

23-6169

No. _____

FILED

OCT 25 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JUAN CARLOS SOTO - PETITIONER

VS.

UNITED STATES - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JUAN C. Soto, petitioner pro se

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Phone No.

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QUESTIONS PRESENTED

A. Selective Remand

Petitioner asks: Why does the 4th circuit Court of appeals remand in most cases where not all of the appellant's Non-frivolous Mitigating arguments are not addressed by the District Court, but denies remand in the instant case? Is a District Court Justice Required to address "ALL" 18 U.S.C. § 3553(a) factors or simply a "Central Thesis" of counsel arguments when imposing a sentence?

B. Double Jeopardy/(non-binding questions)

Substantially Excessive Sentence

Petitioner asks: Is a Federal sentence that is imposed to run Consecutively with an Undischarged State Sentence Substantially excessive when the total time served exceeds the PSR Guidance range? Does such sentence constitute Double Jeopardy when both sentences resulted from the same course of conduct?

APPENDIX - C

Additional questions in this case

A. Double Jeopardy - Multiple Punishments Clause

Petitioner asks: Does Double Jeopardy Apply in the instant case when Both state and Federal sentences arise out of the same course of conduct? Petitioner's state court sentence was imposed for no other crime than abscondment - which was required of him by federal Law. In sum, he absconded because he was deported. He received a probation revocation simply for returning to the United States. He was later punished in Federal Court with a 24 month consecutive sentence. Even though the Federal Detainer was placed on him in April of 2022, Petitioner will not begin his sentence until December 27, 2023 and will have to serve the remainder of it following that date.

Petitioner contends that both sentences are resultant from the same course of conduct - Returning to the United States. Had he committed a crime other than returning to the U.S. consecutive sentences would be merited; However, if they arise out of the same course of conduct they are not. Why was petitioner sentenced to consecutive sentences? Is incarceration a more appropriate Federal punishment than immediate deportation especially since petitioner already has completed most of his 24-month state sentence?

B. Effective Sentence

Petitioner had a Federal detainer placed on him in April of 2022 and was not sentenced by the District Court until February 2023. His consecutive 24 month sentence imposed is not set to begin until December 27, 2023. This date is a full 21 months after a Federal Detainer was placed on him and 10 months after sentencing. The PSR Guideline range recommended 24-30 months of detention. By the prospected release date, ~~with~~ Petitioner will have served 45 months in State/Federal custody since his Detainer and 34 months in custody since the date of sentencing. Again, Petitioner committed no other crime than Illegal re-entry, has not committed any new crimes and yet must serve an Effective Sentence [whether calculated from date of detainer or sentencing] outside and above the PSR Guideline Range. Does this constitute an upward variance? If so, why did the District Court not explain justification for imposing a consecutive sentence instead of a concurrent or mixed sentence? This question affects the substantive nature of the Petitioner's sentence and should be addressed.

LIST OF PARTIES

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

RELATED CASES

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Fed. public Defender's office

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OTHER

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

☒ 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 _____; 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 September 13, 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 _____.

☐ 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 ____.

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 _____.

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

☐ 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 ____.

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

JURISDICTIONAL STATEMENT

Petitioner appeals from an Original Judgment entered on February, 23 2023 in the United States District Court for Western District of North Carolina. District Court had jurisdiction under 18 USC. § 3231. Petitioner timely appealed on March 3, 2023. The Fourth Circuit Court of Appeals had jurisdiction to hear appeal under 18 USC. § 3742 and 28 USC. § 1291. Judgment affirming the District Court's decision was entered September 13, 2023. Petitioner timely submitted original petition for Writ of Certiorari on September 30, 2023, returned for corrections on October 17, 2023. Petitioner timely re-submitted corrections on November 3, 2023 which were again returned for corrections on November 9, 2023. Petitioner timely re-submits this writ with corrections on or about November 22, 2023. This Court has jurisdiction to hear this petition under 28 USC. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See previous page No. -iv-

STATEMENT OF THE CASE

Introduction

Juan Carlos Soto, Petitioner pro se, was charged in April of 2022 with illegal re-entry by a felon. He pled guilty to the charge in September of 2022 without a Plea agreement. This was in violation of 8 U.S.C. § 1326. He was sentenced in February 2023 to 24 months imprisonment to be served consecutively with an undischarged state sentence. Petitioner appealed on grounds that the District Court erred by not considering two of his non-frivolous mitigating arguments in support of a downward variance and that such error was not harmless.

