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IN THE
SUPREME COURT OF THE UNITED STATES

ASHLEY LATREECE THACKERSON — PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Involving Case No. 22-10675

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Fifth Circuit Court of Appeals err by finding that Petitioner did not qualify for safety valve relief under the First Step Act 18 U.S.C. § 3553(f)?

The Court of Appeals in the Ninth Circuit has written an opinion that indicates that Petitioner would qualify for Safety Valve Relief under the new criminal history counting rules in the First Step Act. [US v Lopez, 998 F.3d 2021].

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Ashley Latreece Thackerson is from the Abilene, Texas area.

She was indicted in the San Angelo Division of the Northern District of Texas.

She pled guilty to being a minor participant in a meth distribution indictment in the San Angelo – Abilene area of Texas. The sentencing judge was Mark Pittman of Fort Worth, Texas.

RELATED CASES

There are no related cases.

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**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.

Petitioner received a ten year sentence for selling about \$1700 worth of meth because the Fifth Circuit ruled that Safety Valve Relief under the First Step Act was not available to the Trial Court. 18 USC § 3553(f).

OPINIONS BELOW

The opinion of the United States Fifth Circuit Court of Appeals appears as Appendix A to the petition, pages 8-9. The opinion is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided this case was March 27, 2023. No petition for rehearing was filed in this case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Safety valve relief under the new First Step Act, 18 U.S.C. § 3553(f).

STATEMENT OF THE CASE

This is a direct appeal from a final decision of the U.S. District Court for the Northern District of Texas, San Angelo Division, entering judgment of conviction and imposing a criminal sentence. Petitioner received a ten year prison sentence for selling about \$1700 worth of meth.

Petitioner received a ten year prison sentence for selling about \$1700 worth of meth, having been a very minor participant in a conspiracy indictment involving several other people. The Judge wanted to go below the mandatory minimum.

The District Court Judge from Fort Worth, Texas, entered a written judgment imposing a 120 month term of imprisonment on July 8, 2022, and Appellant filed notice of appeal on July 11, 2022. The Fifth Circuit Court of Appeals affirmed the sentence by an unpublished opinion dated March 27, 2023. [Appendix A].

REASONS FOR GRANTING THE PETITION

The Fort Worth Trial Court Judge made several remarks that require explanation and require reading between the lines. The Trial Court Judge makes a great deal of Petitioner's argument, which is that a ten year sentence for selling about \$1700 worth of meth is just wrong. United States v Lopez, 998 F.3d 431 (9th Cir. 2021), describes an interpretation of counting criminal history points that would make the Petitioner eligible for Safety Valve Relief that the Judge wanted to grant.

The Trial Court Judge stated, [Appendix B, pages 10-14] when he found that he could not grant Safety Valve Relief:

I think if this doesn't present the case that might need some change or the Fifth Circuit to look at it, I can't think of one. Record on Appeal at page 212.

Because the Fifth Circuit does not allow Safety Valve Relief for Petitioner, she received a ten year prison sentence for selling about \$1700 worth of meth.

THE COURT: Again, you can't qualify for the -- particularly with where we're going nowadays -- look, I'm not hear to talk policy, but republican, democrat, independent, yellow, white, brown, black or blue, there seems to be a consensus nowadays that a lot of these sentences are way too high.

Record on Appeal at 212.

CONCLUSION

The petition for a writ of certiorari should be granted. No one should receive a ten year prison sentence for selling \$1700 worth of meth.

Respectfully submitted,

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Dated: 5/20/2023 /s/Andrew Ottaway

United States Court of Appeals for the Fifth Circuit

No. 22-10675
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 27, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ASHLEY LATREECE THACKERSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:21-CR-58-13

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges*.

PER CURIAM:*

Ashley Latreece Thackerson appeals the sentence imposed following her guilty plea conviction for conspiracy to distribute and possess 50 grams or more of methamphetamine with intent to distribute. Relying on *United States v. Lopez*, 998 F.3d 431 (9th Cir. 2021), Thackerson argues that she is eligible for safety valve relief under 18 U.S.C. § 3553(f) and that her statutory

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 22-10675

mandatory minimum prison term of 120 months should be vacated. The Government has filed an opposed motion for summary affirmance or, in the alternative, for an extension of time to file an appellate brief.

Thackerson's argument is now foreclosed by our recent decision in *United States v. Palomares*, 52 F.4th 640 (5th Cir. 2022), *petition for cert. filed* (U.S. Dec. 21, 2022) (No. 22-6391). Because Thackerson ran afoul of § 3553(f)(1)(B)'s requirement that she not have a prior three-point criminal offense, she was ineligible for relief under § 3553(f). *See Palomares*, 52 F.4th at 647.

In light of the foregoing, the judgment of the district court is AFFIRMED. The Government's motion for summary affirmance and alternative motion for an extension of time to file a brief are DENIED. *See United States v. Bailey*, 924 F.3d 1289, 1290 (5th Cir. 2019).

1 **THE COURT:** Okay. Did you have a chance to review
2 all three of those with your client?

3 **MR. OTTAWAY:** Yes.

4 **THE COURT:** All right.

5 Mr. Haag, did the Government receive those in a
6 timely manner?

7 **MR. HAAG:** Yes, Your Honor, it did.

8 **THE COURT:** Okay. Let's pick up where we left off a
9 couple of months ago.

10 Mr. Haag, are you going to stand on the objection
11 that was filed earlier?

12 **MR. HAAG:** Yes, Your Honor, I will, as far as the
13 safety valve.

14 **THE COURT:** No, as far as the one that Juanita filed
15 on the -- how the numbers were calculated.

