No.

IN THE SUPREME COURT OF THE UNITED STATES

LEON KING,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 3553(c) requires a sentencing court which rejects a defendant's nonfrivilous arguments in favor of a lower sentence to explain its reasons for doing so?

PARTIES TO THE PROCEEDING

Parties to the proceeding include Leon King (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), Roger B. Handberg, Esquire (United States Attorney), Sean Siekkinen (Assistant United States Attorney), Yvette Rhodes (Assistant United States Attorney), and Elizabeth B. Prelogar (Solicitor General of the United States of America).

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OPINION BELOW

The decision of the Eleventh Circuit Court of Appeals *infra*, was not selected for publication. The decision can be found at *United States v. King,* No. 23-10995, 2023 WL 8018580 (11th Cir. Nov. 20, 2023), and is attached as Appendix A.

JURISDICTION

The Judgment of the Eleventh Circuit Court of Appeals, which had jurisdiction under Title 28 U.S.C. § 1291, was entered on November 20, 2023. However, a timely Petition for Rehearing was filed on November 29, 2023, which was not denied until January 23, 2024. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3553(c) sets forth the following:

> (c) Statement of reasons for imposing a sentence.--The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—
>
> > (1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or
> >
> > (2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements

> received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.
>
> If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

18 U.S.C. § 3553(c) (footnotes omitted).

STATEMENT OF FACTS

On February 22, 2008, Mr. King was sentenced to 188 months imprisonment followed by 48 months supervised release for the offense of possession with intent to distribute 5 grams or more of cocaine base. On November 30, 2022, a magistrate judge found probable cause to hold Mr. King for a violation of supervised release, and on February 14, 2023, Mr. King admitted to violating his supervised release by committing the new offense of trafficking in cocaine.

A sentencing hearing was then held, during which defense counsel argued that Mr. King's history and characteristics warranted the imposition of a lower sentence. The defense explained that, while incarcerated, Mr. King did not sit idly by, nor get into trouble, but, instead, used his time to create a wellness program that not only benefited his fellow inmates, but prison staff as well. Furthermore,

Mr. King had never made excuses for his criminal conduct. Accordingly, while Mr. King's guideline imprisonment range was 33 to 41 months' imprisonment, which was capped at 36 months due to the statutory maximum penalty for his offense, defense counsel argued in favor of a sentence of no more than one year and a day in prison. The sentencing court ultimately imposed a sentence of 36 months imprisonment without specifically addressing the arguments raised by defense counsel in mitigation of Mr. King's sentence.

On appeal to the Eleventh Circuit, Mr. King argued that the district court had reversibly procedurally erred by failing to explain its reasons for rejecting the arguments raised in mitigation of his sentence. The Eleventh Circuit rejected Mr. King's argument, finding no procedural error had been committed because the record reflected that the sentencing court had considered the arguments raised by Mr. King in mitigation of his sentence, and consideration was all the court was required to provide.

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT WHERE A DEFENDANT PRESENTS NONFRIVOLOUS REASONS FOR IMPOSING A LOWER SENTENCE THAN THAT WHICH IS ARRIVED AT BY THE SENTENCING COURT, THE COURT MUST EXPLAIN WHY THE REASONS HAVE BEEN REJECTED.

At issue in this Petition is whether a sentencing court which rejects a defendant's nonfrivilous arguments in favor of a lower sentence must explain its

reasons for rejecting the arguments. This Court should grant review to establish the sentencing court must do so.