On appeal, the 4th Circuit Court of Appeals admitted that the District Court failed to address the two non-frivolous mitigating arguments - yet refused to remand citing two internal 4th Circuit cases. (See U.S. v. Friend 2 F.4th at 279, and U.S. v. Fowler 58 F.4th at 155)

Petitioner contends^{*} the 4th Circuit Erred in not remanding by failing to consider the precedent set forth in Gall v. United States 552 U.S. 38 (2007) (at 49-50) and instead chose to rely on an internal "Central thesis" standard that petitioner believes is lower than Gall. Petitioner respectfully pleads this Court to issue a writ for remand and resentencing in light of Gall. Petitioner also pleads that any errors or omissions in this petition be viewed in light of his lack of formal legal training and dearth of resources afforded to pro se litigants in North Carolina state prisons.

* Separately, in Appendix C, Petitioner raises two concerns not raised on appeal - and therefore not binding - that may be of interest to this Court.

In the interest of brevity, Petitioner asks The Court to read his Appellate Counsel argument and the Fourth Circuit Court of Appeals Judgment prior to his argument. Petitioner agrees with, and therefore adopts, Appellate Counsel's argument for remand. However, Petitioner wishes to disregard the remorse claims made by Counsel in that they are appropriate for a District Court and therefore inappropriate here. Petitioner disagrees that the application of Friend and Fowler supercede this Court's precedent set forth in Gall, and will proceed to argument on this basis.

SUMMARY OF ARGUMENT

A.

Petitioner agrees with his Appellate Counsel and therefore believes that the District Court Erred procedurally by failing to consider two of his non-frivolous mitigating arguments in support of downward variance. In support of this, Petitioner cites Hoffler, Tann, Webb, Perez-Paz, Nance, Ross, and Blue (citations omitted) as cases that utilized Gall's specific instructions to justify action and/or remand. Further, The 4th itself cites Ross on page 2 of its opinion which is itself an excerpt from Gall. The portion of Gall v. United States 552 U.S 49-50 is:

...After giving both parties an opportunity to argue for whatever sentence they deem appropriate, The district Judge should then consider ALL of the §3553(a) factors to determine whether they support the sentence requested by a party. In so doing, he may not presume

the guidelines range is reasonable. He must make an individualized assessment based on the facts presented. If he decides that an outside-guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. ... After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." (internal citations omitted; emphasis added)

Petitioner contends that a district court cannot show that it considered an argument without clearly addressing the argument and it should not be assumed that it was considered. This wording is clear and instructive in that "ALL" 18 USC § 3553 Factors must ^{be} addressed ~~or~~ considered by the District Court otherwise an "individual assessment" cannot be made. Appellate courts cannot "substitute our assessment of the record" (see Lewis) for a District Court's obligation to address each mitigating factor. Petitioner contends Gall's precedent is binding here and cannot be superseded by the 4th Circuit's contention that addressing a "central thesis" is the only requirement. If it were, Gall would have not specifically stated what it did and the Court would have worded their opinion differently. By failing to adhere to the higher standard of Gall the 4th seeks to justify a sentence that failed to meet that standard and so must remand.

B.

The "Central Thesis" argument creates a gray area in settled law that does not exist, yet will if the 4th circuit allows it. to

go unquestioned. Petitioner argues that any of the District Court Justices in the aforementioned and listed cases could feasibly contend they addressed Counsel's "Central thesis," yet each case was remanded. They were remanded because of the failure to address the non-frivolous mitigating factors and yet petitioner's case was not. The 4th COA clearly stated the District Court did not address his mitigating claims, yet failed to remand. Petitioner asks this Court to remand to Reinforce the standard of Gall and to prevent it's dilution.

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Petitioner concedes that the 4th Circuit is correct that a District Court must address the "Central thesis," but he also believes District Courts must abide by Gall. District Courts should not "Robotically tick" through the § 3553 factors - but should meaningfully address them to ensure Appellate Courts have the ability to conduct a proper review. Without assuming to know the rationale of the Sentencing Justice, nor presuming from context what is inferred - Appellate Courts are less likely to err and also less likely to see appeals on 3553 grounds. By remanding and reinforcing Gall, This Court will aid District Justices by clearly enumerating the importance of addressing each non-frivolous mitigating (or aggravating) argument that is raised by Counsel. Such clarity is warranted in the instant case, and is likely to reduce burden on appellate courts - while the lower standard of "Central thesis" only creates more confusion.

REASONS FOR GRANTING THE PETITION

By failing to address petitioner's two non-frivolous mitigating factors in support of a downward variance, the District Court Erred and that error was not harmless. In failing to remand, The 4th Circuit Court of appeals erred by applying two separate 4th circuit cases to justify the District Court's Error, and failing to apply This Court's precedent as supercedent to their own.

Such requirement to address all non-frivolous mitigating factors is clearly outlined in *Gall v. United States* 552 U.S. 49-50, and cannot be disregarded. If it were, as in the instant case, The potential for departure from binding precedent would be troublesome and create a gray area in the interpretation of sentencing factors where none need exist. Dilution of context ^{for} ~~of~~ meaningful appellate review should not be the object. The opposite - clarity - is what best informs appropriate decisions at the appellate level, and that is what is needed here.