

23 - 6453

No. 23-1925

JAMES DAVID WELTON

Petitioner - Appellant

v.

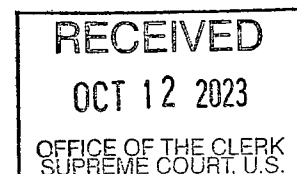
UNITED STATES OF AMERICA

Respondent - Appellee

ON PETITION FOR WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS FOR THE 8th CIRCUIT

PETITION FOR CERTIORARI

JAMES DAVID WELTON PRO SE
#18353-029
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QUESTION PRESENTED FOR REVIEW

1. Whether this court should grant the writ to resolve a circuit split as to whether the sentence of supervised release must be counted within the maximum sentence of imprisonment under 18 U.S.C. 922(g)(1) and 924(a).

PARTIES

James David Welton is the petitioner; he was the defendant - Appellant before the 8th circuit. The United States of America is the respondent; it was the Plaintiff - Appellee below.

All opinions were rejected on June 23, 2023.

CITATIONS TO OFFICIAL AND UNOFFICIAL OPINIONS BELOW
8th Circuit Court of Appeals - United States v James David
Welton - 23-1925

A. Order (Aug 23, 2023)

B. Relief From Judgment (Aug 15, 2023)

C. Mandate (July 7, 2023)

D. Order (June 23, 2023)

E. Application For Rehearing En Banc (May 25, 2023)

F. Order (May 15, 2023) also order (may 2, 2023)

District Court in the Northern District of Iowa -
United States v. James David Welton No: 6:20-cr-2006-
CTW-MAR

G. Notice of Appeal (April 20, 2023)

H. Judgement (April 13, 2023)

I. Motion to Reconsider (April 10, 2023)

J. Judgment (March 29, 2023)

K. Rule 35(a) Motion (March 13, 2023)

JURISDICTION

This is an appeal from a Federal criminal judgement arising in the Northern District of Iowa on March 29, 2023. Mr. Welton was denied correction of an illegal sentence judgement App. J. April 10, 2023 the defendant filed a timely motion to reconsider. Motion to reconsider App. I April 20, 2023 Defendant filed a timely ^{now} ~~motion~~ notice of appeal. Notice of appeal App. G. See Fed R. App. Proc. 4(b)(1)(A)(i). Appeals must be filed within 14 days of final judgement.

The District Court had jurisdiction ^{now} ~~over~~ pursuant to 18 U.S.C. 3231.

The 8th circuit has jurisdiction over all Federal criminal judgements and sentences. See 28 U.S.C. 1291,

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

TIMELINESS

The 8th Circuit affirmed the sentence of conviction on June 23, 2023. Judgement App D. This petition is filed within 90 days of that date. See US Supreme Court Rule 13(1) ("A petition for a writ of certiorari seeking review of a judgement of a lower court that is subject to discretionary review by the court of last resort is timely when it is filed with the clerk within 90 days after entry of the order denying discretionary review") The 90th day falls on Sept. 22, 2023.

A. document is considered timely filed if it were delivered on "if it is sent to the clerk through the United States Postal Service by first-class mail (including express or priority mail) postage prepaid and bears a postmark that the document was mailed on or before the last day for filing, or if it is delivered on or before the last day for filing. Supreme Court Rule 29.2. This document was mailed via United States Postal Service on Sep. 18, 2023 and

was postmarked for delivery on that date. Thus, it is timely filed since it was sent and postmarked on Sept. 18, 2023.

STATEMENT OF THE CASE

Relevant Procedural History before the District Court

On March 19, 2020 the appellant Mr. Welton plead guilty to a violation of 18 U.S.C. 922(g)(1) and 924(a)(2). On October 2, 2020 Mr. Welton was sentenced to 10 years in prison plus 3 years of supervised release and a fine of \$50,000.

On March 13, 2023 Mr. Welton filed a motion to correct an illegal sentence under Federal Rules of Criminal Procedure Rule 35(a) arguing that his sentence exceeded the maximum 10 years set forth under 18 U.S.C. 922(g)(1) and 924(a)(2) since he had received 10 years imprisonment and 3 years of supervised release. Appx K

The District Court on March 29, 2023 denied the rule 35(a) motion holding there was no error in the sentence

to correct. Appx J

Mr Welton on April 10, 2023 filed a motion to reconsider under Federal Rules of Civil Procedure Rule 59(e) Appx I. The District Court on April 13, 2023 denied the motion to reconsider again holding there was no error in the sentence to correct. Appx H

Appeals Proceedings before 8th Circuit of Appeals

Mr Welton then filed his notice of appeal on April 20, 2023 Appx G. The 8th Circuit affirmed judgement on May 15, 2023 Appx F. Mr Welton filed a petition for rehearing en banc on May 25, 2023 Appx E. The 8th Circuit issued an order denying rehearing en banc on June 23, 2023. Appx D. The 8th circuit entered a mandate on July 7, 2023 Appx C. Mr Welton filed a relief from judgement on August 15, 2023 Appx B. The 8th circuit filed a final order on August 23, 2023 Appx A.

