No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN SHERMAN JUMPER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THIS COURT'S HOLDING IN *KOKESH V. SEC,* WHICH HELD THAT DISGORGEMENT IS A PENALTY, PRECLUDES EITHER THE IMPOSITION OF A CRIMINAL SENTENCE IN ITS ENTIRETY AND/OR A SIXTEEN-LEVEL ENHANCEMENT BASED UPON THE AMOUNT OF LOSS, BECAUSE THE PRIOR DISGORGEMENT PUNISHMENT, BASED UPON THE SAME MISCONDUCT, VIOLATES THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT?

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IN THE SUPREME COURT OF THE UNITED STATES

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

Petitioner, John Sherman Jumper, by and through his undersigned attorney, respectfully petitions for a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Third Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Third Circuit appears in the Appendix.

JURISDICTION

On July 14, 2023, in a precedential opinion, a three-judge panel of the Third Circuit Court of Appeals entered its Judgment affirming Mr. Jumper's sentence. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1). This petition is timely filed within 90 days of the decision below under Rule 13.1(3) of this Court.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent statutory provisions include 18 U.S.C. § 3742, 28 U.S.C. § 2106 and the Fifth Amendment to the United States Constitution.

STATEMENT OF THE FACTS

On April 12, 2018, a twelve-count Indictment was returned in the Middle District of Pennsylvania charging Mr. Jumper with, *inter alia*, Wire Fraud, Embezzlement and Theft from Employee Pension Benefit Plan, and False Statements. On April 17, 2018, Mr. Jumper was arrested in his home district, the Western District of Tennessee and appeared before that court for his initial appearance and he was released. On April 26, 2018, Mr. Jumper voluntarily appeared in the Middle District of Pennsylvania for his arraignment. He entered a not guilty plea and was released on his own recognizance with pre-trial services supervision by the Western District of Tennessee.

A negotiated plea agreement was reached with the Government and on April 9, 2021, Mr. Jumper, appearing by video, entered his guilty plea before the district court. The salient terms of the plea agreement included that the base offense level was a level 7 and because the amount of loss was between $1.5 million, but less than $3.5 million, a 16-level enhancement applied. The parties also agreed on a three-level recommendation for acceptance of responsibility.

On June 2, 2022, a sentencing hearing was held. The district court overruled all of Mr. Jumper's objections to the pre-sentence report enhancements. The district court also rejected Mr. Jumper's argument for a non-incarceration sentence based upon the fact that he was already punished for the same conduct in both a contemporaneous civil action, as well as an S.E.C. action. The district court ultimately sentenced Mr. Jumper to seventy-eight months of incarceration.

A timely notice of appeal to the Third Circuit was filed. On July 14, 2023, a three-judge panel of the Third Circuit (the "Panel"), in a precedential opinion, affirmed. *See United States v. Jumper*, 74 F.4th 107 (3d Cir. 2023).

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE IMPORTANT ISSUE OF WHETHER THIS COURT'S HOLDING IN *KOKESH V. S.E.C.*, WHICH HELD THAT DISGORGEMENT IS A PENALTY, PRECLUDES EITHER THE IMPOSITION OF A CRIMINAL SENTENCE IN ITS ENTIRETY AND/OR A SIXTEEN-LEVEL ENHANCEMENT BASED UPON THE AMOUNT OF LOSS, BECAUSE THE PRIOR DISGORGEMENT PUNISHMENT BASED UPON THE SAME MISCONDUCT VIOLATES THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution states, *inter alia*, that no person "be subject for the same offense to be

twice put in jeopardy of life or limb." This basic guarantee extends to both successive prosecutions as well as to multiple punishments. *See Burks v. United States*, 437 U.S. 1 (1978).

This Court has held that SEC disgorgement is punitive and constitutes punishment. *See Kokesh v. S.E.C.*, 581 U.S. 455, 461-64 (2017). In *Kokesh*, this Court held that the five-year statute of limitations, under 28 U.S.C. § 2462, also applied when the SEC seeks disgorgement. In accepting certiorari, this Court noted that both the district court and the Tenth Circuit held that disgorgement and forfeiture are not penalties. *Id.* at 460. In that decision, the Court disagreed and could not be more clear: an SEC disgorgement is a penalty. In doing so, the Court noted the following:

> A penalty is a punishment, whether corporal or pecuniary, imposed and enforced by the State for a crime or offen[s]es against its laws. This defintition gives rise to two principles. First, whether a sanction represents a penalty in turns in part on whether the wrong sought to be addressed is a wrong to the public or a wrong to the individual . . . .

