No._____

IN THE SUPREME COURT OF THE UNITED STATES

TYREE STEELE,
PETITIONER,

- VS. -

UNITED STATES OF AMERICA,
RESPONDENT.

**PETITION FOR WRIT OF CERTIORARI TO THE**
**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

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## QUESTION PRESENTED

The Sentencing Reform Act prohibits federal courts from imposing or lengthening a prison term to promote rehabilitation. 18 U.S.C. § 3582(a); *Tapia v. United States*, 564 U.S. 319 (2011). In the present case, the court of appeals held the district court's sentence of ten years' imprisonment not to run afoul of that proscription.

The question presented is:

Whether a district court violates the Sentencing Reform Act's ban on imprisonment as a rehabilitative measure when, as here, the court explains it is imposing a "lengthy" prison term so that the defendant will "get rid of drugs" and "learn … to follow rules and regulations."

## RELATED PROCEEDINGS

The following proceedings are directly related to this case:

> *United States v. Tyree Steele*, Third Circuit No. 22-1391, judgment entered March 23, 2023.
>
> *United States v. Tyree Steele*, E.D. Pa. No. 2:20-cr-00121-MMB, judgment entered March 3, 2022.

There are no other proceedings related to this case under Rule 14.1(b)(iii).

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No. 22-_____

IN THE SUPREME COURT OF THE UNITED STATES

TYREE STEELE,
PETITIONER

v.

UNITED STATES OF AMERICA,
RESPONDENT.

## PETITION FOR WRIT OF CERTIORARI

Petitioner Tyree Steele respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in this case on March 23, 2023.

## OPINION BELOW

The unpublished opinion of the court of appeals is available at 2023 WL 2609813 and reproduced at Appendix ("Pet. App.") A, 1a–6a. The transcript of the sentencing hearing is at Pet. App. B, 7a–28a. The judgment of conviction and sentence is at Pet. App. C, 29a–35a.

## JURISDICTION

The district court had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

Section 3582(a) of Title 18 of the United States Code provides:

> **Factors to be considered in imposing a term of imprisonment**—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

Section 3553(a) of Title 18 provides, in part:

> **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***

## STATEMENT

Petitioner Tyree Steele came before the district court to be sentenced for a robbery he committed by passing a note to a bank teller. After hearing from the parties, the court imposed ten years of imprisonment. It stated that it selected this "lengthy term of incarceration" for "two reasons." Pet. App. 24a. First, it told petitioner, "[y]ou've got to get rid of drugs." *Id.* "The second thing is that you need a lengthy period of incarceration … to learn that you have to follow rules and regulations." *Id.* at 24a-25a. On appeal, petitioner challenged the sentence as contrary to 18 U.S.C. § 3582(a), which prohibits district courts from imposing or lengthening a prison term to promote rehabilitation. *See Tapia v. United States*, 564 U.S. 319, 332 (2011). The court of appeals affirmed.

1. Tyree Steele, today 35, was charged in a one-count indictment with robbing a Citizens Bank branch in downtown Philadelphia in violation of 18 U.S.C. § 2113(a). He pleaded guilty, admitting he entered the branch in a ski mask, handed a teller a note, and demanded the money in the top drawer, leaving with about $5,000. Pet. App. 2a.

At sentencing, the prosecutor emphasized Mr. Steele's criminal history. In 2013, he pleaded guilty in the District of New Jersey to participating with an older relative in a number of unarmed bank robberies in October and November 2010. *See* Pet. App. 16a. In 2015, he pleaded guilty in the Pennsylvania Court of Common Pleas to an unsuccessful stick-up of a corner store the year before. *See* Presentence Investigation Report, filed under seal at C.A.3 No. 22-1391, at ¶¶ 32-34 and 40.

Defense counsel, pointing to Mr. Steele's history of clinical depression and substance abuse, observed in her sentencing memorandum that "incarceration alone, no matter the length of

time," will not promote the aims of sentencing. C.A. App. 88. The sentence should be fashioned with an eye toward effective mental health and substance abuse treatment in the long term. *Id*.

