

**In the
Supreme Court of the United States**

MARQUAY QUAMAIN SHEPPARD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Fourth Circuit err by dismissing the Petitioner's appeal and affirming the 188 month sentence imposed by the trial court, inasmuch as this decision was inconsistent with the circuit court's own precedent and inconsistent with the decisions of the United States Supreme Court.

LIST OF PROCEEDINGS

United States Court of Appeals for the Fourth Circuit
No. 21-4666

United States of America, *Plaintiff-Appellee*, v.
Marquay Quamaine Sheppard, *Defendant-Appellant*

Date of Final Order: November 22, 2022

United States District Court,
Western District North Carolina

No. 3:20-CR-000201-001

United States of America v.
Marquay Quamaine Sheppard

Date of Final Judgment November 18, 2021

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PETITION FOR A WRIT OF CERTIORARI

Marquay Quamaine Sheppard respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.



OPINIONS BELOW

The Order of the Fourth Circuit Court of Appeals, dated November 22, 2022, dismissing the Petitioner's appeal can be found at 2022 U.S. App. LEXIS 32313 (4th Cir. 2022) and is included at App.1a. The November 18, 2021 Judgment of the Honorable Robert J. Conrad, Jr., United States District Judge for the Western District of North Carolina in *United States v. Sheppard*, 3:20-CR-00201-001 is attached at App.4a.



JURISDICTION

The Order and Judgment of the Fourth Circuit Court of Appeals was entered on November 22, 2022. (App.1a, 3a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(a).



STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions are contained in 18 U.S.C. § 3553(a), which are set forth in the appendix at App.15a.



STATEMENT OF THE CASE

This is an appeal from the sentence entered for Petitioner's conviction for Possession with intent to distribute at least 28 grams of cocaine base in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(B), and possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2). The Petitioner was charged on June 19, 2020 in a seven count Bill of Indictment. Counts One, Two, Three and Four charged the Petitioner with Distribution and Possession with Intent to Distribute Cocaine Base in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(C). In Count Five, the Petitioner was charged with Possession with Intent to Distribute Cocaine Base in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(B). Count Six charged the Petitioner with Possession of a Firearm in Furtherance of a Drug Trafficking Crime in violation of 18 U.S.C. § 924(c) and Count Seven charged the Petitioner with Felon in Possession of a Firearm in violation of 18 U.S.C. § 922(g)(1). In addition, the indictment alleged that the Petitioner had a Prior Conviction of a serious drug felony pursuant to Title 21 U.S.C. § 841 and § 851. The Petitioner was originally arrested and held on state charges and was arrested federally

via writ on September 15, 2020. He made his initial appearance, was appointed counsel and was detained pending arraignment and a detention hearing. On September 18, 2020, he was arraigned, entering a plea of not guilty and waived a detention hearing. The Petitioner signed a plea agreement wherein he would plead guilty to Count Five (Possession with Intent to Distribute at least 28 grams of cocaine base) and Count Seven) (Possession of a Firearm by a Convicted Felon.) In the plea agreement, the Petitioner waived the right to seek a departure or a variance and the right to post-conviction challenges to his sentence. A draft pre-sentence report was prepared. The final pre-sentence report designated the Petitioner as a Career Offender pursuant to U.S.S.G. § 4B1.1(b). The Petitioner's Guideline Level was 34, with a Criminal History Category of VI. Initially, the Petitioner's Guideline Range was 262 to 327 months. After the government withdrew its 851 Notice, the United States Sentencing Guidelines provided for a recommended sentence range of 188 to 235 months. The government and the Petitioner agreed that the Petitioner would be allowed to file a Motion for a Downward Variance from the guidelines, notwithstanding his waiver of his right to do so, and the Petitioner agreed to withdraw his objections to the pre-sentence report.

At his sentencing, on November 15, 2021, the Court denied the Petitioner's Motion for a downward variance and sentenced the Petitioner to one hundred eighty-eight months on Count Five, and One Hundred and Twenty months on Count Seven, to be served concurrently. The Petitioner gave timely Notice of Appeal on December 1, 2021, and this appeal followed. The Petitioner did not challenge the procedural reason-

ableness of his sentence. He does, however, maintain that his sentence was substantively unreasonable. Upon the Government's Motion, the Fourth Circuit dismissed the appeal and affirmed the Petitioner's sentence.

