

No. 23 - 6068

FILED
OCT 29 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Jermaine Deshan West (Pro-Se) — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jermaine Deshan West (Pro-Se)
(Your Name)

Oakdale FCI 1 - P.O. Box #5000
(Address)

Oakdale, IA 71463
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

There is a conflict amongst the Circuit Courts of Appeals regarding the applicability of the Sentencing Commission's Guidelines because of lack of empirical data to support its Sentencing Guidelines. Wherefore, Petitioner Jermaine Deshan West, ("West"), raises the following question:

"Whether the U.S. Sentencing Commission abdicated its duties under 28 U.S.C. §994(2)(1)(B) when determining the appropriate amount of imprisonment Courts should impose utilizing the 10-1 actual - to - mixture ratio under the U.S. Sentencing Guidelines without any empirical data to support this ratio, resulting in unwarranted sentencing disparities of those convicted of Methamphetamine crimes, contrary to the Equal Protection of the 5th Amendment Due Process Clause?"

Petitioner West raises this question according to Rule 10 (a) of the Rules of The Supreme Court of the United States because "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter".

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Appellant: Jermaine Deshan West

District Judges(s): Honorable George Hank, Jr.

Magistrate Judge: Honorable Sam Sheldon

Defense Counsel: Gerardo S. Montalvo (Trial)
Alan Winograd (Appeal)

U.S. Attorney SDTX: Jennifer Lowery

Assistant U.S. Attorney: Jason E. Corley (Trial)
Devon M. Helfmeyer (Trial)
Carmen Castillo Mitchell (Appeal)

RELATED CASES

West v. United States, No. 4:20-CR-355-1, U.S. District Court - Southern District of Texas. Judgment entered on 9/19/22.

West v. United States, No. 22-20483, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on 6/23/23.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at 2023 U.S. App. Lexis 15921, U.S. v. West (6-23-23); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was The Fifth Circuit Court of Appeals affirmed the sentence on June 23, 2023.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
S

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.
S

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.
S

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
S

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.
S

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The question presented herein is of Federal Constitutional importance because of the violation of Constitutional provision(s) under the 5th Amendment's Due Process Clause which guarantees that "[n]o person shall...be deprived of life, liberty, or property, without due process of law." This guarantee is violated when the Sentencing Commission's 10-1 ratio under the U.S. Sentencing Guidelines is arbitrarily imposed to Methamphetamine cases without any empirical data to support this ratio, resulting in unwarranted sentence disparities and an increase of unjustified incarceration.

STATEMENT OF THE CASE

- 1) On August 13 2020 West was indicted on Count 1 through 10 on a multi-defendant drug conspiracy.
- 2) Specifically, Count 1 and 6 of the indictment charged West with methamphetamine for which the "Ice" multiplier under U.S.S.G. §2D1.1(c) N.(C) was applied which increased his base offense level by two points.
- 3) On April 6 2022 West pled guilty to Count 1 through 10 of the Indictment without a Plea Agreement.
- 4) On September 19, 2022 West was sentenced to 280 months of incarceration for Count 1 through 6 and 240 months for Counts 7 through 10 to be served concurrently for a total sentence of 280 months. This was based on an adjusted base offense level of 35 and a criminal history category of IV.
- 5) On February 2, 2023 West's Appellate Brief was filed with the Fifth Circuit Court of Appeals in which he challenged the substantive reasonableness of his sentence because the trial court should have not applied the "Ice" multiplier to determine his Guidelines range.
- 6) On July 23, 2023 the Fifth Circuit Court of Appeals affirmed West's sentence and conviction. No petition for Rehearing was filed in this case with the Appellate Court. Thus, West timely files this instant Petition for a Writ Of Certiorari.

REASONS FOR GRANTING THE PETITION

The question presented is relevant because the Fifth Amendment guarantees that "[n]o person shall be deprived of life, liberty, or property, without due process of law". This guarantee is violated when the 10-1 ratio is arbitrarily imposed to cases involving pure methamphetamine because: (1) There is no empirical data to support the Sentencing Commission's 10-1 ratio; (2) Purity is not an accurate indicator of a defendant's role in a drug enterprise; and (3) It creates unwarranted sentence disparities among defendant's convicted of methamphetamine crimes and those convicted of other drug crimes. Applying the 10-1 ratio results in an increase of incarceration of months if not years in prison, thus, depriving a defendant of life, liberty or property.

1) NO EMPIRICAL BASIS FOR THE 10-1 RATIO

The Sentencing Guidelines Drug Quantity Table weighs "Pure" methamphetamine ten times more heavily than "Mixture" methamphetamine for purposes of calculating a defendant's base offense level under U.S.S.G. §2D1.1. Methamphetamine is considered pure when a mixture contains at least 80% of the chemical substance. §2D1.1(c) Note (C).