The parties otherwise disputed application of the federal sentencing guidelines' enhancement for "career offenders." *See* U.S.S.G. § 4B1.1. Absent the enhancement, the advisory guidelines range is 46 to 57 months; with it, 151 to 188 months. Pet. App. 2a. Defense counsel argued that a sentence in the standard range would be sufficient, while the government argued for a sentence in the enhanced range. Pet. App. 15a-16a; C.A. App. 27, 46, 93.

After hearing from the parties, the district court stated each of the disputed guidelines ranges for the record, observed that bank robbery is a serious offense, and found Mr. Steele's history of robbery convictions to show a sense of entitlement "to money that doesn't belong to you," and "no sense of the importance of being law abiding." Pet. App. 22a-24a. Previous sentences not having achieved deterrence, the court could not "ignore the fact that you keep committing crime." Pet. App. 24a. It then explained it had decided to impose a lengthy prison term for two reasons:

> *** I've decided that you need a lengthy term of incarceration because—two reasons. You've got to get rid of drugs. You can't rely on drugs to cure your problems. And in prison, you will not be getting any drugs unless they're medical mandated.
>
> The second thing is that you need a lengthy period of incarceration where you are totally within the control of someone else, that is the prison authorities, and they have a lot of rules and regulations. And you've got to learn that you have to follow rules and regulations. When you're not in prison, the rule you follow is you don't commit crimes. And you haven't been able to follow that. So while you're in prison, you're going to have to follow a lot of rules and regulations you may think are pretty stupid or silly. But there are rules there. And the point is that people in prison hopefully will learn the fact that when they get out of prison, they have to continue to follow rules and regulations.…

> But I've determined here that the appropriate sentence is 120 months. So if the career offender offense applies, I'm giving you a downward variance. If it doesn't apply, then I'm giving you—I'm making an upward variance because I think the guideline range that would apply without the career offender statute, which is 46 to 57 months, is insufficient to accomplish the objectives of incarceration that are required in your situation.***

Pet. App. 24a-26a.[1] The court proceeded to impose the ten-year prison term, plus three years of supervised release, restitution of $5,043, and a $100 special assessment. Pet. App. 30a-34a. At counsel's request, the court also recommended to the Bureau of Prisons that it arrange for Mr. Steele's participation in its principal drug rehabilitation program. Pet. App. 18a, 30a.

2. Before the court of appeals, Mr. Steele challenged the sentence as contrary to the Sentencing Reform Act, which authorizes imprisonment for the purposes of punishment, deterrence, and incapacitation, but not for the purpose of rehabilitation. 18 U.S.C. § 3582(a); *Tapia v. United States*, 564 U.S. 319, 332 (2011). Mr. Steele argued the district court plainly broke that rule when, as the court stated for the record, it chose a "lengthy" prison term to get him to stop using drugs and live by the rules. Appellant's C.A. Brief 13-16.

A panel of the Third Circuit disagreed. Its spare opinion acknowledged that under 18 U.S.C. § 3582(a) and *Tapia*, "a sentencing court may not consider the defendant's rehabilitation when imposing or lengthening a sentence." Pet. App. 3a. But it perceived no such consideration here. Instead the district court had "expressed a hope that the conditions of imprisonment would lead Steele toward a lawful, drug-free life." Pet. App. 4a. On the panel's view, the judge's statement of reasons did "not plainly show that rehabilitation was considered as a factor in the

[1] In judgment papers entered the next day, the district court indicated it found the career offender enhancement to apply. Mr. Steele challenged the enhancement before the Third Circuit, which declined to reach the merits. *See* Pet. App. 5a-6a.

determination of Steele's sentence." Pet. App. 4a. This petition follows.