The facts of the case involved an investigation into the Petitioner when members of the Gaston County Police Department (GCPD) and Homeland Security Investigations (HSI) Agents had reason to believe that the Petitioner) was selling cocaine and cocaine base (crack cocaine) in Gastonia, North Carolina.

Law enforcement initiated their investigation in August 2018, and conducted numerous controlled drug purchases from the Petitioner in Gastonia, NC, from 2018 through and until the Petitioner's January 2020 arrest. Confidential Informants informed both the Gaston County Police Department and Homeland Security Investigations that the Petitioner was a local cocaine dealer. Law enforcement conducted a criminal investigation, that led to arrests on state charges which became the underlying substantive offenses on the conspiracy charge. These involved undercover transactions that took place on 08/08/2018: involving 6 grams crack cocaine. There was another transaction on December 2, 2019 involving 3.8 grams crack cocaine. A December 16, 2019 transaction involved 2.1 grams crack cocaine. On December 31, 2019 there was a 1.6 grams crack cocaine transaction. On August 8, 2020, as part of the investigation, 47.6 grams of crack cocaine, 34 unit doses Oxycodone, 6 grams of marijuana and \$6,750 were seized at a hotel in Gaston County, North Carolina and the Petitioner was arrested on North Carolina state trafficking charges.

Thereafter a search warrant for the Petitioner's residence was obtained and executed on November 3, 2020. This resulted in the seizure of 55 grams crack cocaine, 1.4 grams marijuana, 2 firearms and \$8,719.

The Petitioner was originally arrested on North Carolina state charges, and was indicted in Federal Court on June 19, 2020. He entered his plea on October 28, 2020. He was sentenced on November 15, 2021.

The Petitioner was sentenced as a career offender based in part on two South Carolina convictions, 2008-GS4600530 Possession of Marijuana with Intent to Distribute-1st Offense, and 2008GS460372;73, Possession with Intent to Distribute Marijuana Within Proximity of a School and Possession with Intent to Distribute Marijuana.-2nd Offense. As a youthful offender, the Petitioner received probation for the first offense, however, as a result of the second set of charges, his probation was revoked and he received a four year sentence to run concurrently with the four year sentences imposed for the second set of charges. His third conviction in 2012, for Possession with Intent to Distribute Crack Cocaine Within Proximity of a School or Park, and Possession with Intent to Distribute Crack Cocaine – 1st Offense, involving 4 grams, occurred on March 28, 2012, and he was convicted on October 19, 2012.

Since the government had filed an 851 Notice, the Petitioner's guideline range as a career offender was Guideline Level 34, Criminal History Category VI, as a Career Offender, with a guideline range of 262 months to 327 months. After the government moved to withdraw the 851 Notice, his Guideline Level was 31 with a Criminal History Category and his recommended sentencing guideline range was 188 to

235 months. Had he not been a Career Offender his Guideline Level would have been 27, and his Criminal History Category would have been IV. His recommended guideline range would have been 100 months to 120 months, subject to the 120 month mandatory minimum.

In his plea agreement, the Petitioner waived his appeal rights, and his right to seek a variance. The government agreed, however, that the Petitioner could move for a variance, and the Petitioner agreed to withdraw objections. Objections were withdrawn, and the motion for a downward variance was denied.

At sentencing below, the Petitioner acknowledged that the probation officer was legally correct. He maintained, however, that, the facts and circumstances of his case justified a variance from the United States Sentencing Guidelines. All of the conduct alleged in the 2008 South Carolina convictions took place while the Petitioner was seventeen years old. The relevant South Carolina cases occurred on November 13, 2007 and on March 18, 2008, a period of just over four months and involved small amounts of marijuana. The acts and his convictions all took place more than ten years before January 3, 2020, the date the Petitioner was arrested, but less than fifteen years. The offenses resulted in three concurrent four year sentences, amounting to what was effectively one prison sentence of four years. At the age of 21, his third conviction involved 4 grams of crack cocaine. While there is no excuse for continued criminal behavior, the Petitioner's age and personal circumstances at the time are factors that he believes the trial did not adequately consider. His immaturity and the fact that he became a convicted felon at the age of 17 made

prospects for a successful future to be grim. He respectfully submits that his lack of maturity, his young age and those matters referenced in his Sealed Motion for a Variance and Sentencing Memorandum detailing his interviews by law enforcement were a sufficient basis for the consideration for a variance from the guidelines and that the district court abused its discretion by failing to adequately consider all of the factors of 18 U.S.C. § 3553(a) and 18 U.S.C. § 3553(a) (2), and by denying his Motion for a Variance.

