

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

GREGORY L. RANDLE
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. 23-60041

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the district court erred by ordering Mr. Randle to serve 12 months in prison for nonviolent supervised release violations, and by ordering the 12-month sentence to run consecutively to the 51-month sentence ordered in a related case.

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. Introduction.

This supervised release revocation proceeding was assigned Case Number 23-60041 in the United States Court of Appeals for the Fifth Circuit.¹ The sentencing issue in this supervised release proceeding is intertwined with the conviction and sentence ordered in another case – *United States v. Randle*, Fifth Circuit Case Number 23-60061.² Case Number 23-60061 involves convictions of Mr. Randle for felon in possession of a firearm and possession with intent to distribute less than 50 kilograms of marijuana. The Court conducted a single joint hearing of the supervised release revocation issue in Case Number 23-60041 and the sentencing issue in Case Number 23-60061. Throughout the remainder of this Petition, Case Number 23-60041 is referenced as the “**supervised release proceeding**” and Case Number 23-60061 is referenced as the “**conviction and sentence proceeding**.”

B. Proceedings below.

As stated above, this case involves a supervised release revocation proceeding. The case arises out of an underlying conviction entered by the United States District Court for the Southern District of California for use of an interstate

¹ The district court case number is 3:21cr82.

² The district court case number is 3:22cr20.

facility to promote prostitution, in violation of 18 U.S.C. § 1952(a)(3). The court in the Southern District of California ordered a 15-month prison term followed by three years of supervised release. It entered a Judgment reflecting this sentence on February 3, 2021.

After Mr. Randle's release from prison, jurisdiction of this case transferred from the Southern District of California to the Southern District of Mississippi. Thereafter, the Southern District of Mississippi had jurisdiction over Mr. Randle for purposes of his supervised release.

While on supervised release, Mr. Randle admittedly violated three conditions of supervised release. The admitted violations were:

- Violation of Standard Condition # 2: Failure to submit monthly reports to the probation officer in July, August, September, October and November of 2021.
- Violation of Standard Condition # 5: Failure to inform the probation officer of a change of address on or about May 26, 2021.
- Violation of a Mandatory Condition: Failure from refraining from committing another crime as indicated by his arrest on December 3, 2021, for felony flight in a motor vehicle, felon in possession of a firearm and possession of a controlled substance with intent to distribute.

The prosecution alleged a fourth violation, but the district court found him not guilty of that violation. The fourth alleged violation was:

- Violation of a Mandatory Condition: Failure to pay \$100 monthly installments on the court ordered \$3,000 fine for the months of April, May, June, July, August, September, October and November of 2021.

The district court conducted Mr. Randle's hearing on January 26, 2023. As stated above the district court conducted a joint hearing on the supervised release proceeding and the conviction and sentence proceeding. Mr. Randle accepted responsibility for his actions by confessing the three of the alleged supervised release violations.

Regarding the supervised release proceeding, the court ordered a 12-month prison term followed by 12 months of supervised release. As to the conviction and sentence proceeding, the court ordered 51 months in prison followed by three years of supervised release. The court ordered the two prison sentences to run consecutively, for a total prison term of 63 months in jail. The court entered a Revocation Judgment on January 30, 2023. The Revocation Judgment is attached hereto as Appendix 1.

On January 21, 2023, Mr. Randle filed a Notice of Appeal to the United States Circuit Court for the Fifth Circuit. The Fifth Circuit affirmed the lower

court's ruling via an Opinion filed August 9, 2023. The appellate court's Opinion is attached hereto as 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 August 9, 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--

* * * * *

(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;

* * * * *

(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; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements 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);

(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.1

- (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.

18 U.S.C. § 3553(a).

IV. STATEMENT OF THE CASE

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

This case arises out of a supervised release Revocation Judgment entered against Mr. Randle. 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 underlying criminal conviction entered against Mr. Randle arose from the laws of the United States of America.

B. Statement of material facts.

1. Mr. Randle's background.

Mr. Randle has many positive characteristics. As the district court recognized, letters written by family and friends indicate a strong support system. He was honorably discharged from the National Guard. *Id.* at ROA.58. Also, he is close to finishing his undergraduate degree at Jackson State University.

2. The admitted supervised release violations.

The district court found Mr. Randle guilty of three supervised release violations. The violations were: (1) failure to submit monthly reports to the probation officer; (2) failure to inform the probation officer of a change of address; and (3) failure from refraining from committing another crime.

The “other crimes” supporting the third supervised release violation were felony flight in a motor vehicle, felon in possession of a firearm and possession of

a controlled substance with intent to distribute. It is important to note that in the conviction and sentence case, Mr. Randle admitted and pled guilty to the same felon in possession of a firearm charge and possession of a controlled substance with intent to distribute charge. The court sentenced him to 51 months in prison in the conviction and sentence case. Fifty-one months was the top of the range calculated under the United States Sentencing Guidelines (hereinafter “Sentencing Guidelines”).

