

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JASON MORIARTY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Title 18, Section 3583(e)(3) authorizes the district court to “revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release,” except the court may not require service in prison of more than a specific number of years, depending on the classification of the original offense. For example, if the original offense was a Class C or D felony, the maximum service in prison upon revocation is two years. 18 U.S.C. § 3583(e)(3).

Title 18, Section 3624(e) requires that multiple terms of supervised release run concurrently, and imprisonment-upon-revocation is “part of ‘the term of supervised release,’” *Johnson v. United States*, 529 U.S. 694, 705 (2000).

The question presented is:

When revoking multiple terms of supervised release and requiring a defendant “to serve in prison all or part of the term of supervised release,” may the court run the “serv[ice] in prison” on each term consecutively to achieve an aggregate length of “serv[ice] in prison” that exceeds the maximum authorized for one term?

RELATED PROCEEDINGS

UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

United States v. Jason Moriarty

Case No. 21-14099-G

Judgment Date: May 22, 2023

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA

United States v. Jason Moriarty

Case No. 6:04-cr-5-CEM-GJK

Judgment Date: November 16, 2021

LIST OF PARTIES

Petitioner, Jason Moriarty, was the defendant in the district court and the appellant in the court of appeals. Respondent, the United States of America, was the plaintiff in the district court and the appellee in the court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Jason Moriarty, respectfully petitions for a writ of certiorari to review the Eleventh Circuit Court of Appeals' affirmance of the district court's judgment.

OPINION AND ORDER BELOW

The Eleventh Circuit's opinion and order affirming Mr. Moriarty's judgment is provided in Appendix A-1. The district court judgment of conviction and sentence is provided in Appendix A-2.

STATEMENT OF JURISDICTION

The United States District Court for the Middle District of Florida had original jurisdiction over Mr. Moriarty, *See* Appendix A-2. The Eleventh Circuit entered its judgment on May 22, 2023. Appendix A-1. This Court extended the time within which Mr. Moriarty may file a petition for certiorari until September 19, 2023. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 3581 provides in part:

Sentence of imprisonment

(a) In general. A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment. . . .

18 U.S.C. § 3583 provides in part:

Inclusion of a term of supervised release after imprisonment

(a) In general.--The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

...

(e) Modification of conditions or revocation.--The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)--

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without

credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

18 U.S.C. § 3584(a) provides in part:

Imposition of concurrent or consecutive terms.—If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

18 U.S.C. § 3624(e) provides:

(e) Supervision after release.—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation

officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

STATEMENT OF THE CASE

Mr. Moriarty was serving three concurrent terms of supervised release following his imprisonment for three criminal offenses contained in one judgment of conviction and sentence. Mr. Moriarty violated a special condition of his supervised release by using a computer without the prior written approval of his probation officer. The probation officer filed a petition to revoke Mr. Moriarty's supervised release based on the single violation, which Mr. Moriarty admitted.

The violation was grade C under the United States Sentencing Guidelines (Guidelines). On revocation, the Guidelines recommended four to ten months in prison. Because all three of Mr. Moriarty's underlying offenses were class C or D felonies, the court could not require him to serve more than two years in prison on each count. *See* 18 U.S.C. § 3583(e)(3).

The district court revoked Mr. Moriarty's term of supervised release, varied upward from the Guideline range, and required him to serve six years in prison: two years in prison for each of the three terms of supervised release, running consecutively. The district court also included a life term of supervised release to follow the six years in prison.

On appeal, Mr. Moriarty asserted that the district court lacked statutory authority to run the revocation sentences consecutively. He argued that the court's discretionary authority to impose concurrent or consecutive "terms of imprisonment" in 18 U.S.C. § 3584(a) does not apply when the court revokes supervised release under § 3583(e)(3). Relying on *Johnson v. United States*, 529 U.S. 694 (2000), he argued that he still served a "term of supervised release" while confined in prison after a § 3583(e) revocation, and that § 3584(a) only applies to "multiple terms of

imprisonment,” not a term of supervised release. Instead, 18 U.S.C. § 3624(e) applies to a “term of supervised release” and provides that the “term of supervised release . . . runs concurrently” with any federal term of supervised release for another offense.

The Eleventh Circuit rejected Mr. Moriarty’s argument and affirmed his judgment. *United States v. Moriarty*, 2023 WL 3580139, at **7-8 (11th Cir. May 22, 2023). The appellate court applied its prior-panel-precedent rule and concluded it was bound by *United States v. Quinones*, 136 F.3d 1293, 1294 (11th Cir. 1998). It also concluded that *Johnson* did not undermine *Quinones* to the point of abrogation. The appellate court also cited its post-*Johnson* opinion in *United States v. Sweeting*, 437 F.3d 1105, 1106-07 (11th Cir. 2006), holding that a district court acts within its discretion when imposing a consecutive sentence upon revocation of two terms of concurrent supervised release.

REASONS FOR GRANTING THE WRIT

This Court should grant review to determine whether 18 U.S.C. § 3584(a)'s discretionary authority to impose concurrent or consecutive “terms of imprisonment” applies to revocations of supervised release under 18 U.S.C. § 3583(e)(3).

The question presented warrants this Court's review to resolve an important question of statutory interpretation involving the authority Congress granted district courts when revoking supervised release. The scenario reoccurs frequently when a defendant whose sentence includes multiple terms of supervised release violates a condition of supervised release.