## REASONS FOR GRANTING THE PETITION

On occasion, there issue from the courts of appeals opinions declining to give force to undoubted precedent. The opinion below is one. It avoids applying the rule of *Tapia v. United States*, 564 U.S. 319 (2011), by resting decision on an insupportable view of the record. On any reasonable interpretation, the record shows the district court selected a "lengthy" prison term so that petitioner Tyee Steele would "get rid of drugs" and "learn … to follow rules and regulations." Pet. App. 24a-25a. These were, in fact, the *only* reasons the district judge gave for imposing 120 months of imprisonment. Both are plainly contrary to 18 U.S.C. § 3582(a), which proscribes imprisonment as a rehabilitative measure. *Tapia*, 564 U.S. at 332. Rather than confront the error, the court of appeals untenably characterized the judge's remarks as an afterthought not "plainly show[ing] that rehabilitation was considered as a factor." Pet. App. 4a.

In the face of this record, a fair inference is that § 3582(a)'s command carries no force in federal sentencing today, leaving *Tapia* a dead letter and judges free to indulge the discredited idea that prisons foster rehabilitation. Certiorari should be granted and the judgment of the court of appeals vacated to make perfectly clear that is not so.

### A. The Sentencing Reform Act proscribes resort to imprisonment as a rehabilitative measure.

In the Sentencing Reform Act of 1984, 98 Stat. 1987, Congress authorized imprisonment to punish offenders, deter crimes, and protect the public, *see* 18 U.S.C. § 3553(a)(2)(A)–(C), but not to promote rehabilitation:

> The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.***

18 U.S.C. § 3582(a). This Court has authoritatively construed § 3582(a) to command that a district court "may not impose or lengthen a prison sentence … to promote rehabilitation." *Tapia v. United States*, 564 U.S. 319, 335 (2011). Rather, "when sentencing an offender to prison, the court shall consider all the purposes of punishment except rehabilitation—because imprisonment is not an appropriate means of pursuing that goal." 564 U.S. at 328.

Section 3582(a)'s adoption reflected a broader course of reform whereby Congress departed from the "rehabilitation model" of imprisonment that had informed penology for much of the nineteenth and twentieth centuries. *Id*. at 332. That model favored indeterminate sentences on the premise that effective correctional programming would commonly warrant early parole. *Id*. at 323-24. Over time, however, "[l]awmakers and others increasingly doubted that prison programs could 'rehabilitate individuals on a routine basis.'" *Id*. at 324 (quoting S. Rep. No. 98-225, p. 40 (1983)). Accordingly, while Congress did not forsake rehabilitation "completely as a purpose of sentencing," *id.* at 332, it required this aim be promoted by such means as probation or supervised release and prohibited federal courts from "considering a defendant's need for rehabilitation in support of a prison sentence." *Concepcion v. United States*, 142 S. Ct. 2389, 2400 (2022) (citing § 3582(a) and *Tapia*, 564 U.S. at 328); *see United States v. Johnson*, 529 U.S. 53, 59 (2000) ("Supervised release fulfills rehabilitative ends, distinct from those served by incarceration.").

### B. Certiorari should be granted and the judgment vacated to reinforce the Sentencing Reform Act's proscription.

The record in this case unequivocally demonstrates that the district court relied on rehabilitative considerations to fix the length of imprisonment. Indeed, the "two reasons" given by the court for selecting a "lengthy" prison term each sounded in rehabilitation:

> I've decided that you need a lengthy term of incarceration because—two reasons. You've got to get rid of drugs. You can't rely on drugs to cure your problems. And in prison, you will not be getting any drugs unless they're medical mandated.
>
> The second thing is that you need a lengthy period of incarceration where you are totally within the control of someone else, that is the prison authorities, and they have a lot of rules and regulations. And you've got to learn that you have to follow rules and regulations. When you're not in prison, the rule you follow is you don't commit crimes. And you haven't been able to follow that. So while you're in prison, you're going to have to follow a lot of rules and regulations you may think are pretty stupid or silly. But there are rules there. And the point is that people in prison hopefully will learn the fact that when they get out of prison, they have to continue to follow rules and regulations.

Pet. App. 24a-25a.

