

23-6220
No. _____

FILED
NOV 08 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Daniel Thomason Smith — PETITIONER
(Your Name)

vs.

Joseph Gay — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals - New Orleans
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daniel Thomason Smith
(Your Name)

FCC Beaumont Low P.O. Box 26020
(Address)

Beaumont, TX, 77720
(City, State, Zip Code)

409-272-8172
(Phone Number)

RECEIVED

DEC - 6 2023

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Since my charges are identical to David Fox Dubin,
should I receive all charges of 1028 A(a)(1),
aggravated Identity Theft as vacated ??

Was the crux of my "fraud" "how" services were rendered,
since the patients' names were part of the billing process, but
ancillary to what made the conduct fraudulent?

See: Michael, 882 F.3d, at 628-629.

Didn't my D.M.E. corporation have prior authorization
to bill for the patients' D.M.E. (Durable Medical Equip.)
??

Does Applicability become even more pervasive
since David Fox Dubin was 'persecuted' + prosecuted
by the same U.S. Attorney(s) in the same District
in the same city?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

RELATED CASES

Dubin vs. United States June 8, 2023
Supreme Court 599 U.S.
Miller, 882 F.3d., at 628-629.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Dubin v. United States 599 U.S.
June 8, 2023 Supreme Court

Dubin v. United States
2023 U.S. LEXIS 2420 June 8, 2023

United States v. Michael, 882 F.3d (CA6 2018)

STATUTES AND RULES

See: *Justice Sotomayor's Opinion*
and *Justice Gorsuch's concurrence*
in *Dubin v. United States*
Supreme Court June 8, 2023

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☒ is unpublished.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 B 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 ~~Unknown - on or about~~ October 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: October 13, 2023, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

next const. prov.

next stmt. of case

Constitutional Provisions

Continued

We review a sentencing decision for "reasonableness," and as the Supreme Court has clarified, "[the] explanation of 'reasonableness' review in the *Booker* opinion made it pellucidly clear that the familiar abuse-of-discretion standard of review now applies to appellate review of sentencing decisions." 35 This standard applies "[r]egardless of whether the sentence imposed {2008 U.S. App. LEXIS 27} is inside or outside the Guidelines range." 36 *Gall v. United States* bifurcates the process for reviewing a sentence. Appellate courts

must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence--including an explanation for any deviation from the Guidelines range. 37 Provided that the sentence is procedurally sound, the appellate court then considers the "substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." 38 Neither *Gall*, *Rita v. United States*, 39 nor *Kimbrough v. United States* 40 purport to alter our review of the district court's construction of the Guidelines or findings of fact. Thus, "[a] district court's interpretation or application of the Sentencing Guidelines is reviewed de novo, and its factual findings . . . are reviewed for clear error. There is no clear error if the district court's finding is plausible in light of the record as a whole." 41 {2008 U.S. App. LEXIS 28}

The process for reviewing a sentence is bifurcated. Appellate courts must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the U.S. Sentencing Guidelines Manual range, treating the Guidelines as mandatory, failing to consider the 18 U.S.C.S. § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence--including an explanation for any deviation from the Guidelines range. Provided that the sentence is procedurally sound, the appellate court then considers the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard. Review of the district court's construction of the Guidelines or findings of fact has not been altered. Thus, a district court's interpretation or application of the Guidelines is reviewed de novo, and its factual findings are reviewed for clear error. There is no clear error if the district court's finding is plausible in light of the record as a whole.

STATEMENT OF THE CASE

on March 23, 2017, Judgement was entered and for finality.
on February 23, 2017, preliminary Judgment stated:

Daniel Thomason Smith convicted of:

Count 1 18 U.S.C. § 1349 Conspiracy to commit Health Care Fraud.

Count 2 18 USC § 1347 Aiding + Abetting Health Care Fraud.
18 USC § 2

Counts → 18 USC § 1028 Aiding + Abetting Aggravated Identity Theft.
3-13 18 USC § 2

Counts 18 USC § 1035 Aiding + Abetting False Statements Related
14-21 18 USC § 2 to a Health Care Matter.

The preceding facts were subsequent to a trial by
Jury, where Guilt was pronounced on June 27, 2016
following inception of such trial on June 20, 2016, in
the Western District of Texas, Waco Division.

REASONS FOR GRANTING THE PETITION

See: Enclosed Supreme Court ruling;
Opinion and Concurrence of *Dubin v. United States*.
Daniel Thomason Smith's case is identical to *Dubin*.

See: "National Importance as to why the Supreme Court should decide the question(s) involved."

According to Justice Sotomayor's Opinion + Justice Gorsuch's concurrence + All other Seven Justices concurrences, I have been slammed with an Enhancement, overturned, pursuant to *Dubin vs. United States*, June 8, 2023 by the Supreme Court of the United States. Period.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DTH ✓
Daniel Thomason Smith

Date: ~~11-8-2023~~ 11-26-2023 ✓
DTH ✓