The Petitioner appealed to the Fourth Circuit Court of Appeals, which granted the Government's Motion to Dismiss the appeal and affirmed the Petitioner's conviction and sentence (App.1a).



REASONS FOR GRANTING PETITION

The Fourth Circuit's Order dismissing the Petitioner's Appeal and affirming the Petitioner's conviction and sentence was erroneous inasmuch as the Fourth's Circuit's decision was inconsistent with its precedent and the Opinions of the United States Supreme Court. The Appellant respectfully submits that the trial court abused its discretion by denying the Petitioner's Motion for a variance from the United States Sentencing Guidelines and that he is entitled to have review of that exercise of discretion.

I. THE DISTRICT COURT ABUSED DISCRETION IN ISSUING A SUBSTANTIVELY UNREASONABLE SENTENCE.

Pursuant to *Anders v. California*, 386 U.S. 638, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), the Petitioner

appealed, notwithstanding the waiver of appeal in his plea agreement, acknowledging that there were no procedural or substantive errors committed below, apart from the reasonableness of his sentence. Since *Booker v. United States*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed 2d 621 (2005), a sentence is reviewed for reasonableness using an abuse of discretion standard of review. In the Fourth Circuit, the standard of review for the grant or denial of a Motion for a variance is whether the sentence is reasonable using an abuse of discretion standard of review. *United States v. Evans*, 526 F.3d 155 (4th Cir. 2008); *United States v. Heath*, 559 F.3d 263 (4th Cir. 2009). *United States v. Howard*, 773 F.3d 519 (4th Cir. 2014).

This standard of review encompasses both procedural and substantive reasonableness. *United States v. Myers*, 589 F. 3d 117 (4th Cir. 2009). The Petitioner makes no claim that the district court committed procedural error, and seeks relief only on notions of substantive reasonableness. Review for substantive reasonableness takes into account the “totality of the circumstances.” *Id.*

This Court has recognized that in a sentencing context, the diminished culpability of juvenile offenders, given their lack of maturity, vulnerability to social pressures and malleable identities is an important factor in determining an appropriate sentence. *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455, 183 L.Ed 2d 407 (2012); This Court has recognized differences between juveniles under eighteen and adults and adult offenders. *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 825 (2010). The Court pointed out that it is difficult for experts to appropriately differentiate between juvenile offenders whose crimes reflect

transient immaturity and the rare juvenile offender whose crimes reflects what the court referenced as irreparable corruption, *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2s 825 (2010).

In *United States v. Howard*, 773 F. 3d 519 (4th Cir. 2014), the Fourth Circuit reviewed the sentence of the defendant, convicted of trafficking in PCP whose guideline range called for a guideline sentence of 78 to 97 months based upon a Guideline Level 26 and Criminal History category III. The statutory mandatory minimum, however was 120 months. Accordingly, Howard's enhanced guideline range was 120 months. The court bumped Howard's guideline level to level 28, based upon some anecdotal testimony concerning the PCP. At Guideline Level 28, Criminal History Category III, Howard's guideline sentencing range was 121 months. The government moved for an upward variance from the guidelines asserting that Howard's criminal history substantially underrepresented the seriousness of his criminal history. It requested an upward departure to an offense level of 28 and a criminal history category of VI, resulting in a sentencing range on the trafficking counts of 140 to 175 months, and asked the court to sentence within that guideline range.

Howard had predicate convictions that were beyond the appropriate time period to be included in calculating his criminal history category, most of which occurred when he was eighteen years or younger, and thus stale. The government relied upon *United States v. Cash*, 983 F. 2d 558 (4th Cir. 1992), which held that a district court may depart directly to the Career Offender Guideline range when the defendant's history would otherwise qualify for Career Offender

status, but for the fact that one or more of the predicate convictions may not be counted.

The district court elected to consider Howard a “de facto” career offender, based on numerous stale prior convictions. The court arrived at a sentencing range of 420 months to life for the conspiracy charge in Count One and 360 months to life for the substantive charges contained in Counts Two through Ten, each of which carried a statutory maximum of 360 months. These concurrent sentences were to be followed by a 60 month sentence for Count Eleven, pursuant to a 924(c) conviction.

The district court determined that “Howard was, at his core, a career criminal”:

It’s who he is. It’s what he has done. It’s what he has always done. It’s how he lives his life ... the likelihood of recidivism for this man [is] 100 percent. Absolutely 100 percent. If he is living free, he will be committing crimes. He will be dealing drugs. It’s who he is.