Id. at 461 (internal citations omitted).

> SEC disgorgement constitutes a penalty within the meaning of § 2462. First, SEC disgorgement is imposed by the courts as a consequence for violating . . . public laws. The violation for which the remedy is sought is committed against the United States rather than an aggrieved individual – this is why, for example, a securities enforcement action may proceed even if victims do not support or are not parties to the prosecution. As the Government concedes, when the SEC seeks disgorgement, it acts in the public interest, to remedy harm to the public at large, rather than standing in the shoes of particular injured parties . . . .

Id. at 463 (internal citations omitted).

> Second, SEC disgorgement is imposed for punitive purposes. In *Texas Gulf*– one of the first cases requiring disgorgement in SEC proceedings – the court emphasized the need to deprive the defendants of their profits in order to . . . protect the investing public by providing an effective deterrent for future violations, 312 F. Supp. at 92. In the years since, it has become clear that deterrence is not simply an incidental effect of disgorgement. Rather, courts have consistently held that the primary purpose of disgorgement orders is to deter violation of their ill-gotten gains. . . .

Id. at 464.

> Finally, in many cases, SEC disgorgement is not compensatory. As courts and the Government have employed the remedy, disgorged profits are paid to the district court, and it is within the court's discretion to determine how and to whom the money will be distributed. Courts have required disgorgement regardless of whether the disgorged funds will be paid to such investors as restitution. Some disgorged funds are paid to victims; other funds are dispersed to the United States Treasury. Even though district courts may distribute funds to the victims, they have not identified any statutory command that they do so. When an individual is made to pay a non-compensatory sanction to the Government as a consequence of a legal violation the payment operates as a penalty.

Id. at 464-65.

Here, Mr. Jumper's base offense level under the Sentencing Guidelines was merely a 7. PSR ¶ 31. However, he was subjected to a 16-level amount of loss increase. PSR ¶¶ 32. At sentencing, Mr. Jumper argued for a non-incarceration sentence based upon the fact that Mr. Jumper had already been subjected to multiple punishments for the same conduct, including an SEC disgorgement entered in the Western District of Tennessee.[1] Ultimately, the district court rejected any double jeopardy argument.

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[1] Mr. Jumper was also subject to an additional civil action in the Middle District of Pennsylvania and a FINRA action, all based upon the same alleged misconduct.

This Court in *Kokesh* clearly held that SEC disgorgement is a penalty and constitutes punishment. Under *Kokesh*, there can be no doubt that Mr. Jumper was punished with a penalty in the form of an SEC disgorgement. He was then punished a second time for the same conduct in this criminal prosecution in two ways: by the imposition of a punitive 16-level enhancement based upon the amount of loss and by the imposition of a 78-month incarceration sentence. As a result, under this scenario, with the same loss and punishment, Mr. Jumper was punished twice in violation of the Fifth Amendment's Double Jeopardy Clause.

Because Mr. Jumper's case implicates the scope and application of this Court's prior holding in *Kokesh* and will impact many other similarly-situated litigants who face both criminal prosecutions and other forms of civil and regulatory punishments, this Petition for Writ of Certiorari should be granted.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, this Court should grant the petition for writ of certiorari.

Dated: October 9, 2023

MIELE & RYMSZA, P.C.

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NO._____

IN THE SUPREME COURT OF THE UNITED STATES

JOHN SHERMAN JUMPER,

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v.

UNITED STATES OF AMERICA,

Respondent.

CERTIFICATE OF SERVICE

I, Edward J. Rymsza, hereby certify that on this 9th day of October 2023, I served copies of the Petition for a Writ of Certiorari in the above-captioned case were mailed, first class postage prepaid to the following:

Elizabeth Prelogar
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I certify that all parties required to be served have been served.

