

IN THE
Supreme Court of the United States

HIA-KEEM DON'AE RICE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Rule 43(a)(3) of the Federal Rules of Criminal Procedure, which requires a defendant to be present at sentencing, permits the sentencing judge to impose in the written judgment conditions of supervised release that were never pronounced at sentencing.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Hia-Keem Rice respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's unpublished opinion is available at 2023 WL 7688288, 2023 U.S. App. LEXIS 30401 (4th Cir. Nov. 15, 2023); *see also infra*, Pet. App. 1a.

LIST OF PRIOR PROCEEDINGS

- (1) *United States v. Hia-Keem Don'ae Rice*, United States District Court, Eastern District of North Carolina, No. 4:20-CR-41-FL-1 (final judgment entered November 2, 2022).
- (2) *United States v. Hia-Keem Don'ae Rice*, United States Court of Appeals for the Fourth Circuit, No. 22-4623 (unpublished per curiam opinion issued November 15, 2023).

JURISDICTION

The Fourth Circuit issued its opinion on November 15, 2023. Pet. App. 1a. This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

RULE INVOLVED

Federal Rule 43(a)(3) of the Rules of Criminal Procedure provides that: “Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at . . . sentencing.”

STATEMENT OF THE CASE

A. District Court Proceedings

Petitioner pled guilty pursuant to a plea agreement to knowingly possessing a firearm having been previously convicted of a felony, as proscribed by 18 U.S.C. § 922(g)(1). App. 1a at 1. At sentencing, the district court imposed 110 months of imprisonment and three years of supervised release. The court also announced it would impose several standard conditions of supervised release. In its written judgment, however, the court imposed numerous additional conditions of supervised release it never announced at sentencing. Petitioner appealed to the Fourth Circuit.

B. Court of Appeals Proceedings

On appeal, the Fourth Circuit rejected Petitioner’s argument that the court improperly imposed conditions of supervised release in the written judgment that it did not announce at sentencing. App. 1a at 2-3. The Fourth Circuit thus affirmed the district court. This petition followed.

REASONS FOR GRANTING THE PETITION

A criminal defendant has the right to be present at his sentencing. That right is rooted in the Fifth Amendment's Due Process Clause. *United States v. Gagnon*, 470 U.S. 522, 526 (1985). In practice, this right is reflected in Federal Rule of Criminal Procedure 43(a)(3), which specifically grants defendants the right to be present at sentencing. A sentence is imposed when it is orally announced. Fed. R. Crim. P. 35(c). The circuit courts agree that if there is a conflict between the oral pronouncement of the sentence and the written judgment, the oral pronouncement of sentence controls. *See United States v. Daddino*, 5 F.3d 262, 266 n.5 (7th Cir. 1993) (collecting cases).

Here, the district court violated Petitioner's right to be present at sentencing when it imposed supervised release conditions in the written judgment that were not orally pronounced at sentencing. Because there is a conflict between the oral pronouncement of the sentence and the written judgment, the oral pronouncement of the sentence controls. This case should therefore be remanded to the district court for resentencing in Petitioner's presence.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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