

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

JOSHUA CHRISTOPHER STOCKSTILL
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 22-60305

PETITION FOR WRIT OF CERTIORARI

Omodare B. Jupiter (MB #102054)
Federal Public Defender
N. and S. Districts of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510

Abby Brumley Edwards (MB # 101929)
Assistant Federal Public Defender

Attorney for Defendant-Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the district court ordered a substantively unreasonable 30-year prison sentence.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

A Federal Grand Jury for the Southern District of Mississippi indicted Mr. Stockstill on the following counts:

Counts 1 through 3: Production of images of minors engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2251(a) and (e); and

Count 4: Possession of images of minors engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(4)(B) and (b)(2). The Grand Jury returned the Indictment on September 8, 2021.

Mr. Stockstill took responsibility for his actions by pleading guilty to Count 1. The court sentenced him to serve 30 years in prison, which was the statutory maximum sentence allowed. The court also required Mr. Stockstill to be on supervised release for the remainder of his life, following completion of the prison term. The court entered a Judgment reflecting this sentence on April 27, 2022. The district court's Judgment is attached hereto as Appendix 1.

Mr. Stockstill appealed the sentence to the United States Court of Appeals for the Fifth Circuit on May 26, 2022, and the court assigned the appeal case number 22-60305. The Fifth Circuit affirmed the district court's rulings via an Opinion filed on April 20, 2023. The Fifth Circuit filed a Judgment on the same day. The Fifth Circuit's Opinion and Judgment are attached hereto as composite Appendix 2.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on April 20, 2023. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. STATUTE INVOLVED

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced;

* * * * *

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction entered against Mr. Stockstill for producing images of minors engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2251. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Stockstill arose from the laws of the United States of America.

B. Statement of material facts.

1. Mr. Stockstill's background.

While we do not make excuses for Mr. Stockstill's admitted wrongdoing, we must consider life events that shaped decisions related to the wrongdoing. He was born on April 28, 1992. Somewhat remarkably, problems for Mr. Stockstill emerged before his birth. "Prior to his birth, the doctors determined his kidneys were not functioning and recommended his mom terminate the pregnancy." His mother refused to take the doctors' advice.

At birth, Mr. Stockstill suffered from a clubbed right foot, a displaced left kneecap and Duane Syndrome, which makes it difficult to control eye movement. "Due to his physical conditions, he required multiple surgeries as a child. He was referred to as 'the hospital kid.'" Additionally, he underwent treatment for

attention deficit disorder as a child. Needless to say, Mr. Stockstill was bullied at school because of his health conditions.

As an adult, Mr. Stockstill suffers from Tourette's Syndrome. Because of this condition, he has "uncontrollable verbal outbursts and bouts of self-harm by striking his body or head." He has been prescribed 0.1 milligram of clonidine, twice daily, for that condition. He also suffers from anxiety.

Physical maladies were not Mr. Stockstill's only problems as a child. "Throughout his childhood, [his] father reportedly abused alcohol and was abusive, both verbally and physically, towards the other family members." As further discussed below, Mr. Stockstill was sexually abused by a friend during childhood.

Notwithstanding all of Mr. Stockstill's problems growing up, he completed high school. After that, he took classes in criminal justice at a local community college. Also to his credit, he has never abused alcohol or drugs.

Mr. Stockstill dreamed of being a law enforcement officer. However, because of his physical conditions, no law enforcement agency would sponsor his attendance at the police academy. But this did not dissuade him. Mr. Stockstill entered and completed training at the police academy under "self-sponsored" status.

His first jobs in law enforcement were as jailers at the Pearl River, Mississippi County Jail and at the City of Picayune, Mississippi Jail. He worked at

these jails from 2010 through 2014. Then Mr. Stockstill was a patrol sergeant with the Picayune Police Department from June 2016 through the date of his arrest in July 2021.

Even the district court recognized his achievements and the seemingly insurmountable hardships he overcame. The court stated, “Mr. Stockstill has overcome much leading up to this point[,]” and acknowledged “the good things Mr. Stockstill has done in his life up to this point.” Other than the subject incident, the court opined that Mr. Stockstill was “a law-abiding citizen that was protecting and serving [his] community.” The court’s opinion is consistent with Mr. Stockstill’s criminal history prior to the subject incident – he has no criminal history whatsoever.

2. The admitted offense.

Mr. Stockstill admitted his wrongdoing by pleading guilty to Count 1 of the Superseding Indictment. He did nothing to obstruct justice while officers investigated the offense.

Facts about the incident arose when the National Center for Missing and Exploited Children became aware of videos of an adult male changing the diaper of a nine-year-old girl. Authorities later identified Mr. Stockstill as the male in the video.