Dated: October 9, 2023

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CERTIFICATIONS

I, Edward J. Rymsza, Esq., hereby certify that:

1. I am a member of the bar of the Supreme Court of the United States,

2. the text of the electronic brief e-mailed to the Court is identical to the text of the other paper copies mailed to the Court,

3. the attached brief has been automatically scanned during preparation and upon sending by Avast anti-virus detection program and no virus was detected,

4. on the date below, one copy of the foregoing Petition for Writ of Certiorari was placed in the United States mail, first class, postage pre-paid addressed to:

Navin Jani, Esq.
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Harrisburg, PA 17102

5. on the date below, ten copies of the same were placed in the United States mail, first class, postage pre-paid, addressed to:

Supreme Court of the United States
Office of Clerk
One First Street NE
Washington, D.C. 20543

Dated: October 9, 2023

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PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2085

UNITED STATES OF AMERICA

v.

JOHN SHERMAN JUMPER,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal No. 4:18-cr-00128-001)
District Judge: Honorable Matthew W. Brann

Submitted Under Third Circuit L.A.R. 34.1(a):
June 12, 2023

Before: PORTER, FREEMAN, and FISHER,
Circuit Judges

(Filed: July 14, 2023)

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OPINION OF THE COURT

PORTER, *Circuit Judge.*

The District Court sentenced John Jumper to 78 months' imprisonment and ordered him to pay restitution for fraudulently transferring assets from a company pension plan to his own accounts. In a civil securities action for the same misconduct, a district court in Tennessee disgorged Jumper of his ill-gotten gains. Jumper appeals his sentence. He asserts

that his criminal sentence violates the Double Jeopardy Clause and principles of collateral estoppel. He also claims that the District Court improperly concluded that the Bureau of Prisons (BOP) could treat his medical issues. We will affirm the criminal sentence.

I

Jumper was a securities broker-dealer in Memphis, Tennessee. Acting in that capacity, he arranged financing on behalf of a group of private investors for the purchase of Snow Shoe Refractories, LLC, a Pennsylvania fire-brick manufacturer. Jumper fraudulently obtained authority to transfer Snow Shoe's pension plan assets by forging the majority stakeholder's signature on several documents. Between 2007 and 2016, Jumper transferred $5.7 million from the pension plan to accounts he controlled.

The government pursued both civil and criminal actions against Jumper. The Securities and Exchange Commission (SEC) filed a civil complaint against Jumper for securities fraud in the Western District of Tennessee. And the Department of Justice filed criminal charges against Jumper in the Middle District of Pennsylvania. In the civil action, the Tennessee District Court entered a default judgment for the SEC and ordered Jumper to disgorge all $5.7 million of ill-gotten gains and to pay prejudgment interest of $726,758.79. In the criminal proceedings, Jumper pleaded guilty to one count of wire fraud. As part of his plea agreement, Jumper agreed to make full restitution and the parties stipulated to a loss of $1.5 to $3.5 million.

At criminal sentencing, Jumper requested a downward departure or variance based on various medical issues. The

District Court considered his request, heard argument from Jumper and his counsel, and discussed the relevant 18 U.S.C. § 3553(a) factors. The District Court denied Jumper's requests, explaining, "it would appear that the Bureau of Prisons is equipped to provide consistent and adequate medical care." App. 125a; *see also* App. 146a.

The District Court sentenced Jumper to 78 months' incarceration, a sentence at the bottom of the Guidelines range of 78–97 months, and ordered him to pay $2,426,550 in restitution. At Jumper's request, the District Court recommended that Jumper be placed in either a BOP medical facility or a prison with a medical facility. Jumper appealed his sentence.

II

The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 18 U.S.C. § 3742.

We review challenges under the Double Jeopardy Clause de novo. *United States v. Ayala*, 917 F.3d 752, 759 (3d Cir. 2019). We review the procedural and substantive reasonableness of a sentence under an abuse of discretion standard. *United States v. Tomko*, 562 F.3d 558, 567–68 (3d Cir. 2009) (en banc). "[I]f the district court's sentence is procedurally sound, we will affirm it unless no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided." *Id.* at 568.

III

A

Jumper asserts that his criminal sentence violates the Double Jeopardy Clause because he was already penalized with disgorgement in a civil suit brought by the SEC in the Western District of Tennessee. Today, we join every other circuit to address the issue in holding that the Double Jeopardy Clause does not prevent a person subject to a disgorgement order from being criminally sentenced for the same conduct.