STATEMENT OF THE FACTS

This case involves a violation of 18 U.S.C. 922(g)(1) for possession of a firearm and the maximum penalty for the offense of 10 years that is set forth under 18 U.S.C. 924(a)(2). It further involves 3 years of supervised release which totaled a penalty of 13 years exceeding the maximum 10 years set forth under section 924(a)(2) by 3 years. It also involves whether or not the District Court committed error when it failed to correct the illegal sentence under Federal Rules of Criminal Procedure Rule 35(a) and a Rule 59(e) motion to reconsider.

REASONS FOR GRANTING THE WRIT

I. This court should GRANT THE WRIT TO RESOLVE A CIRCUIT SPLIT AS TO WHETHER SUPERVISED RELEASE MUST BE COUNTED WITHIN THE MAXIMUM SENTENCE UNDER THE STATUTE THE DEFENDANT WAS CONVICTED OF VIOLATING.

A. Rule 10(a)

The writ should be granted to resolve a circuit split

as to whether 18 U.S.C. 922(g)(1) maximum sentence of imprisonment must also include the term of supervised release within the maximum sentence. See Supreme Court Rule 10(a) (writ may be granted if there is circuit split on important federal questions.) There is currently a split between the 8th, 11th, and 3rd against the 1st, 2nd, 4th, 5th, 6th, 7th, 9th, 10th and D.C. circuits regarding the "unitary-sentence approach."

B. The 8th Circuits approach.

The 8th circuit in *United States v. Watkins* holding that the defendant there was found guilty of a violation of 18 U.S.C. 924(c) and sentenced to a maximum term of 5 years but objected to the assessment of any supervised release. Contending that any term of supervised release in excess of the maximum five years term of imprisonment is illegal.

The court held that section 3583(a) empowers courts to include as a part of the sentence a requirement that the defendant

be placed on a term of supervised release after imprisonment
see also USSC 501.1 Authorizing the imposition of
supervised release as part of the sentence as opposed
to part of the imprisonment. This implies that a term
of supervised release is to be in addition to any
incarceration authorized by a particular substantive
criminal statute. United States v Watkins 14 F.3d
414, 415 (8th circuit 1994)

The appellant argues that the 8th circuit is in conflict
with the other circuits due to the fact of their holding
that supervised release as part of the sentence but not
part of the imprisonment sentence. If the 8th circuit's
holding held water then a statute such as 18 U.S.C.
922(g)(1) or 924(a) authorizing only imprisonment or fine
would leave a defendant's sentence above what the
statute calls as well as setting forth a split sentence
which is not authorized by the statute. As was the

problem in this instant case. (10-years imprisonment plus 3-years supervised release) which exceeds the maximum sentence set forth under 922(g)(1)-924(a)

C. The 4th circuit in agreement with the 1st, 2nd, 5th, 6th, 7th, 8th, 10th, 11th and D.C. Circuits

The 4th circuit in *United States v Ketter* concluded that "treating custodial and supervised release terms as components of one unified sentence appropriately recognizes the independent relationship between incarceration and supervised release. The term of supervised release, the revocation of that term, and any additional term of imprisonment imposed for violating the terms of the supervised release are all part of the original sentence." Quoting *Evans* in *United States v Evans* 159 F.3d 908, 913 (4th c.r. 1998); see also *United States v Woodrup* 86 F.3d 359, 361 (4th circuit, 1996) describing supervised release as an "authorized part of the original sentence." *United States v Ketter* 908 F.3d 61, 65 (4th circuit 2018)

Ketter further stated that 8 of our sister circuits have applied the "unitary-sentence" approach that we adopt today. ID at 908 F.3d 66 lexis *7

D. The Supreme Courts View

The Supreme Court in *United States v Johnson* and reaffirmed in *United States v Haymond* has held, "we acknowledge that an accused final sentence includes any supervised release sentence he may receive, nor in saying that do we say anything new. This court has already recognized that supervised release punishments arise from and are treated as part of the penalty for the initial offense. *United States v Haymond* 139 S.Ct 2369, 2379-80 (2019) Quoting *United States v Johnson*.

Also with the Supreme Court in *Mont v United States* stating "Both now and at the time congress created supervised release See 212(a)(2) 98 Stat 1999-2000. The term "imprison" has meant to put in prison, to incarcerate, to confine

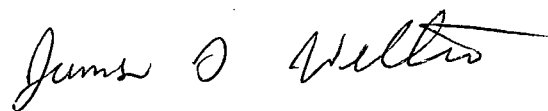
a person or restrain his liberty in any way. Black's Law Dictionary 681 (5th ed 1979) Oxford Dictionary 113 (1933). *Mont v United States* 204 L.E.d. 2d 94 Lexis 3889 H.N.2. (2019)

Appellant states that Mont has clearly shown that imprisonment, incarceration, and restrain ones liberty in anyway are one and the same. Therefore, supervised release must be considered as imprisonment for noone can dispute that supervised release restrains ones liberty due to the conditions that must be followed for its term.

CONCLUSION AND REQUESTED RELIEF

The Court should grant the writ and instruct the lower courts of the 8th circuit to correct this illegal sentence.

RESPECTFULLY SUBMITTED



James O Welton Pro Se