Mr. Stockstill sent the video in question to another person on Kik Messenger. In turn, that person posted the video on a Russian website. Once he learned that the videos were made public, Mr. Stockstill attempted to remove them on four or five occasions.

Mr. Stockstill admitted the above facts, and “stated that he had a fetish for adults and children in diapers[.]” We must consider Mr. Stockstill’s admission that he has a fetish for adults and children in diapers in the context of his life experiences. At age 12, a friend who was wearing diapers molested Mr. Stockstill.

The Psychosexual Evaluation provides other valuable insights. The psychologist concluded that “Mr. Stockstill is not attracted to males, nor pre-juvenile females, small child females, infant females, or elderly females.” The report indicates that he has only about a 7.9 percent chance of recidivism. That figure is low compared to the 49.3 percent recidivism arrest rate for federal offenders from 2010 through 2018. *See* 2021 Annual Report and Sourcebook of Federal Sentencing Statistics at p. 5, published by the United States Sentencing Commission.

3. The sentencing hearing.

The offense level under the United States Sentencing Guidelines (hereinafter “Sentencing Guidelines” or “Guidelines”) is 43. Because Mr. Stockstill has no prior criminal history whatsoever, his criminal history category is I. Under the

Sentencing Guidelines Table, this combination yields a sentence range of life in prison. However, because the statutory maximum punishment for the crime is 30 years in prison, that is the recommended range under the Sentencing Guidelines.¹

Mr. Stockstill moved the court for a variance, asking for a sentence of 20 years in prison. The court denied the Motion and ordered the statutory maximum 30-year prison term.

As to supervised release, the recommended range under both the statute and the Sentencing Guidelines is five years to life. Even though the prosecutor was contractually bound under the Plea Agreement to recommend a sentence within the lower 50 percent of this range, she argued for lifelong supervised release. The court followed the prosecutor's recommendation and ordered Mr. Stockstill to serve a lifelong term of supervised release after his release from prison. The court also ordered numerous special conditions of supervised release, which are further addressed below.

The court ordered numerous monetary penalties as well. It required paying a \$100 special assessment, \$300 in restitution, and a \$10,000 assessment under the Amy, Vicky and Andy Child Pornography Victim Assistance Act.

¹ 18 U.S.C. § 2251(a) carries a 15-year minimum term of imprisonment.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

The issue in this case is whether the lengthy 30-year prison sentence ordered by the district court is unreasonable. Considering the totality of Mr. Stockstill's background, the 30-year sentence is unreasonably high.

Rule 10 of the Supreme Court Rules states, "[r]eview on writ of certiorari is not a matter of right, but of judicial discretion." The Court should exercise its discretion and grant certiorari to correct the unreasonably high sentence imposed by the district court.

B. Legal standard.

Pursuant to *Gall v. United States*, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007), we engage in a bifurcated review of the sentence imposed by the district court. *United States v. Delgado-Martinez*, 564 F.3d 750, 752 (5th Cir. 2009). First, we consider whether the district court committed a "significant procedural error," such as miscalculating the advisory guidelines range. *Id.* If there is no error or the error is harmless, we may proceed to the second step and review the substantive reasonableness of the sentence for an abuse of discretion. *Id.* at 751–53. We review the district court's factual findings for clear error and its interpretation and application of the guidelines, including any cross-reference provisions, *de novo*. *United States v. Arturo Garcia*, 590 F.3d 308, 312 (5th Cir. 2009).

United States v. Griego, 837 F.3d 520, 522 (5th Cir. 2016).

In Mr. Stockstill's case, the district court ordered a within-Guidelines, albeit statutory maximum, 30-year prison sentence. "Sentences within the properly

calculated Guidelines range are presumed to be substantively reasonable.” *United States v. Romans*, 823 F.3d 299, 313 (5th Cir. 2016) (citation omitted).

The sentence ordered by the district court is substantively unreasonable. A sentence is substantively unreasonable if it “(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *United States v. Churchwell*, 807 F.3d 107, 123 (5th Cir. 2015) (citation omitted). Mr. Stockstill contends that his sentence is substantively unreasonable under the first and third tests. That is, the court did not account for a factor that should have received significant weight, and the court’s decision represents a clear error of judgment in balancing the sentencing factors.