As to the first of the court's reasons, promoting an offender's recovery from substance abuse has been a paradigmatic rehabilitative aim since long before the Sentencing Reform Act was signed into law. *See*, *e.g.*, *Pollard v. United States*, 352 U.S. 354, 355-56 (1957) (recounting district court's selection of probationary sentence to foster defendant's participation in Alcoholics Anonymous); *Tapia*, 564 U.S. at 324 n.3 (citing pre-SRA provisions authorizing indefinite commitment of "drug-addicted offenders" with release after completion of six months' treatment). As to the second reason, though it is more abstract, it too conceives of imprisonment as a rehabilitative measure, echoing the antiquated view that "regimentation" and "confinement itself—its inherent solitude and routine—will lead to rehabilitation." *Id*. at 332-33. That is the view Congress rejected.

Notwithstanding the district court's express statement of rehabilitative aims, the Third Circuit concluded there was no plain error. On its view of the record, "the District Court explained that 120 months was an appropriate sentence because Steele's criminal history

revealed serious recidivism, disregard for the law, and a sense of 'entitlement to money that doesn't belong to him.'" Pet App. 4a (brackets omitted). That reframing of the district court's statement of reasons is not tenable. While the district court did note these points, what it then "explained" was that it had chosen a 120-month sentence for two reasons: to keep Mr. Steele clean from drugs and practice him in following rules. Moreover, the points foregrounded by the panel, such as a history of recidivism, fit a rehabilitative frame as readily as a frame of punishment, deterrence, or incapacitation—and the district court's remarks show its own perspective was the rehabilitative one. Should an appellate panel view the sentence as appropriate for different reasons, that does not cure the error.

The Third Circuit is not alone in sometimes turning a deaf ear to strong tones of impermissible rehabilitative purpose. *See*, *e.g.*, *United States v. King*, 57 F.4th 1334, 1337 (11th Cir. 2023); *United States v. Rodriguez-Saldana*, 957 F.3d 576, 578, 581 (5th Cir. 2020); *United States v. Holdsworth*, 830 F.3d 779, 782 (8th Cir. 2016); *United States v. Krul*, 774 F.3d 371, 373-74 (6th Cir. 2014). This apparent hardness of hearing indicates that the statutory proscription confirmed by *Tapia* could stand amplification.

The present case offers ripe occasion to achieve it. Whereas usually statements expressing rehabilitative purpose come alongside discussion of aims such as deterrence and punishment, *see*, *e.g.*, *Tapia*, 564 U.S. at 335-36 (Sotomayor, J., concurring), in this case the district court stated reasons sounding in rehabilitation alone. As a result, the error could hardly be more striking in clarity and consequence. Plainly the district court failed to heed the statutory directive confirmed by *Tapia*: "Do not think about prison as a way to rehabilitate an offender." 564 U.S. at 330. Equally, the court's remarks make clear it would not select such a "lengthy"

term were rehabilitation not among its purposes. In all, the record presents unrivaled opportunity to remind district courts of § 3582(a)'s proscription and spur courts of appeals to enforce it.

Finally, the clarity of the error in this case may warrant consideration of summary reversal. *See*, *e.g.*, *Nelson v. United States*, 555 U.S. 350, 351-52 (2009) (per curiam) (summarily reversing where "the District Court's statements clearly indicate that it impermissibly applied a presumption of reasonableness" to guidelines range, contrary to *Rita v. United States*, 551 U.S. 338 (2007)). As the "law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error," this case is one which even critics of summary dispositions would regard as a sound candidate for abbreviated review. *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting). Summary reversal would also strengthen the message that may be warranted by decisions, like those just cited, that suggest petitioner's "case is not unique." *Overton v. Ohio*, 122 S. Ct. 389, 391 (2001) (statement of Breyer, J., for Stevens, O'Connor, and Souter, JJ., respecting denial of writ of certiorari) (favoring summary reversal where, though "we cannot act as a court of simple error correction," matter had "a general aspect" in that record suggested likelihood of other, similar cases).

## CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the court of appeals vacated, and the matter remanded. Ultimately the case must be returned to the district court for it to fashion a new sentence comprising only that length of imprisonment the court finds necessary to serve purposes other than rehabilitation.

Respectfully submitted,

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JULY 2023