18 U.S.C. § 3553(c) requires the sentencing court to state in open the court the reasons for the sentence it has chosen. The circuit courts are split regarding whether the statute requires a sentencing court that has rejected a defendant's nonfrivolous arguments in favor of a lower sentence to explain its reasons for doing so. Some courts have held that the sentencing court must do so, *see*, *e.g.*, *United States v. Blue*, 877 F.3d 513, 519 (4th Cir. 2017) ("a sentencing court must address the parties' nonfrivolous arguments in favor of a particular sentence, and if the court rejects those arguments, it must explain why in a sufficiently detailed manner to allow this Court to conduct a meaningful appellate review."); *United States v. Wallace*, 597 F.3d 794, 803 (6th Cir. 2010) (When a defendant raises a nonfrivolous argument seeking a lower sentence, "the record must reflect both that the district judge considered the defendant's argument and that the judge explained the basis for rejecting it.")(citations omitted), while others, like the Eleventh Circuit in Mr. King's case, have concluded the record need only reflect that the court considered the defendant's arguments, *see*, *e.g.*, *United States v. Pyles*, 862 F.3d 82, 89 (D.C. Cir. 2017) ("[W]hile non-frivolous mitigation arguments must always be considered, we do not require the court to expressly address every argument advanced by a defendant when imposing a sentence.")(citations and quotations omitted), and yet others have concluded that sometimes the former and sometimes the latter rule applies. *See*, *e.g.*, *United States v. Wireman*, 849 F.3d 956, 962-63 (10th Cir.

2017)("[W]hen a district court has varied upwards from the Guidelines, our cases have generally required the district court to specifically address and reject the arguments the defendant made for a more lenient sentence[,]"…"[b]ut when the district court has imposed a sentence within the Guidelines, our cases have noted that the district court need *not* specifically address and reject each of the defendant's arguments for leniency[.]")(emphasis in original). This Court has not yet definitively weighed in, but it has opined that "[w]here the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence…the judge will normally go further and explain why he has rejected those arguments[,]" *Rita v. United States*, 551 U.S. 338, 357, 127 S. Ct. 2456, 2468, 168 L. Ed. 2d 203 (2007), and further explained "that a district court is not required to be persuaded by every argument parties make, and it may, in its discretion, dismiss arguments that it does not find compelling without a detailed explanation." *Concepcion v. United States*, 597 U.S. 481, 501, 142 S. Ct. 2389, 2404, 213 L. Ed. 2d 731 (2022).

Although neither *Rita* nor *Concepcion* squarely addressed the question of whether a sentencing court which rejects a defendant's nonfrivilous arguments in favor of a lower sentence must explain its reasons for rejecting the arguments, *Rita* would seem to indicate there are instances where a court may not be required to do so, as the Court indicated a sentencing judge will "normally" do so, but stopped short of saying a sentencing judge is always required to do so, while *Concepcion* would seem to indicate an explanation is required, as this Court explained that a sentencing court could dispense with arguments it does not find compelling

"without a detailed explanation," which indicates *some* explanation for rejecting an argument is always required. *See*, e.g., *United States v. Newbern*, 51 F.4th 230, 233 (7th Cir. 2022) ("*Concepcion* does not require a detailed explanation in response to these considerations, but we cannot be sure that the district court considered Newbern's arguments when it provided no explanation at all.")(citing, *Concepcion,* 142 S. Ct. at 2404). Accordingly, even in this Court's own precedent there appears to be a conflict regarding whether a sentencing court must explain its reasons for rejecting a parties' nonfrivolous arguments in favor of a different sentence. However, because "a district court exercising its discretion is still responsible for addressing and responding to nonfrivolous arguments timely raised by the parties before it," *Golan v. Saada*, 596 U.S. 666, 679, 142 S. Ct. 1880, 1893, 213 L. Ed. 2d 203 (2022), *judgment entered,* 213 L. Ed. 2d 1107 (June 29, 2022), this Court should remove any doubt, and firmly establish that 18 U.S.C. § 3553(c) requires a sentencing court which rejects a defendant's nonfrivilous arguments in favor of a lower sentence to explain its reasons for rejecting the arguments, to resolve the circuit split and bring uniformity to the requirements of Section 3553(c) throughout the circuit courts.