The Fifth Circuit considers “the totality of the circumstances” when it analyzes substantive reasonableness. *United States v. Gerezano-Rosales*, 692 F.3d 393, 398 (5th Cir. 2012) (citations omitted). The starting point for the totality of the circumstances analysis is 18 U.S.C. § 3553, titled “Imposition of a sentence.” Under § 3553(a), “[t]he court shall impose a sentence sufficient, but not greater than necessary” to meet the ends of justice. Section 3553(a) requires judges to consider several factors when they craft appropriate punishments for offenses. The primary factors are:

- “the nature and circumstances of the offense” (§ 3553(a)(1));

- “the history and characteristics of the defendant” (*id.*);
- “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense” (§ 3553(a)(2)(A));
- “to afford adequate deterrence to criminal conduct” (§ 3553(a)(2)(B));
- “to protect the public from further crimes of the defendant” (§ 3553(a)(2)(C));
- “to provide a defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner” (§ 3553(a)(2)(D));
- “the kinds of sentences available” (§ 3553(a)(3));
- “the sentencing range established for ... the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines” (§ 3553(a)(4)(A)); and
- “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” (§ 3553(a)(6)).

The relevant factors are considered below.

C. Application of the law to the facts of Mr. Stockstill's case proves that the district court ordered a substantively unreasonable sentence.

1. The nature and circumstances of the offense under § 3553(a)(1).

Mr. Stockstill accepted full responsibility for his actions by pleading guilty to the subject offense. As the probation officer correctly noted, he did nothing to obstruct the administration of justice while law enforcement investigated the crime.

While the video in question was posted on the internet, Mr. Stockstill had nothing to do with that. Another person with whom he shared the video with was responsible for the internet posting. In fact, once Mr. Stockstill found out about the posting, he attempted to remove the video on four or five occasions.

Mr. Stockstill recognizes his problem. He admitted to having a fetish for females in diapers. To his credit, he is amenable to, and actually wants counseling, to address the issue. Notably, the psychologist concluded that "Mr. Stockstill is not attracted to males, nor pre-juvenile females, small child females, infant females, or elderly females."

In short, Mr. Stockstill admitted his wrongdoing and wants help to address the issue. Mr. Stockstill's contrite attitude toward the offense, combined with the facts presented above, favor a ruling that the 30-year sentence ordered by the district court is unreasonably long.

2. The history and characteristics of the defendant under § 3553(a)(1).

Mr. Stockstill faced and overcame many challenges during his life. At birth, Mr. Stockstill suffered numerous physical maladies. He underwent multiple life altering surgeries to correct the deformities. Other children mocked Mr. Stockstill because of his physical problems, referring to him as ‘the hospital kid.’” Mr. Stockstill suffered other psychological abuse as a child which, in all likelihood, affected his future behaviors. For example, his alcoholic father abused him and the other family.

Another event that shaped Mr. Stockstill’s decision making process was the sexual abuse he suffered during childhood. When he was only 12 years old, a friend sexually abused him. His abuser was wearing diapers.

The psychologist stated that this childhood trauma “likely contributes to his current struggles and fetish behavior.” The psychologist further opined that the “diapering behavior” provided a stress relieving or coping mechanism, “which is understandable given the chaotic and abusive relationship with his dad.” Because of his sexual abuse as a child, his admitted crime is not uncommon, because children who are abused often become abusers in adulthood.

Many people facing these kinds of problems resort to drugs and alcohol in a hopeless effort to ease the pain. Compounding the problem is his father’s history of alcohol abuse. As we all know, alcoholism tends to be a genetic issue. Mr.

Stockstill, however, broke the family cycle of alcohol addiction. He has never abused drugs or alcohol. These facts demonstrate that he can face and overcome problems, and has expressed a desire to do so via counseling.

His lifelong ambition to be a law enforcement officer further supports that he will actively pursue positive changes in his life. For example, because of his physical conditions, no law enforcement agency would sponsor his attendance at the police academy. But Mr. Stockstill pushed forward with his dream anyway. He entered and completed training at the police academy under “self-sponsored” status. These actions show dedication, perseverance and motivation, which support that he will follow through on his commitment for change through counseling.

After completing training at the police academy, law enforcement agencies began taking notice of Mr. Stockstill. He was in high demand, working a jailer at two different jails, then as a patrol sergeant with the Picayune Police Department.

The district court affirmatively commended Mr. Stockstill on his achievements and his ability to overcome hardships. The judge stated, “Mr. Stockstill has overcome much leading up to this point[,]” and acknowledged “the good things Mr. Stockstill has done in his life up to this point.” Other than the instant offense, the court realized that Mr. Stockstill was “a law-abiding citizen that was protecting and serving [his] community.” However, the court arguably failed to consider these positive facts when it ordered the 30-year statutory

maximum sentence. *See Churchwell*, 807 F.3d at 123 (citation omitted) (holding that a court errs when it “does not account for a factor that should have received significant weight”).

Also of great importance in the balancing process is Mr. Stockstill’s criminal history, or lack thereof. Prior to the subject conviction, he had no criminal history whatsoever, not even misdemeanor violations. This fact should have been given greater weight in the court’s sentence decision. *See Churchwell*, 807 F.3d at 123 (citation omitted) (holding that a court errs when its decision “represents a clear error of judgment in balancing the sentencing factors”).