Howard, at 532.

In reviewing the sentence for substantive reasonableness, citing the above referenced Supreme Court cases, the Fourth Circuit reversed the sentence, holding that it was substantively unreasonable, observing:

The District Court’s sentence failed to appreciate what we cannot ignore – that the three predicate convictions, upon which the district court focused so heavily in assessing its departure and sentencing options, occurred when Howard was between sixteen and

eighteen, and that youth is a “mitigating factor derived from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside.” (quoting *Roper v. Simmons*, 543 U.S. 551, 125, S. Ct. 1183, 161 L. Ed. 2d 1 (2005)).

Howard, at 531,532.

The *Howard* court also cited with approval, from an article from the Ohio State Journal for Criminal Law, Barry C. Feld, *The Youth Discount: Old Enough To Do The Crime, Too Young To Do The Time*, OHIO ST. J. CRIM L. 107, 137 (2013):

The [Supreme] Court’s jurisprudence of youth recognizes that juveniles who produce the same harms as adults are not their moral equals and do not deserve the same consequences for their immature decisions.

Howard, at 532.

The court held the sentence of life plus sixty years to be substantively unreasonable and vacated the sentence and remanding for re-sentencing, holding that the sentence was manifestly greater than necessary to achieve the sentencing purposes contained in 18 U.S.C. § 3553(a) or to achieve the purposes of 18 U.S.C. § 3553(a)(2).

While Petitioner’s case did not involve an upward departure by the court, or a life sentence, the above-discussed principles are applicable. In his allocution, in addition to apologizing and accepting full responsibility for his misconduct, the Petitioner shared some

of his circumstances that led to his being before the district court. He was born on May 29, 1990. When he was in school his mother was diagnosed with cancer. He had no father figure. He supported his family with illegal activity. He did not graduate, and asked the Court provide him with educational opportunities. He became a felon at 17.

His first felony offense arose on November 13, 2007, when he was caught with seven individual bags of marijuana. He was charged in the Circuit court for York County, South Carolina, as an adult. He was seventeen years, five months and 15 days old. Seventy or so days later he was a convicted felon.

His second felony offense arose on March 18, 2008 in York County, SC, when he was accused of possessing a larger bag which contained three smaller bags of marijuana. He was charged and convicted on two counts, Possession with Intent to Distribute Marijuana with Proximity of a School, (92008GS4603472) and Possession with Intent to Distribute Marijuana, 2nd Offense, (2008GS4603473). The total weight was 31 grams, barely over an ounce of marijuana. Less than six months later, while still 17 he had his second felony conviction. He pled guilty and his probation from the prior case was revoked. His sentences were consolidated and he was sentenced to four years imprisonment as a youthful offender on September 9, 2008.

On March 28, 2012, at the age of twenty-one, the defendant was charged with Possession with Intent to Distribute Crack Cocaine Within Proximity of a School or Park, (2013GS4602124) and Possession with Intent to Distribute Crack Cocaine, 1st offense, (2012GS4602175). He was convicted on October 19, 2012, and was sentenced to six years imprisonment.

According to the final pre-sentence report, the court records reflect that the defendant pled guilty to Possession with Intent to Distribute Crack Cocaine, 2nd Offense. This sentence was amended on June 6, 2013 to reflect that the defendant was convicted of a First Offense. On February 10, 2016, he was released on supervised reentry, which ended on August 8, 2016. The final-presentence reports treated these two offenses as one conviction providing for three criminal history points. The charges involved four grams of crack cocaine.

The Petitioner concedes that his criminal history is not something to be proud of and, as he acknowledged in his statement to the court, he admitted that he had not been born to do the things that he had done and considered himself a failure. In addition, he has never gone to trial on any of his charges. He has always accepted responsibility for his actions and been punished. As a convicted felon with no education, he continued to spiral downwards. It is of note that his charges initially involved small quantities of marijuana, and even the current charges involve small, or street level quantities. His 2012 South Carolina cocaine charges involved four grams. The current charges involve 6 grams, 3.8 grams, 2.1 grams, 55 grams and 47.6 grams of cocaine, and small quantities of marijuana and Oxycodone. These quantities aggregated would have made him guilty of one or two counts of state court level one trafficking with exposure of 35 to 51 months on each count. See. N.C. Gen. Stat § 90-95(h). The court acknowledged that the Petitioner was not a large-scale drug dealer. The Petitioner believes that it is significant that the government agreed that he could file a departure,

notwithstanding the plea agreement prohibition to the contrary, particularly in light of those matters in the sealed Motion for Variance. The district court was not, moved. In denying the Petitioner's motion the trial court stated the following:

I've considered the fact that several of these prior convictions occurred when Mr. Sheppard was in his late teens and the impact that early convictions have on later sentencing, the lack of a male role model at a critical points in Mr. Sheppard's life and his stated desire to be present in the lives of his children.

