

22-7804

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IN THE
SUPREME COURT OF THE UNITED STATES

RICKY SIMMONDS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ricky Simmonds
(Your Name)

Federal Corr. Inst. - Hazelton
P.O. Box 5000, Reg. # 10173-509

(Address)

Bruceton Mills, WV 26525
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the United States of America breaches a negotiated plea agreement when it fails to affirmatively state at the Sentencing hearing that the stipulated sentencing offense level of the parties should be adhered to prior to the district court's imposition of a sentence?

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

U.S. vs. Simmonds, 2023 U.S. App. LEXIS 6277 (6th Cir.)

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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.

OPINIONS BELOW

[X] For cases from federal courts:

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

reported at 2023 U.S. App. LEXIS 6277 (6th Cir.); 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[] is unpublished.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 _____ to the petition and is

[] reported at _____; 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[] is unpublished.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[] is unpublished.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[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 16, 2023.

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: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. 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 _____. A copy of that decision appears at Appendix _____.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rules of Criminal Procedure Rule 11(c)(1)(C) [reads]:

(c) Plea Agreement Procedure.

(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

U.S. Constitution Amendment 5 [reads]:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

The Appellant, Ricky Simmonds, was arraigned before the U.S. District Court for the Northern District of Ohio for participating in a conspiracy to distribute and possess with intent to distribute fentanyl, cocaine, and methamphetamine and [using] a telephone to facilitate said drug offenses. At the time of the pretrial proceeding, the defendant was over the age of fifty years old; the defendant's son, fiancee, and [now deceased] brother were arrested in the instant case (along with thirteen other persons). Under the advice of defense counsel, Simmonds entered a plea agreement with the Government, upon entering a plea of guilty to certain counts, the parties stipulated that Simmonds base level would be 32, pursuant to Section 2D1.1(c)(4) under category II, and that the Government may argue for two adjustments (+2 organizer, +2 Possession of Firearm). The Appellant plead guilty one count of violation of 21 U.S.C. section 846, one count of 21 U.S.C. section 841(a)(1), (b)(1)(B) and 846, one count 21 U.S.C. section 841(a)(1)(A) and (b)(1)(C), and twenty-two counts of 21 U.S.C. section 843(b), on September 15, 2021.

Prior to Sentencing, defense counsel filed a Sentencing Memorandum and objected to the PreSentence Investigation Report recommendation of life imprisonment based on a total offense level 43 (Criminal History Category II) within Zone D. Defense counsel at Sentencing argued that the district court impose a

sentence within the stipulated offense level and guideline range of the negotiated plea agreement. The plea agreement high end with two [enhancement] adjustments after acceptance of responsibility was an imprisonment range of 151-188 months [with a mandatory minimum sentence of 120 months]. At Sentencing, the Government did not object to the PSIR total offense of 43 and only after the Court sentenced the defendant above the plea agreement guideline range did the Government make a brief statement on "a few house keeping matters." See Appellate Brief (page 12). Counsel for the Government claimed they want the record to show that the Government informed defense counsel that they will honor the plea agreement eventhough it was a "moot point." The district court imposed a sentence of 250 months of imprisonment on January 13, 2022.

Defense counsel filed a Notice of Appeal following Sentencing. Mr. Henry J. Hilow (Esq.) briefed the case on appeal and the Court of Appeals for the Sixth Circuit later affirmed the judgment on March 16, 2023. See U.S. vs. Simmonds, 2023 U.S. App. LEXIS 6277 (No. 22-3072). The Court of Appeals held that [the] appellant "could not satisfy three threshold requirements for plain-error relief on his claim that [the] district court improperly relied on [the] PreSentence Report's recommendation rather than [the] parties non-binding plea agreement" and the "Government did not breach the plea agreement, so defendant could not show [the] district court erred by failing to rectify that breach." See *Id.*

Appellate counsel, Mr. Hilow (Esq.), did not serve the appellant a copy of the Sixth Circuit decision, nor provide the appellant a letter advising him on the next steps towards his appeal. Appellant now files this petition for a Writ of Certiorari on the instant appeal decision. See Appendix A.

REASONS FOR GRANTING THE PETITION

THE PETITION SHOULD BE GRANTED TO ALLOW THIS COURT TO REVIEW THE GOVERNMENT BREACHING A NEGOTIATED PLEA AGREEMENT WHEN IT FAILED TO AFFIRMATIVELY STATE AT THE SENTENCING HEARING THAT THE STIPULATED SENTENCING OFFENSE LEVEL OF THE PARTIES SHOULD BE ADHERED TO PRIOR TO THE DISTRICT COURT'S IMPOSITION OF A SENTENCE.