The Double Jeopardy Clause of the Fifth Amendment instructs that no "person [shall] be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. "[T]he Double Jeopardy Clause does not prohibit the imposition of any additional sanction that could, in common parlance, be described as punishment." *Hudson v. United States*, 522 U.S. 93, 98–99 (1997) (citation and quotation marks omitted). Instead, it "protects only against the imposition of multiple *criminal* punishments for the same offense." *Id.* at 99 (citations and parenthetical information omitted). *Hudson* provides us with a framework for deciding "[w]hether a particular punishment is criminal or civil." *Id.*

Eight circuits have preceded us in holding that disgorgement is not a criminal punishment and thus does not implicate the Double Jeopardy Clause. *See United States v. Bank*, 965 F.3d 287, 296–97 (4th Cir. 2020); *United States v. Dyer*, 908 F.3d 995, 1003–04 (6th Cir. 2018); *United States v. Melvin*, 918 F.3d 1296, 1301 (11th Cir. 2017); *United States v. Van Waeyenberghe*, 481 F.3d 951, 959 (7th Cir. 2007); *United States v. Perry*, 152 F.3d 900, 904 (8th Cir. 1998); *SEC v. Palmisano*, 135 F.3d 860, 866 (2d Cir. 1998); *United States v.*

Gartner, 93 F.3d 633, 635 (9th Cir. 1996); *SEC v. Bilzerian*, 29 F.3d 689, 696 (D.C. Cir. 1994). These cases guide our analysis under *Hudson*.

Beginning with the statutory text, we "ask whether the legislature, 'in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.'" *Hudson*, 522 U.S. at 99 (quoting *United States v. Ward*, 448 U.S. 242, 248 (1980)). We conclude that "Congress expressly established a preference for disgorgement to be a civil remedy." *See Dyer*, 908 F.3d at 1002. The district court in Jumper's SEC action ordered disgorgement under 15 U.S.C. § 78u(d)(5), which gives federal courts the authority to grant "equitable relief." **Red 5.** *See Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020) ("a disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under § 78u(d)(5)"). "[S]uits in equity are considered civil actions." *Bank*, 965 F.3d at 298 (citation omitted). And § 78u(d) is labeled, in relevant part, "money penalties in civil actions."[1] *See Hudson*, 522 U.S. at 103 (finding that Congress intended money penalties to be civil in nature

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[1] In 2021, Congress added disgorgement to the list of remedies that a district court could grant in a civil action brought by the SEC for securities violations. William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 6501, 134 Stat. 3388, 4625–26 (codified at 15 U.S.C. § 78(u)(d)(3)(ii), (u)(d)(7)). Previously, courts looked to scattered statutes, like § 78(u)(d)(3), to derive a legal basis for the remedy. *See Bank*, 965 F.3d at 297.

because 12 U.S.C. § 93(b)(1) "expressly provide[d] that such penalties [were] 'civil'").

At step two of the *Hudson* analysis, we "inquire[] further whether the statutory scheme was so punitive either in purpose or effect, as to transform what was clearly intended as a civil remedy into a criminal penalty." *Id.* at 99 (quotation marks, alterations, and citations omitted). Only the "clearest proof" can "transform what has been denominated a civil remedy into a criminal penalty." *Id.* at 100 (quoting *Ward*, 448 U.S. at 249). For guidance, we look to the seven *Kennedy* factors:

> (1) [w]hether the sanction involves an affirmative disability or restraint;
>
> (2) whether it has historically been regarded as a punishment;
>
> (3) whether it comes into play only on a finding of *scienter*;
>
> (4) whether its operation will promote the traditional aims of punishment—retribution and deterrence;
>
> (5) whether the behavior to which it applies is already a crime;
>
> (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and
>
> (7) whether it appears excessive in relation to the alternative purpose assigned.

Id. at 99–100 (quotation marks omitted) (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963)).

We find there is insufficient evidence "to transform what was clearly intended as a civil remedy into a criminal penalty." *Id.* at 99 (quotation marks, alteration, and citation omitted). "Although disgorgement . . . appl[ies] to conduct that may also be prosecuted under a criminal statute, and [] posses[es] some characteristics common to criminal laws, such as requiring scienter and effecting deterrence, . . . disgorgement . . . [has not] historically been viewed as punishment." *Palmisano*, 135 F.3d at 866 (citation omitted). Instead, money penalties have "been recognized as enforc[ea]ble by civil proceedings since the original revenue law of 1789." *Hudson*, 522 U.S. at 104 (citing *Helvering v. Mitchell*, 303 U.S. 391, 400 (1938)); *see* Act of July 31, 1789, ch. 5, § 36, 1 Stat. 29, 47. Even more, disgorgement, which requires a person to dispense only with ill-gotten gains, does not involve an "affirmative disability or restraint" approaching that of imprisonment. *See id.* And it advances other nonpunitive purposes such as "ensuring that defendants do not profit from their illegal acts, encouraging investor confidence, increasing the efficiency of financial markets, and promoting stability of the securities industry." *Bank*, 965 F.3d at 300 (citations and quotation marks omitted).