All of this are very serious considerations that the court takes seriously, but, in grasping a straw that would reflect to the court that things will be different in the future than they have been in the past, there's very little but promises to direct the court in that way.

Mr. Sheppard's conviction when he was 17 years old counts three points, but only because he choose to sell drugs while on state probation and have an active sentence activated.

His second conviction in 2008 resulted in a four year current sentence with his activated sentence of the earlier conviction. And then, 2012, shortly after getting out of prison for the prior conviction, he's escalated from marijuana to crack. And then, in the instant case, he's now an established, long time crack dealer, selling multiple times to informant

large quantities—or dealer quantities of crack cocaine found during a search warrant, found after his subsequent arrest.

A fact already pointed out that, even after the search warrant and arrest, Mr. Sheppard was not deterred. He continued to sell drugs until his second arrest, large sums of money, multiple forms of drugs and drug paraphernalia in his possession.

And so the court can only conclude that, during his adult life time, Mr. Sheppard has been a drug dealer with no indication that he will – he would engage in something – in the future different from dealing drugs. I wish it were otherwise.

The serious nature of the two-year drug distribution, the serious nature of the prior convictions going back to age 17, indicate to the court a strong need in this case to deter that type of criminal conduct and, most importantly, to protect the public from the drug-dealing activities of Mr. Sheppard.

He's not a large-scale drug dealer. This sentence will deter maybe only him, but it is the intent of the sentence to deter Mr. Sheppard's continued drug dealing and to protect the community among the other very important 3553(a) goals and factors.

I see no grounds for a variance from this case. The government has withdrawn a 5k—or not a 5k—but an 851 notice based upon prior convictions, dropping Mr. Sheppard's

sentencing range from the 20-year-plus to the 15-year-plus.

At the time he was initially charged in South Carolina, had he engaged in the same conduct twelve miles to the north, for his first offense, he would have been prosecuted in the Juvenile Court of Mecklenburg County, North Carolina. In any juvenile court system, he would have almost certainly been assigned a Juvenile Court Counsellor or Pre-Hearing Release officer. Among other things he would have been required to attend school and submit to curfews and regular supervision. Steps would have been taken in order to re-direct his life. There would have been numerous court dates wherein a judge would review his conduct and his compliance, or lack thereof, with his pre-trial restrictions. He would have had been exposed to daily structure designed and intended to modify behavior. If adjudicated to be delinquent, he would have had a juvenile probation officer who would monitor his compliance with court orders. He would have been required to participate in programs designed to lessen the potential for recidivism. Instead he was prosecuted as an adult and became a convicted felon at the tender age of 17. From a certain perspective he became a branded man, with no formal education whose chances for a successful adult life were suspect, at best. The government had no objection to the Petitioner filing and arguing for a downward variance from his sentencing guideline range, After considering the defendant's Motion and hearing his argument and presentation, the court declined to grant a downward variance.

II. DISTRICT COURT FAILED TO ADEQUATELY CONSIDER DEFENDANT CHARACTERISTICS UNDER 18 U.S.C. § 3553(a)(2).

In doing so, the Petitioner respectfully submits that the district court focused excessively on punishment and the deterrent effect of a one hundred and eighty-eight month sentence without fully considering or giving the appropriate weight to all of the 18 U.S.C. § 3553(a) sentencing factors. These include:

The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant.

(a) Defendant's Criminal History

Had the defendant not been a Career Offender, and if his objections to the draft of the pre-sentence report had been granted, he would have been a Level 27, Criminal History of V, with a guideline range of 100 to 120 months. Even though his record is not one to be proud of, his past reflects street level participation. His first two marijuana convictions involved smaller quantities of marijuana and his prior cocaine conviction involved four grams of cocaine. He was between 17 and 21 at those time..

(b) Characteristics of the Defendant

The defendant has been on felony status since he was still a teenager. He lacked male guidance in his life and was raised primarily by his mother and grandmother. When sentenced, he was 31 years old and the father of three children. He did not graduate from high school and has used marijuana on a daily basis. Maintaining employment has been a challenge.