The Sixth Circuit decision in U.S. vs. Simmonds is contrary to past Sixth Circuit precedent and Sister Circuit precedent when reviewing a clearly apparent claim of the Government breaching a plea agreement at a held Sentencing hearing. The prejudice shown on record details a 155-188 month guideline calculation turned to a life imprisonment guideline recommendation, leaving the lower court to impose a close, to 21 year sentence of imprisonment (250 months of imprisonment) for a 51 year old defendant. To uphold confirmity with this Court's precedent, such as Santobello vs. New York, 404 U.S. 257 (1971), and other Sister Circuit [precedent], this Court should review whether a plea agreement not under Fed.R.Crim.P. Rule 11(c)(1)(C) is exempt from the rule set out in Santobello and what is the correct analysis that a district court should apply when a breach of plea agreement happens.

This U.S. Supreme Court has held as a rule that "when a plea rests in any significant degree on promise or agreement

of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." See Santobello vs. New York, 404 U.S. 257, 262, 92 S.Ct. 495 (1971). In Santobello, this Supreme Court reversed the New York case conviction even after the lower court said that the prosecution's breach was inadvertent and had no impact on the sentencing decision. See Id at 262-63. However, the case of Simmonds differs as the PSIR recommendation of life imprisonment was not objected to by the Government, nor was the imposed 250 months of imprisonment objected to by the Government. After filing the Plea Agreement and PreSentence Memorandums, the Government showed no interest in honoring the stipulated guideline range from the Plea Agreement until the issue was a "moot" point after the lower court pronounced it's sentence, simply address a "house keeping" note on record in case the defendant seeks an appeal. Honoring a plea agreement after the Sentence is pronounce does not cure a "breach of plea agreement" and should not be treated as a remedy in future precedent.

The Fourth Circuit and D.C. Circuit still adhere to the rule laid out by this Supreme Court in reversing a conviction and Sentence due to the Government's breach of a plea agreement. See e.g. U.S. vs. Edgell, 914 F.3d 281 (4th Cir. 2019) ("Plea agreements are grounded in contract law and as with any contract, each party is entitled to receive the benefit of his bargain."); also see e.g. U.S. vs. Malone, 51 F.4th 1311 (D.C. Cir. 2022). In U.S. vs. Beston, the Court of Appeals for the Eighth Circuit

held that the "[G]overnment's inexcusable breach of the plea agreement by failing to recommend a restitution amount undermined judicial fairness, and thus, the plea agreement's appeal waiver would not be enforced." See 43 F.4th 867 (8th Cir. 2022). The Government's refusal to advocate against the PSIR recommended higher guideline and higher level of point enhancements in the case of Simmonds, deserves a proper judicial review and remedy when such inaction amounts to a "breach of a plea agreement" and is contrary to precedent.

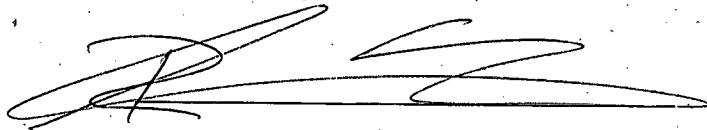
Due process requires that the agreement be interpreted in accordance with a defendant's reasonable understanding and that any ambiguity be construed against the government. See e.g. U.S. vs. Ligon, 937 F.3d 714, 719 (6th Cir. 2019)(defendant reasonably understood plea agreement terms to bar any government recommendation for enhancement of Guidelines at Sentencing hearing); also see U.S. v. Warren, 8 F.4th 444 (6th Cir. 2021) (citing U.S. vs. Ligon, Supra); U.S. Const. Amendment 5. The Court of Appeals for the Sixth Circuit failed to apply Due Process requirements when reviewing the appeal for the Simmonds case. In the past, the same Sixth Circuit made the correct conclusion in U.S. vs. Barnes, holding in similar circumstances when the Government violates a plea agreement, the sentence should be vacated and remanded for a new sentencing hearing. See 278 F.3d 644 (6th Cir. 2002). The decision in U.S. vs. Simmonds, 2023 U.S. App. LEXIS 6277, is clearly contrary to the Court's view on the same topic in Barnes, supra, where the Circuit Court

applied the ruling in Santobello for the correct remedy. Therefore, this U.S. Supreme Court should grant this Pro Se Petition for a Writ of Certiorari and assign [new] counsel to brief this matter before this Supreme Court. And grant such other and futher relief this Supreme Court deems just and proper.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe".

Date: June 6, 2023