Instead of challenging the consensus of authority from other circuits or attempting to classify disgorgement as a criminal punishment under *Hudson*, Jumper argues that the Supreme Court abrogated those cases in *Kokesh v. SEC* when it labeled disgorgement "a penalty." 581 U.S. 455, 463 (2020); *see* Appellant's Br. 15. Similar arguments were rejected by the Fourth and Sixth Circuits in *Bank* and *Dyer*. *See Bank*, 965 F.3d at 301; *Dyer*, 908 F.3d at 1003.

Because the Court concluded in *Kokesh* that disgorgement is a civil, not criminal, penalty, it does not disrupt our conclusion. Specifically, the Court held that "disgorgement constitutes a penalty within the meaning of [28 U.S.C.] § 2462." 581 U.S. at 463. Section 2462 defines the statute of limitations for "any *civil* fine, penalty, or forfeiture." 28 U.S.C. § 2462 (emphasis added). "Civil," in this context, modifies "fine," "penalty," and "forfeiture." *See* Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 147 (2012) (Series-Qualifier Canon). So a "penalty within the meaning of § 2462" is a "civil penalty." *Cf. Gabelli v. SEC*, 568 U.S. 442, 444–45 (2013) (referring to § 2462 as "the general statute of limitations for civil penalty actions"). The Double Jeopardy Clause "protects only against the imposition of multiple *criminal* punishments for the same offense." *Hudson*, 522 U.S. at 99.

We hold that the District Court did not violate the Double Jeopardy Clause by issuing a criminal sentence to Jumper.

B

Relatedly, Jumper raises a collateral estoppel, or issue preclusion, claim. It is true that the Double Jeopardy Clause "embodies principles of collateral estoppel that can bar the relitigation of an issue actually decided in a defendant's favor by a valid and final judgment." *United States v. Merlino*, 310 F.3d 137, 141 (3d Cir. 2002) (citing *Ashe v. Swenson*, 397 U.S. 436, 443 (1970)). But Jumper does not point to the issue that was decided in his favor that he thinks should be barred from relitigation. On the contrary, the district court in Tennessee entered default judgment against Jumper, so it is not readily

apparent that *any* issues were actually litigated and decided in his favor.

We hold that the imposition of Jumper's criminal sentence is not barred by principles of collateral estoppel.

C

Finally, Jumper asserts that the District Court erred when it failed to grant a downward departure or variance based on his medical conditions. Specifically, he claims that the District Court improperly concluded that the BOP had medical facilities capable of treating his impairments. We hold that the District Court did not abuse its discretion because the sentence was procedurally sound and substantively reasonable.

When a defendant alleges procedural error, "we must ensure that the district court did not fail to calculate (or miscalculate) the Guidelines range; treat the Guidelines as mandatory; gloss over the § 3553(a) factors; choose a sentence based on a clearly erroneous fact; or inadequately explain the chosen sentence." *United States v. Brito*, 979 F.3d 185, 189 (3d Cir. 2020) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)). We presume that procedurally sound sentences within the Guidelines are reasonable. *United States v. Handerhan*, 739 F.3d 114, 119–20 (3d Cir. 2014). And we affirm unless we believe that "no reasonable court would have imposed that sentence for the reasons provided." *Brito*, 979 F.3d at 189 (citing *Tomko*, 562 F.3d at 568).

A district court may depart downward from the calculated Guidelines range for "[a]n extraordinary physical impairment." U.S. Sent'g Guidelines Manual § 5H1.4 (U.S. Sent'g Comm'n 2018). We lack jurisdiction to review a discretionary

denial of a downward departure "once we determine that the district court properly understood its authority to grant a departure." *United States v. Minutoli*, 374 F.3d 236, 239 (3d Cir. 2004). Because the District Court recognized that it could grant a downward departure for an extraordinary medical condition, we lack jurisdiction to review its denial of Jumper's request for such a departure.