Accordingly, this Court should grant review, establish that 18 U.S.C. § 3553(c) requires a sentencing court which rejects a defendant's nonfrivilous arguments in favor of a lower sentence to explain its reasons for rejecting the arguments, and remand Mr. King's case for a new sentencing hearing.

CONCLUSION

For the reasons stated above, this Court should grant Mr. King's Petition for Writ of Certiorari and establish that 18 U.S.C. § 3553(c) requires a sentencing court which rejects a defendant's nonfrivilous arguments in favor of a lower sentence to explain its reasons for rejecting the arguments, and remand Mr. King's case for a new sentencing hearing.

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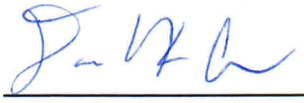
Respectfully Submitted,



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APPENDIX A

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-10995

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEON KING,
a.k.a. PK,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:05-cr-00355-WFJ-MRM-1

Before WILSON, LUCK, and MARCUS, Circuit Judges.

PER CURIAM:

Leon King appeals his within-range sentence of 36 months' imprisonment with no supervised release imposed upon revocation of supervised release. On appeal, King argues that his sentence was procedurally unreasonable because the district court failed to adequately explain its sentencing decision and failed to directly address King's arguments in mitigation of his sentence. After careful review, we affirm.

We review a sentence imposed upon revocation of supervised release for reasonableness. *United States v. Trailer*, 827 F.3d 933, 935–36 (11th Cir. 2016). If a party does not raise a procedural sentencing argument before the district court, we generally review only for plain error. *United States v. McNair*, 605 F.3d 1152, 1222 (11th Cir. 2010). To establish plain error, the appellant must show (1) error, (2) that was plain, and (3) that affected his substantial rights. *Id.* If these three conditions are satisfied, we may exercise our discretion to recognize the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

Section 3553(c) requires that a district court state in open court at the time of sentencing the reasons for its imposition of the particular sentence. 18 U.S.C. § 3553(c). It further requires that if a sentence is within the guideline range and "that range exceeds 24 months," the court must specify "the reason for imposing a

sentence at a particular point within the range." *Id.* § 3553(c)(1). Notably, § 3553(c)(1) applies only where *the span of the guideline range* exceeds 24 months. *See United States v. Pippin*, 903 F.2d 1478, 1484–85 (11th Cir 1990) (stating that § 3553(c)(1) did not apply where the span of the guideline range was only six months). Section 3553(c) also requires that if a sentence is outside the guideline range, the court must state "the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form." *Id.* § 3553(c)(2). We've said that we will review challenges that a district court failed to comply with § 3553(c)(1) or (c)(2) *de novo*, even if the appellant did not object in the district court. *United States v. Parks*, 823 F.3d 990, 996 (11th Cir. 2016) (§ 3553(c)(2)); *United States v. Bonilla*, 463 F.3d 1176, 1181 (11th Cir. 2006) (§ 3553(c)(1)).

Section 3553(c) does not require a full opinion in every case. *See Rita v. United States*, 551 U.S. 338, 356 (2007). Instead, when explaining a sentence, the district court judge must "set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority." *Id.* A sentence imposed within the guideline range will "not necessarily require lengthy explanation," where the circumstances may make clear that the judge relies on the Sentencing Commission's reasoning that a sentence within the guideline range is proper in a typical case and that the present case is typical. *Id.* at 356–57. The appropriateness of the length and detail of what to write depends on the circumstances of the case, and

"[t]he law leaves much, in this respect, to the judge's own professional judgment." *Id.* at 356.