We recognize that Mr. Stockstill committed a crime and must suffer just punishment. But we cannot consider the admitted crime in a vacuum. Mr. Stockstill faced numerous challenges in life and overcame them. As the psychologist explained, many of these adverse life circumstances contributed to the criminal behaviors at issue. Mr. Stockstill recognizes his wrongdoing and is ready for help to overcome the problem. Given his life circumstances, the 30-year statutory maximum sentence is unreasonable.

3. Adequate deterrence to criminal conduct under § 3553(a)(2)(B) and protection of the public from further crimes of the defendant under § 3553(a)(2)(C).

Adequate deterrence to criminal conduct and protection of the public from further crimes by Mr. Stockstill are closely related factors. Therefore, they are considered together in this Brief.

The trained psychologist appointed by the district court to evaluate Mr. Stockstill provided a compelling statistic on his chance of recidivism. The evaluation states that his chance of recidivism is only about 7.9 percent. The 7.9 percent recidivism rate is very low compared to the 49.3 percent recidivism arrest rate for federal offenders from 2010 through 2018. *See* 2021 Annual Report and Sourcebook of Federal Sentencing Statistics at p. 5, published by the United States Sentencing Commission. This statistical comparison indicates that a 30-year sentence is simply too long to reasonably promote deterrence and public protection.

In the context of deterrence and protection of the public, we must also consider the special conditions of supervised release that Mr. Stockstill will have to abide by after completing his prison term. The special conditions of supervised release include but not limited to the following: prohibition against using any internet capable device (special condition 3); submission to warrantless searches (special condition 4); submission to a sex offense specific assessment (special

condition 5); participation in sex offense specific treatment (special condition 6); submission to polygraph examinations (special condition 7); registration as a sex offender (special condition 8); prohibition against contact with people under age 18 (special condition 9) prohibition against going places where people under 18 are likely to be present (special condition 10); and submission to outpatient mental health treatment (special condition 12).

All these special conditions of supervised release provide further assurances regarding deterrence and public protection. His required compliance with these conditions provides another building block for the Court to rule that the 30-year prison term ordered by the district court is substantively unreasonable.

4. The need for educational or vocational training, medical care, or other correctional treatment under § 3553(a)(2)(D).

Mr. Stockstill acknowledges that he will benefit from counseling. Such treatment, however, can be achieved in far less time than the 30-year sentence ordered by the district court. Further, as stated in the previous subsection of this Brief, he will be required to undergo mental health treatment as a special condition of supervised release. Treatment during supervised release, which will be outside of the prison context, will likely be in a much more conducive environment to affect change in Mr. Stockstill's behaviors. These facts provide further support for ruling that the subject sentence is unreasonable.

5. The sentencing range established by the Sentencing Guidelines under § 3553(a)(4)(A).

It is true that the 30-year sentence is within the sentence range under the Sentencing Guidelines. However, this is but one of many factors that the Court must consider. All the other factors analyzed above indicate that the statutory maximum 30-year sentence is substantively unreasonable.


6. Conclusion: § 3553(a) analysis.

Based on the facts of Mr. Stockstill's case, the 30-year sentence ordered by the district court is unreasonably long. This is especially true when we consider the cumulative effect of the district court's errors in the above § 3553(a) analyses. In *United States v. Houston*, 481 Fed. App'x 188, 196 (5th Cir. 2012), the Fifth Circuit ruled that the cumulative effect of errors committed by the district court warranted reversal of a conviction. The *Houston* court held, "[c]umulative error analysis evaluates 'the number and gravity of the errors in the context of the case as a whole.'" *Id.* at 194 (citation omitted). Just as in *Houston*, the district court in Mr. Stockstill's case erroneously analyzed and failed to give adequate weight to almost all the § 3553(a) factors. Accordingly, this Court should grant certiorari and correct the district court's error.

VI. CONCLUSION

For all the reasons stated above, this Court should grant Mr. Stockstill's Petition for Writ of Certiorari.

Submitted July 17, 2023, by:


A handwritten signature in blue ink, appearing to read "AB Edwards", is written over a horizontal line.

Abby Brumley Edwards

First Assistant

Office of the Federal Public Defender

Southern District of Mississippi

200 South Lamar Street, Suite 200-N

Jackson, Mississippi 39201

Telephone: 601/948-4284

Facsimile: 601/948-5510

Attorney for Defendant-Petitioner

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CERTIFICATE OF SERVICE

I, Abby Brumley Edwards, appointed under the Criminal Justice Act, certify that today, July 17, 2023, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. 772749217422, addressed to:

The Honorable Elizabeth B. Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.

A handwritten signature in blue ink, appearing to read 'AB Edwards', is written over a horizontal line.

Abby Brumley Edwards
First Assistant