16 **MR. HAAG:** No, Your Honor. I'll, at this time,
17 withdraw that objection.

18 **THE COURT:** All right. Thank you.

19 So, the order (*sic*) that we have before us today is
20 a motion for downward departure or variance that was filed by
21 Ms. Thackerson with regards to whether the First Step Act
22 applied in her case or not, and I allowed you guys to do some
23 briefing on it.

24 I want to make some very candid comments, and
25 perhaps you-all can convince me otherwise. But we have an

1 offense here that carries a minimum ten-year offense (*sic*).
2 The evidence, at least that I have before me in my presentence
3 report, Mr. Ottaway, is that she purchased, what, a little
4 under \$2,000 worth of methamphetamine?

5 **MR. OTTAWAY:** Ordered on Facebook messenger or
6 something and paid by PayPal.

7 **THE COURT:** Like \$1,700?

8 **MR. OTTAWAY:** Yes, sir. They got us cold on the
9 elements.

10 **THE COURT:** She's got a criminal conviction that
11 goes back to 2011 for theft of copper wire. Now, I'm not a
12 lifelong drug prosecutor, but I do seem to believe that most
13 of the time that's addicts stealing copper wire to pay for
14 their addiction. But nonetheless, she has that crime on her
15 criminal history when she was 22, bringing her into a category
16 II criminal history on a 10-year-old crime, \$1,700 worth of
17 methamphetamine.

18 You filed a motion that the First Step Act
19 qualifies. This is one of those cases where I have to do
20 something I don't agree with. I think that ten years is a
21 hell of a lot of time for what I have before me. I wish that
22 I could waive a magic wand and say that the First Step Act
23 applies, but under my oath I am bound to follow the law, even
24 when I don't like the outcome. And the minute that I stop
25 doing that I need to resign or have Congress impeach me.

1 I am left with no choice, unless you can convince me
2 otherwise, based on the law, than to deny the motion for
3 relief under the safety valve. And I hope you explain to your
4 counsel -- I mean, to your client, this does not mean she's
5 not left with any other avenues, whether it be appealing my
6 decision today to the Fifth Circuit, whether it be filing any
7 appropriate motions for compassionate release or the like,
8 it's something that we consider all the time.

9 But empathy is not supposed to be something as a
10 judge that I use to guide my decisions, I'm guided by the law.
11 And for better or worse my hands are tied in this situation.

12 **MR. OTTAWAY:** We understand, Judge.

13 **THE COURT:** Do you have any additional argument
14 you'd like to make? I'd like for you to be able to preserve
15 your record.

16 **MR. OTTAWAY:** Well, Judge, we think --

17 **THE COURT:** And I think it will be a good one for
18 the Fifth Circuit to look at.

19 **MR. OTTAWAY:** We think the First Step Act would
20 apply to this, because it really is a considerable change in
21 the sentencing policy. We think that you have discretion to
22 apply that and allow the safety valve relief.

23 **THE COURT:** All right.

24 Mr. Haag, would you like to respond?

25 **MR. HAAG:** Your Honor, just briefly.

1 I do agree with the Court, this is an issue that is,
2 indeed, subject to different interpretation. The Ninth
3 Circuit, it would agree with Mr. Ottaway. The Eleventh
4 Circuit just recently debriefed en banc and they're going to
5 address this issue en banc. So, it certainly is an issue
6 that's unsettled.

7 We do believe that the better opinion is those
8 reflected in the Government's briefing and district courts
9 that basically say that this defendant is disqualified from
10 the safety valve because of that prior three-point conviction.

11 **THE COURT:** You know, I used to be on the Court of
12 Appeals, and the same is true that bad facts make bad law, but
13 it's also true that good facts make good law. I would highly
14 encourage you-all to appeal this. I think if this doesn't
15 present the case that might need some change or the Fifth
16 Circuit to look at it, I can't think of one.

17 **MR. OTTAWAY:** We certainly intend to, Judge.

18 **THE COURT:** Again, you can't qualify for the --
19 particularly with where we're going nowadays -- look, I'm not
20 hear to talk policy, but republican, democrat, independent,
21 yellow, white, brown, black or blue, there seems to be a
22 consensus nowadays that a lot of these sentences are way too
23 high.

24 We just had a republican president that signed the
25 most sweeping reform with criminal justice in decades, since

1 the '90s. But if buying \$1,700 worth of methamphetamine over
2 the Facebook gets you ten years with a 10-year-old crime for
3 stealing copper wire and a consistent history of drug
4 addiction of methamphetamine doesn't, then I think the Fifth
5 Circuit needs to make that decision. But I'm bound by my
6 oath.

7 *MR. OTTAWAY:* We understand.

8 *THE COURT:* Again, it's not the only avenue, okay?

9 *MR. OTTAWAY:* She has lots of medical problems, so
10 we'll be doing a compassionate release after this also.

11 *THE COURT:* I think that might be a good idea.

12 But again, for better or worse, how I personally
13 feel about these cases is not the guidestone that I've taken
14 up as a judge. And I try to do my best, even in cases that I
15 don't agree with. Sometimes you have to do that. So if you
16 didn't, you wouldn't be doing your job as a judge.

17 Therefore, I'm going to be denying the motion filed
18 by the defense for relief under the safety valve.

19 Let me make the following findings, in light of my
20 denial of defense's motion. I will adopt as my final findings
21 of fact the statements of fact made in the presentence report,
22 subject to and including the changes and qualifications made
23 by the addendum to the presentence report and that I made in
24 response to the motion filed on behalf of defendant by
25 Mr. Ottaway in the presentence report that I've just denied --