(c) Defendant's Health Problems

Apart from substance abuse, the defendant presented no health problems.

(d) Family Circumstances

The most compelling aspect of the defendant's family circumstances are the absence of a positive male role model in his developmental years, the illness of his mother and his young children, and his perceive need to support his family by any means possible.

(e) The Nature of the Offense

It is interesting to note that the defendant was dealing with relatively small quantities from a federal case perspective, in this case and was responsible for 115 grams of cocaine and 34 pills.

III. DISTRICT COURT FAILED TO ADEQUATELY CONSIDER PUBLIC IMPACT FACTORS UNDER 18 U.S.C. § 3553(a)(2).

The Petitioner respectfully further submits that the district court failed to adequately consider the sentencing factors set for in 18 U.S.C. 3553(a)(2). These include:

(a) Need to Protect the Public from Further Crimes

At his sentencing hearing, the Petitioner asked the Court for a downward variance from the sentencing guidelines to a sentence of 120 months which he believed would have been sufficient to afford the Petitioner time to restart and complete his education as well as learn a skill that will enable him to be a productive citizen. He would also be incarcerated for a sufficient time for him to get treatment for his

substance abuse. During this time he would not be in a position to commit further crimes. He respectfully submits that that a variance to 120 months would have been sufficient, but not greater than necessary, to protect the public from further crimes.

(b) Need to Provide Just Punishment for the Offense

The Petitioner respectfully submits that a sentence of 120 months would constitute roughly 1/3 of his life since the time he was arrested and 1/4 when he would be released. While each of his prior offenses are serious, he nonetheless was a smaller fish in a much bigger pond during his formative years, (seventeen to twenty-one) dealing in small quantities, which tragically set his life on the wrong course. Being a felon from the time he was seventeen was much to overcome. He suggests that a 120 month sentence would have been sufficient, but not greater than necessary to provide a substantial and just punishment for his offenses.

(c) Need to reflect the Seriousness of the Offense

The Petitioner respectfully submits that a 120 month sentence would have satisfied the need for the imposition of a appropriate sentence to reflect the seriousness of the offenses.

(d) The Kind of Sentences Available and The Need to avoid Disparate Sentences

The 120 month sentence the Petitioner asked the Court to deviate to would have been sufficient, but not greater than necessary, to provide just punishment, yet would have afforded the Petitioner the opportunity to become educated and learn a trade or skill that would serve him when he is released. During his service of the sentence, he would have had a sufficient opportunity to receive treatment for his substance abuse. From the time he was a very young man, a minor under South Carolina law, a juvenile under North Carolina law, the Petitioner had a lot going against him. While the choices he made were his own, his felon status and his lack of an education or work ethic or vocational training and his prison sentences made his prospective life choices extremely limited, with little opportunity to avoid the lifestyle that, by his own conduct, he trapped himself therein. There was limited opportunity for the rehabilitative opportunities available to those similarly situated in states where any juvenile under the age of eighteen is exposed to a system that is rehabilitation as opposed to the harsh reality of being an adult offender while still a child.

The Fourth Circuit has acknowledged that the sentencing judge is in the best position to find facts and judge the importance of those facts in light of the § 3553(a) sentencing factors in an individual case. *Howard*, at 535. This Court recognized that the district court's determination of a sentence is not without limitations, and that "inherent in the concept of reasonable is the notion that the rare sentence may be unreasonable, and inherent in the idea of discretion is

the notion that it may, on infrequent occasion, be abused.” Howard, at 535.

The Petitioner believes that his case is such a case. As much respect as the Petitioner has for the United States District Court and Judge Conrad in particular, he respectfully submits that the district court abused its discretion by failing to adequately consider all of the sentencing factors as required by the provisions of 18 U.S.C. § 3553(a) and 18 U.S.C. § 3553(a)(2) focusing only on the individual deterrent and punishment aspect towards the Petitioner. He believes that by imposing a one hundred and eighty-eight month sentence abused its discretion and that he is entitled to a new sentencing hearing.

The Petitioner respectfully submits that the trial judge abused its’ discretion by focusing too much on the particular acts of the Petitioner as opposed to the overall characteristics and circumstances of the Petitioner as required by 18 U.S.C. § 3553(a) and 18 U.S.C. § 3553(a)(2), and that the Fourth Circuit erred by dismissing his appeal. He urges this Court to grant the Petition and review his sentence.



CONCLUSION

The Petitioner, Marquay Quamaine Sheppard, respectfully requests that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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