"[N]o United States Circuit Court of Appeals has provided guidance to district courts to reject the methamphetamine Guidelines, presumably because of the district courts' wide discretion to decide the weight of the Guidelines." Nawanna, 321 F. Supp. 3d 943.

But several district courts have found that the Guidelines ranges for offenses involving actual/pure methamphetamine, like their crack-cocaine counterparts, are not based on empirical data and national experience, and thus do not exemplify the Commission's exercise of its characteristic institutional role. Because of those district courts' policy disagreement with the Guidelines ranges for actual/pure methamphetamine offenses, those district courts have exercised their discretion under Kimbrough, 552 U.S. 81 and Spears, 555 U.S. 261 and have deviated from the Guidelines and applied the methamphetamine mixture Guidelines to all methamphetamine violations, regardless of whether the defendant possesses actual or mixture methamphetamine. See: Robinson, 2022 U.S. Dist. Lexis 231041; Celestin, 2023 U.S. Dist. Lexis 25406; Ross, 2023 U.S. Dist. Lexis 121029; Havel, 2023 U.S. Dist. Lexis 22683; Carillo, 440 F. Supp. 3d 1148; Bean, 371 F. Supp 3d 46; Johnson, 379 F. Supp 3d 1213.

Wherefore, it has been widely recognized by a growing number of district courts across the nation that the Sentencing Commission's 10-1 ratio is not based on empirical data and therefore

there is no justification for the 10-1 ratio.

2) PURITY IS NOT AN ACCURATE INDICATOR OF DEFENDANT'S ROLE IN A DRUG ENTERPRISE

The Sentencing Commission considers drug purity relevant in part because possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs". U.S.S.G. §2D1.1 cmt.9. However, it has been determined that "methamphetamine purity is no longer an accurate indicator of a defendant's role in a drug-trafficking conspiracy." Bean, 371 F. Supp. at 51. Today, methamphetamine is almost always imported from foreign drug labs and is being produced on an industrial scale with a high purity level. The average purity of all methamphetamine in the U.S. is over 90% and has been since 2011, according to U.S. Dep't of Justice, DFA, 2017 National Drug Threat Assessment. The availability of methamphetamine (actual) to everyone in the chain of distribution, from the kingpin to the mule to the low level addict, has no correlation between the purity of the drugs and the defendant's position in the criminal enterprise, but as a result, contrary to 18 U.S.C. §3553(a), the guideline is treating all of them like kingpins. Purity is even less justified for a low-level offender who has no knowledge or control of the purity level. See., e.g., Hayes, 948 F. Supp. 2d 1009 (problems with outdated purity assumptions are "heightened when the offender was a merely a courier or mule who has no knowledge of the purity of the methamphetamine"); Ortega, 2010 U.S. Dist. Lexis 48346 (purity based penalties "illogically skews sentences for 'average' defendants to the upper end of the sentencing spectrum, blurring the distinction between high and low level distributors in a hierarchy").

National experience suggests that drug purity is no longer a proxy for culpability for Guidelines purposes. The better way to determine culpability is to examine all of the circumstances of the defendant's case and life, as the Supreme Court in Concepcion stated, 142 S.Ct. at 2395. There are sentencing enhancements available for leaders, organizers, or managers of criminal enterprises. If the defendant's case warrants, those enhancements should apply. In the context of methamphetamine though, purity is no longer probative of the defendant's culpability.

3) UNWARRANTED SENTENCE DISPARITIES FOR THOSE CONVICTED OF METHAMPHETAMINE CRIMES

18 U.S.C. §3553(a)(6) emphasizes on "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." Different outcomes

are driven by whether or not methamphetamine is tested for purity, therefore not everyone is being treated alike.

Take for example, two different defendant's involving a methamphetamine mixture of 150 grams and 90% purity. If testing is performed in one case, the base offense level for that defendant would be 30, while the base offense level for the defendant with the untested methamphetamine would be 24. Assuming no adjustments and a Criminal History of I, the Guidelines range without purity testing is 51-63 months. With purity testing the Guidelines range balloons to 97-121 months, doubling the term of incarceration.

The reasons why testing is or is not performed in any case are dependent on arbitrary conditions that have no bearing on the §3553(a) factors which should be driving sentencing decisions. In many cases only some of the drugs were seized and available for testing. In others, the testing lab was too busy to complete testing before sentencing. In some the wise defendant pled guilty early in the case so that sentencing would occur before testing could be completed. In many cases, the prosecution originated with a state agency where testing could not be completed in a timely manner. Pereda, 2019 U.S. Dist. Lexis 19183 at *5. Regardless, none of those reasons relate to the defendant's culpability or the danger which he or she poses to society.