When a district court considers a party's nonfrivolous arguments, it is "not required to be persuaded by every argument parties make, and it may, in its discretion, dismiss arguments that it does not find compelling without a detailed explanation." *Concepcion v. United States*, 597 U.S. 481, 501 (2022). The district court's acknowledgement that it considered the defendant's arguments at sentencing and the § 3553(a) factors is sufficient explanation for a particular sentence. *United States v. Tinker*, 14 F.4th 1234, 1241 (11th Cir. 2021). In other words, the court need not specifically discuss each § 3553(a) factor so long as the record reflects that the court considered those factors. *United States v. Ghertler*, 605 F.3d 1256, 1262 (11th Cir. 2010). Similarly, the failure to discuss mitigating evidence does not indicate that the court "erroneously 'ignored' or failed to consider this evidence." *United States v. Amedeo*, 487 F.3d 823, 833 (11th Cir. 2007).

Here, even under *de novo* review, King's 36-month sentence was procedurally reasonable.[1] At the hearing, the district court said

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[1] While King says plain error review applies, the government argues that *de novo* review applies since we review *de novo* challenges that a district court's explanation did not comply with § 3553(c)(1). *See Bonilla*, 463 F.3d at 1181. However, that provision does not apply here because King's guideline range before application of the statutory maximum was 33 to 41 months, which spans eight months and is *not* a range with a span that "exceeds 24 months." *See* 18 U.S.C. § 3553(c)(1); *Pippin*, 903 F.2d at 1484–85. We've not yet decided whether *de novo* review applies to an unpreserved challenge to the adequacy

that it had "heard from the defense and from the government" and "reviewed the 18 U.S.C. 3553(a) factors and the advisory guidelines and policies." The court said it was imposing a 36-month sentence -- King's advisory range was 33 to 41 months' imprisonment, but it was capped at 36 months due to a statutory maximum penalty -- and discussed King's criminal history, which was at a criminal history category VI *before* his federal conviction, and then King committed the prior offense that "resulted in a lengthy sentence." On top of this, the court noted, King committed the recent trafficking conviction that led to the instant revocation proceedings, which would make King's criminal history "a six-plus-plus at this point." The court added the sentence was justified by the need for King's "personal specific deterrence and protecting the public from the continued recidivism."[2] All told, the record reflects that in imposing King's sentence, the district court considered the parties' arguments and had a reasoned basis for exercising its decision-making authority. *Rita*, 551 U.S. at 356. It's also worth noting that the district court's sentence was within the guideline range, which generally will not require a lengthy explanation. *See id*. at 356–57.

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of the district court's explanation of a sentence that does not fall within § 3553(c)(1) or (c)(2). But because, as we'll explain, King's sentence is procedurally reasonable under *de novo* review, we need not resolve this issue.

[2] In making its remarks, the court used the term "variance," but in context, it is clear that the court was explaining why it had imposed a sentence at 36 months, the upper end of the guideline range, as opposed to 33 months, the bottom of the guideline range.

As for King's claim that the district court improperly failed to specifically address his mitigating arguments, the record does not indicate that the court failed to consider those arguments. To the contrary, the court stated that it had read King's sentencing memorandum and had heard counsel's remarks at the sentencing hearing, both of which contained his mitigation arguments. Moreover, the district court thanked King and his counsel at the conclusion of each of their arguments and said that he appreciated their comments, further indicating that it considered the parties' arguments. There is simply nothing in the record to suggest that the court "erroneously 'ignored' or failed to consider this evidence." *Amedeo*, 487 F.3d at 833. Nor is there any merit to King's attempts to draw a distinction between the court's statements that it "heard" his argument as opposed to "considered" it. The length and detail of the district court's sentence is largely left to the professional judgment of the judge, and the court may use its discretion to dismiss arguments it does not find compelling without detailed explanation, as the district court did here. *Rita*, 551 U.S. at 356; *Concepcion*, 597 U.S. at 501.

In short, King has not demonstrated that the district court failed to adequately explain his sentence or otherwise procedurally erred, and we affirm.

AFFIRMED.

APPENDIX B

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-10995

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEON KING,
a.k.a. PK,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:05-cr-00355-WFJ-MRM-1

Before WILSON, LUCK, and MARCUS, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant Leon King is DENIED.