3. The supervised release revocation hearing.

Mr. Randle accepted full responsibility for his actions by confessing all three of the supervised release violations. He apologized to the court and ensured the court that he would not violate the law in the future.

The court ordered a 12-month prison term in the supervised release proceeding. It ordered the 12-month sentence in the supervised release proceeding to run consecutive to the 51-months sentence ordered in the conviction and sentence proceeding. That resulted in a total prison sentence of 63 months.

As stated above, the conduct underlying the supervised release violation for failing to refrain from further violation of the law is the exact same conduct for which the district court ordered a 51-month sentence in the conviction and sentence case. Both charges were based on felon in possession of a firearm and conspiracy with intent to distribute marijuana.

The defense objected to the 12-month sentence as unreasonable under the § 3553(a) factors. The defense also objected to running the sentences on the conviction and sentence proceeding and the supervised release proceeding consecutively. The district court overruled the objections.

V. ARGUMENT

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

Mr. Randle admitted the three supervised release violations at issue. None of the violations involved violent conduct. The district court ordered Mr. Randle to serve 12 months in prison, to run consecutive to a 51-month term ordered in the conviction and sentence proceeding. Running the two sentences concurrently was unjust. That is true because the conduct underlying the supervised release violation for failing to refrain from further violation of the law is the exact same for which the district court ordered a 51-month sentence in the conviction and sentence case.

Rule 10 of the Supreme Court Rules states, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion.” Based on the unduly harsh sentence ordered by the district court, this Court should exercise its discretion and grant this Petition for Writ of Certiorari.

B. The district court ordered a substantively unreasonable sentence.

1. Applicable law.

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) (emphasis added; citation omitted).

Mr. Randle contends that his sentence is substantively unreasonable under the third test – the district court erred in balancing the sentencing factors under 18 U.S.C. § 3553(a). Also, the sentence is unreasonable because the district ordered the 12-month sentence in the supervised release proceeding to run consecutively to the 51-month sentence ordered in the conviction and sentence proceeding.

This Court 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.³ The primary factors are:

- “the nature and circumstances of the offense” (§ 3553(a)(1));
- “the history and characteristics of the defendant” (*id.*);
- “to afford adequate deterrence to criminal conduct” (§ 3553(a)(2)(B));

³ The § 3553(a) factors that a court can consider when imposing a supervised release revocation sentence are limited by 18 U.S.C. § 3583(e). Under § 3583(e), the only § 3553(a) factors that a court can consider during a revocation proceeding are “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)[.]”

- “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 applicable guidelines or policy statements issued by the Sentencing Commission” (§ 3553(a)(4)(B)); and
- “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” (§ 3553(a)(6)).

Relevant § 3553(a) factors are considered below.

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

Mr. Randle admitted the three supervised release violations. None of the violations involved violent conduct. Also, the exact same conduct underlies both the supervised release violation for failing to refrain from further violation of the law and the charges in the conviction and sentence proceeding. Under these facts, the sentence ordered by the district court was unreasonable.

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

Mr. Randle has strong family support. He was honorably discharged from the National Guard. As to his continuing pursuit of education, Mr. Randle is close

to finishing his undergraduate degree at Jackson State University. These facts support that a lower prison sentence should have been ordered.

4. 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).

The supervised release violations at issue involve nonviolent acts.

Considering this fact, the sentence ordered by the district court was unreasonably high to meet the goals of deterrence and protecting the public.

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

The district court opined that Mr. Randle might benefit from drug and alcohol treatment. Alcohol and drug treatment does not require a 63-month prison term. Further, a district court is barred “from imposing or lengthening a prison term because the court thinks an offender will benefit from a prison treatment program.” *Tapia v. United States*, 564 U.S. 319, 334 (2011).

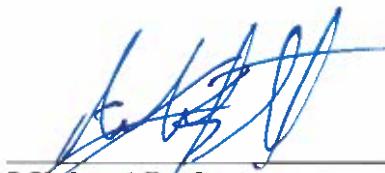
6. Conclusion: § 3553(a) analysis.

Analysis of the above § 3553(a) factors supports a ruling that the district court plainly erred by ordering a 12-month term of imprisonment in the supervised release proceeding, to run consecutive to the 51-month term ordered in the conviction and sentence proceeding.

VI. CONCLUSION

Based on the arguments presented above, Mr. Randle asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted October 31, 2023 by:



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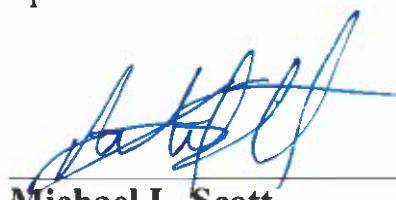
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CERTIFICATE OF SERVICE

I, Michael L. Scott, appointed under the Criminal Justice Act, certify that
today, October 31, 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.
773921913480, 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.



Michael L. Scott
Senior Litigator