Congress authorized the court to revoke a defendant's supervised release in 18 U.S.C. § 3583(e)(3). The plain text of that subsection authorizes a district court to “revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release.” 18 U.S.C. § 3583(e)(3). Nowhere does the text authorize a district court to revoke a term of supervised release and impose a term of imprisonment. *Johnson*, 529 U.S. at 705 (“So far as the text is concerned, it is not a ‘term of imprisonment’ that is to be served,

but all or part of ‘the term of supervised release.’”); *see id.* at 713-14 (Kennedy, J., concurring in part).

Section 3583(e)(3) also caps the length of time a defendant may be required to serve “in prison” when his term of supervised release is revoked. 18 U.S.C. § 3583(e)(3). That cap is two years in prison if the underlying offense was a Class C or D felony. But the plain text chosen by Congress does not refer to a two-year “term of imprisonment” as the maximum.

Because § 3583(e)(3)’s plain text provides that a defendant like Mr. Moriarty continues to serve a “term of supervised release” in prison—as opposed to a “term of imprisonment”—when his supervision is revoked, 18 U.S.C. § 3624(e) applies. And § 3624(e) requires that “term[s] of supervised release” run concurrently.

To be sure, 18 U.S.C. § 3584 confers discretion on the district court to “impos[e]” concurrent or consecutive “terms of imprisonment.” But § 3584’s application is limited to the “imposition” of “terms of imprisonment,” which is what the court does under 18 U.S.C. §§ 3581

and 3582 when sentencing a defendant who has been found guilty of an offense.¹

When a court “revoke[s] a term of supervised release” and “require[s] the defendant to serve in prison all or part of the term of supervised release” under § 3583(e)(3), the court does not “impos[e]” a “term[] of imprisonment.” So § 3584 does not apply to Mr. Moriarty or any of the numerous defendants who face revocation of multiple, concurrent terms of supervised release.

Section 3624(e) requires the court to continue to run the terms of supervised release concurrently, even though the court revoked supervised release and required service of the supervised release in prison. As such, the court lacked discretion under § 3584 to require Mr. Moriarty to serve consecutive terms of supervised release in prison under § 3583(e)(3).

¹ Section 3581 authorizes the court to sentence “a defendant who has been found guilty of an offense” to a “term of imprisonment.” Section 3582 authorizes “[i]mposition of a sentence of imprisonment.” They apply to initial sentencings, as opposed to revocations of supervised release under § 3583(e)(3). The proceedings are different. *See, e.g., Johnson*, 529 U.S. at 712 (“The proceeding that follows a violation of the conditions of supervised release is not, to be sure, a precise reenactment of the initial sentencing.”).

This issue occurs any time a court revokes the supervised release of a defendant serving multiple terms of supervised release. It has serious consequences for defendants, who serve longer sentences and suffer deprivations of liberty longer than Congress allowed. And letting these illegal sentences stand undermines the fairness, integrity, and public reputation of judicial proceedings.

Because the court here assumed discretion to stack Mr. Moriarty's revocation sentences consecutively, Mr. Moriarty is serving three times the maximum he should be serving in prison (six years instead of two years). Other defendants with multiple counts face even higher multiples and longer sentences. For example, a defendant serving 35 concurrent three-year terms of supervised release for 35 counts of mail fraud, who violated his supervised release by failing to contact his probation officer and faced three to nine months' imprisonment under the Guidelines, was required to serve five consecutive periods in prison; but there was nothing to stop the court from imposing 35 consecutive sentences. *United States v. Campbell*, 937 F.3d 1254 (9th Cir. 2019); *see United States v. Turner*, 21 F.4th 862, 867 (D.C. Cir. 2022) (discussing the *Campbell* court's reasoning). In some cases, the prison time on

revocation exceeds the term of imprisonment on the initial sentence. *See United States v. Dees*, 467 F.3d 847, 849 (3d Cir. 2006) (affirming three 24-month consecutive revocation sentences for an aggregate 72 months in prison where initial sentence was three concurrent 51-month terms of imprisonment).

Mr. Moriarty acknowledges that the circuit courts are against him. *See, e.g., Dees*, 467 F.3d at 852 (citing six other circuits that have agreed with the proposition that § 3584(a) applies to not only the imposition of one's initial sentence but also to a sentence imposed upon revocation of supervised release). Many of these circuits, like the Eleventh Circuit in his case, rely on pre-*Johnson* precedents without analyzing the plain texts and engaging in statutory construction post-*Johnson*. To the extent some of the circuits have analyzed the statutes post-*Johnson*, Mr. Moriarty respectfully submits that they have come to the wrong conclusion. *See, e.g., United States v. Xinidakis*, 598 F.3d 1213 (9th Cir. 2010). Despite the lack of a circuit split, this Court should grant certiorari review to correct the circuits' interpretations of the statutes in this frequently occurring scenario. *Cf. Rehaif v. United States*, 139 S. Ct. 2191 (2019)

(granting certiorari despite the absence of a circuit split among the ten circuits that had weighed in).

CONCLUSION

For the foregoing reasons, Mr. Moriarty respectfully asks this Court to grant the petition for writ of certiorari.

Respectfully submitted,

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APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, *United States v. Moriarty*, 2023 WL 3580139 (11th Cir. May 22, 2023)..... A-1

Judgment of the District Court for the Middle District of Florida, *United States v. Jason Moriarty*, Case No. 6:04-cr-5-CEM-GJK (M.D. Fla. Nov. 16, 2021) A-2