The methamphetamine guidelines also create unwarranted sentencing disparities between methamphetamine offenses and offenses involving other major drugs. The Court in Bean, 371 F. Supp 3d at 53-54, provided the following illustration:

500 grams of actual methamphetamine earns a base offense level of 34, while the same quantities of other drugs result in lower offense levels: fentanyl (30), cocaine base (crack) (30), heroin (26), and cocaine (24). The harsher treatment and lack of empirical data to support it, run contrary to the "need to avoid unwarranted sentence disparities among defendant's with similar conduct."

Wherefore, there is no basis to conclude that methamphetamine (actual) demands that much more punishment per gram than other street drugs.

CONFLICT AMONGST THE CIRCUIT COURTS OF APPEALS REGARDING THE APPLICABILITY OF THE SENTENCING COMMISSION'S GUIDELINES BECAUSE OF LACK OF EMPIRICAL DATA TO SUPPORT ITS SENTENCING GUIDELINES

The Fifth Circuit Court of Appeals in United States v. Miller, stipulated that the Sentencing Commission did not base its Sentencing Guidelines on empirical data. Even though the Fifth Circuit does not approve of a within the Guidelines Sentence, the district courts cannot reject a Guidelines provisions as "unreasonable" or "irrational" simply because it is not based on empirical data, even if it leads to some disparities in sentencing. Empirically based or not, the Guidelines remain the Guidelines. 665 F.3d at 121 (5th Cir. 2011).

The Fourth Circuit Court of Appeals in United States v. Williams, stipulated the opposite by stating that the district court may reject the [methamphetamine] Guidelines on policy disagreements, including the presence or absence of empirical data, but they are "under no obligation to do so" 19 F.4th 374, 378 (4th Cir. 2021).

The Eighth Circuit Court of Appeals in United v. Spears, stipulated that district courts may not categorically reject the 100:1 powder cocaine to crack cocaine quantity ratio under the United States Sentencing Guidelines even if there is lack of empirical data to support this ratio. 469 F.3d 1166 (8th Cir. 2006).

The Third Circuit Court of Appeals stipulated that district courts may exercise their discretion and reject the MDMA to marihuana ratio based on a reasoned policy disagreement when the Sentencing Guidelines' ratio lacks empirical data to support such ratio. 94 F.3d 138, U.S. v. Sepling.

Wherefore, the Circuit Courts disagreement on whether the district courts may apply or reject the Sentencing Commission's Guidelines based on policy disagreement because of lack of empirical data to support its Guidelines, creates a conflict amongst the United States Courts of Appeals on the same important matter. Thus, further judicial review is warranted and the Supreme Court of the United States should grant a Writ of Certiorari to settle this question of constitutional importance.

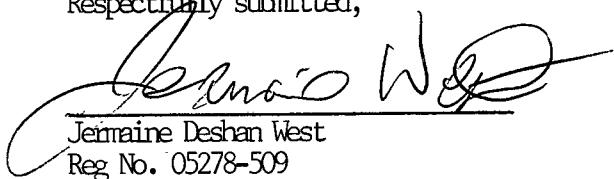
CONCLUSION

Wherefore, the Sentencing Commission abdicated its duties when it decided to utilize the 10-1 ratio without any empirical data, resulting in unwarranted sentencing disparities of those convicted of Methamphetamine crimes because: (1) as the sentencing Judge in Hartle, 2017 U.S. Dist. Lexis

93367 stated, "I have tried to determine whether there is empirical data from the Sentencing Commission or in the academic literature which would justify the ratio. I have found none"; (2) As stated in Johnson, 379 F.Supp. 3d 1212, 1223-24, "[J]ust as courts have criticized the link between drug quantity and the offender's role, they have also debunked the Guidelines' assumed connection between drug purity and criminal role.>"; (3) as stated in Bean, 371 F.Supp. 3d at 53, "the methamphetamine guidelines create unwarranted sentencing disparities between methamphetamine offenses and offenses involving other major drugs".

Petitioner West respectfully requests that this Honorable Court grant him a Writ of Certiorari to settle this question of federal importance because of the conflict in the Circuit Court of Appeals regarding this issue. Petitioner West files the instant petition in the interest of justice and in GOOD FAITH.

Respectfully submitted,



Jermaine Deshan West
Reg No. 05278-509

10-29-2023

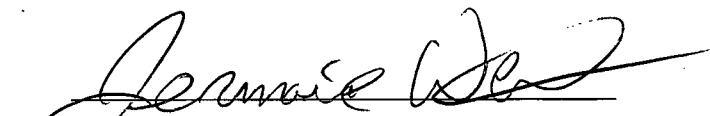
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CONCLUSION

Petitioner West respectfully requests that this instant Petition be granted for the reasons presented within.

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: 10.24.2023