toddlers and other children under the age of 12 years old.

31 victims was Identified under the National Center for missing children NCMEC.

Neizan was charged for one count under § 2252(A)(2) & (B)(1). Neizan was sentenced to 97 months imprisonment.

United States v Combs 44 F.4 815 (8th cir)

Police found hundreds of sexually explicit images and Videos on Combs cell phone.

Combs who was 19 at the time Solicited them from younger girls. His Criminal behavior was Not just Limited to just child pornography. He talked several of them into having sex with him including one that was just 13 years old. Facing 5 pornography Counts and one enticement of a minor.

Three of the counts he pled guilty to. two for receiving Child pornography each from a separate victim
(m.5)

18 U.S.C § 2252(A)(2) & (B)(1) and another for possessing it. § 2252(A)(4)(B), (B)(2) at Sentencing Combs received a 210 month sentence.

These cases alone show a major Sentencing Disparity under 18 U.S.C § 3553(A)(6).

The Court clearly abused its discretion for sentencing Mr. Thomas to 360 months imprisonment when the statutory maximum was 20 years imprisonment. The court imposed a substantively unreasonable sentence. The court placed too much weight on the aggravating factors and not enough on the mitigating factors. The sentence was greater than necessary. United States v Pepper 518 F.3d 949, 951 (8th cir 2008) citing Gall v United States, 522 38, (8th cir 2008).

The court focused mainly on conduct unrelated to Thomas's actual offence as aggravating factors namely his relationship with one of the individuals who had nothing to do with Mr. Thomas's offences in which he was charged.

While a defendant's history and characteristics are relevant Sentencing factors to take into consideration by a sentencing court, the sentence imposed by this court in this

case was more a reflection of Thomas's alleged History and characteristics than it was on the crimes he was facing and actually Plead guilty to.

By Sentencing Mr. Thomas to 360 months imprisonment the District Court committed clear error of Judgement in weighting the relevant factors by arriving at a sentence outside the range of choice dictated by the facts of the case; United States V Jones 507 F.3d 657, 659 (8th cir 2007).

Statutory Interpretation 18 U.S.C § 2252 (A)(2) (B)(1). "Plain Error Review"

Mr. Thomas is requesting a review under "plain error". Rule 52(B) of federal rules of criminal procedure provides that plain error or defects affecting Substantial rights may be noticed although they were not brought to the attention of the court.

(1) There must be error a deviation from a Legal review being "error" unless rule has been waived.

Mr. Thomas Looks to the Statute of 18 U.S.C § 2252(A)(2), (B)(1).

§ 2252 (A)(2), (B)(1) under (B)(1) whoever violates, or attempts or conspires to violate paragraph (1)(2) or (3) of subsection (A) shall be fined under this title and Imprisoned not less than 5 years and not more than 20 years.

Mr. Thomas was charged with two counts pursuant to his plea agreement. Both counts are for Title 18 U.S.C § 2252 (A)(2) + (B)(1) which has a maximum sentence of 20 years imprisonment. Mr. Thomas was under one conviction and one ultimate sentence.

Since Both counts are of the same offence and have the same statutory Interpretation then the Court should have stayed within the statutory maximum of the offence charged.

The court must look to the word within the Statute "Imprisoned". If the Statute reads that one should not exceed the statutory maximum of Imprisonment then the court is bindied by the Statutory requirements and shall not exceed what the statute requires.

Now if there were 2 counts and one carries a statutory maximum of a sentence of Imprisonment that Superceeds the other than the court can then apply the Superceeded Sentence of Imprisonment of the other Count.

The court recently ruled in Dubin V United States U.S. Lexis 2420 (2023), Dubin was convicted of healthcare fraud under 18 U.S.C. § 1347 after he overbilled Medicaid for psychological testing performed by the company he helped manage. The question in the Dubin case is whether defrauding Medicaid, he also committed aggravated Identity theft under § 1208(A)(1). applicable

Bound By fifth circuit precedent the District Court allowed Dublin's conviction for aggravated Identity theft to stand, even though, in the District Courts view, the crux of the case was fraudulent billing, not identity theft. The fifth circuit sitting en banc affirmed in a fractured decision with five concurring Judges acknowledging that under the government's reading of § 1028(A)(1) the elements of the offence are not captured or even fairly described by the words "identity theft".

The way Mr. Thomas case can resemble Dubin because it deals with statutory interpretation's is because the court in Mr. Thomas case overrides the plain meaning of the word "Imprisoned" and the meaning of "Not more than".

The Title of a statute and the heading

of a section are tools available for the resolution of a doubt about the meaning of a statute. A title will not of course override the plain words of the statute. The means of the word's of "not more than" and "Imprisoned" serves to designate the actual meaning's of the words and the court shall not deviate from it's true meaning. The words "not more than" and "Imprisoned" does not pose interpretational difficulties and only has one meaning so it's clear that the court presented "Plain Error" because there is no reason to have express the court to determining the meaning of these words. All in all Mr. Thomas final Sentence for Both counts must not exceed more than 20 years of imprisonment.

(2) The Error must be plain that is clear or obvious at least under the law that is current at the time of review.

In this case the error is plain and obvious that the court used a consecutive sentence to undermine the authority given within the Statute of conviction under 18 U.S.C § 2252 (A)(2), (B)(1).

(3) The plain error must affect Substantial rights wick in most cases

the error must have been prejudicial.

By Mr. Thomas receiving a ~~30~~ year sentence instead of a 20 year maximum prejudiced Mr. Thomas because had he known the sentence would have exceeded the 20 year mark he would not have plead guilty and would have proceeded to trial affecting his 5th Amendment rights "Due process violation" as well as his 6th Amendment rights of the U.S Constitution.

Conclusion

For the reasons just stated Nathan Karl Thomas urges that this petition for rehearing be granted and that on further consideration Mr. Thomas gets a rehearing under Abuse of Discretion standard and under "Plain error review". Mr. Thomas ultimately prays the courts grant this motion and reduce his sentence to run consecutively for a total of 180 months for both counts, and the Judgment of the lower courts be reversed.

Certificate of Good Faith

I pro-se petitioner Nathan Karl Thomas certify that this petition for rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Supreme Court rule 44 rules of the court.

I hereby certify that the foregoing is true and correct to the Best of my Knowledge under penalty of perjury of the court

x Nathan

Date 8-9-23