A district court must "consider [] the need for the sentence imposed [] to provide the defendant with needed . . . medical care" before announcing a sentence. 18 U.S.C. § 3553(a)(2)(D). We require courts to explain their decision on the record so that we can satisfactorily review the sentence for reasonableness. *Rita v. United States*, 551 U.S. 338, 356–57 (2007). But "brevity is not error *per se*." *United States v. Jackson*, 467 F.3d 834, 842 (3d Cir. 2006). And we may affirm if the record makes clear that the court "listened to each argument[,] . . . considered the supporting evidence[,] . . . was fully aware of defendant's various physical ailments and imposed a sentence that [took] them into account." *Rita*, 551 U.S. at 358.

The record makes clear that the District Court adequately considered Jumper's medical needs before imposing the sentence and did not commit any procedural error. The Court reviewed Jumper's sentencing memorandum, which contained a detailed description of his medical needs as well as letters from his physicians and pastor. It heard from Jumper and his attorney, who specifically argued that the BOP would be unable to treat his client's medical needs. It discussed the relevant § 3553(a) factors. And it concluded, "it would appear [that the BOP] is equipped to provide consistent and adequate medical care for [Jumper]" before imposing a sentence that was reasonable, appropriate, and "not greater than necessary to meet sentencing objectives." App. 146a–47a.

We also find Jumper's sentence to be substantively reasonable. It was at the bottom of the Guidelines range, and the District Court noted Jumper's medical issues for the BOP and recommended that he be placed at a BOP medical facility or a prison with a medical facility.[2] There is no evidence in the record that would lead us to believe the BOP was not capable of treating Jumper's medical conditions.

Jumper submits, incorrectly, that the District Court was required to factually investigate whether the BOP was able to treat his impairments. He cites several cases, none of which stand for his proposition that it is an abuse of discretion to deny a sentence departure without factual evidence of the BOP's ability to deliver specific medical care.[3] To be sure, many

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[2] Jumper alleges that he has not been placed in a BOP medical facility. The appropriate avenues for contesting the adequacy of BOP medical care are the prison's administrative grievance procedures and the Eighth Amendment, not a sentence appeal.

[3] Jumper cites two cases that stand for a logically dissimilar rule: it was permissible for the district court to disregard boilerplate language from the BOP regarding medical capabilities when granting a downward departure. *See United States v. Martin*, 363 F.3d 25, 50 (1st Cir. 2004); *United States v. Gee*, 226 F.3d 885, 902 (7th Cir. 2000). He cites two cases in which the appellate court vacated a sentence because the district court granted a departure without explaining how the defendant was entitled to one. *See United States v. Schein*, 31 F.3d 135, 138 (3d Cir. 1994); *United States v. Carey*, 895 F.2d 318, 320 (7th Cir. 1990). And he cites one case in which the appellate court disagreed with the district court's

inmates suffer from physical impairments. And Jumper has not explained how or why the BOP's typical medical care would be lacking in his case, or why it was unreasonable for the District Court to conclude that the BOP was capable of treating him.

We hold that the District Court did not abuse its discretion when it denied Jumper's requests for a downward departure and variance.

* * *

For the reasons stated above, we will affirm the District Court.

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departure denial because it disregarded U.S.S.G. § 5H1.4 entirely. *See United States v. Fisher*, 55 F.3d 481, 484–85 (10th Cir. 1995) (quoting district judge as explaining "I am not in the business of rehabilitation in this case, I am in the business of punishing the sale of L.S.D.").

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2085

UNITED STATES OF AMERICA

v.

JOHN SHERMAN JUMPER,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal No. 4:18-cr-00128-001)
District Judge: Honorable Matthew W. Brann

Submitted Under Third Circuit L.A.R. 34.1(a):
June 12, 2023

Before: PORTER, FREEMAN, and FISHER
Circuit Judges

JUDGMENT

This cause came on to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted on June 12, 2023.

On consideration whereof, it is now ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered June 2, 2022, is hereby AFFIRMED. No costs taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit

Clerk

Dated: July 14, 2023

Certified as a true copy and issued in lieu of a formal mandate on August 7, 2023

Teste: Patricia S. Dodszuweit

Clerk, U.S. Court of Appeals for the Third Circuit