

No. _____

In The
Supreme Court of the United States

ROMEO KEVANTE PRIDE,

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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QUESTIONS PRESENTED FOR REVIEW

- A. WHETHER THE FOURTH CIRCUIT COURT OF APPEALS ERRED BY DENYING MR. PRIDE'S ARGUMENT THAT THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY IMPOSING A 110 MONTH SENTENCE.

LIST OF PARTIES

ROMEO KEVANTE PRIDE, *Petitioner*

UNITED STATES OF AMERICA, *Respondent*

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Romeo Kevante Pride respectfully prays for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The decision of the Fourth Circuit Court of Appeals affirming the judgment entered against Mr. Pride is reported at *United States v. Romeo Kevante Pride*, 2023 WL 8231947, No. 23-4349 (4th Cir., 28 November 2023). (App A). Pursuant to Federal Rules of Appellate Procedure 32.1, the decision is unpublished.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit issued an unpublished decision on November 28, 2023. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), and this Petition is timely filed within ninety days of the underlying Judgment of the Fourth Circuit (App B) pursuant to United States Supreme Court Rule 13(1) and 28 U.S.C. § 2101.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S. Code § 3553 – Imposition of a Sentence

(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
- (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

- (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
- (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.¹

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) Application of Guidelines in Imposing a Sentence.—

(1) In general.—Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.—

(A) Sentencing.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(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.

(d) Presentence Procedure for an Order of Notice.—Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

- (1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;
- (2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and
- (3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) Limited Authority To Impose a Sentence Below a Statutory Minimum. — Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) Limitation on Applicability of Statutory Minimums in Certain Cases.—Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without

regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

- (1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;
- (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (3) the offense did not result in death or serious bodily injury to any person;
- (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and
- (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

STATEMENT OF THE CASE

On November 26, 2021, the Defendant Appellant, Romeo Kevante Pride, was at the “Streets at Southpoint” shopping mall in Durham, North Carolina for “Black Friday” shopping. Mr. Pride went to the mall with a juvenile friend. Because the juvenile friend was a “little guy” Mr. Pride took the gun that he was carrying and kept it on his own person even though he admitted that he knew as a felon he was not allowed to have a firearm.

At the mall, Mr. Pride had an encounter with a man selling jewelry, Jacquaay Walton. Mr. Walton was armed. He testified that Mr. Pride attempted to

rob him. He grabbed Pride's wrist and fired his own weapon. Mr. Pride received several gunshot wounds resulting in serious and permanent injuries. Two innocent bystanders – a ten-year-old girl and a fifty-three-year-old man – were also hit by bullets. Everyone survived the shooting although Mr. Pride's injuries included having his spleen and half of his lungs removed as well as being placed with a colostomy bag.

Following the shooting, the Durham Police arrested Mr. Pride and charged him with robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous weapon, and possession of a firearm. The State subsequently dismissed the charges in lieu of federal prosecution. A grand jury for the Middle District of North Carolina returned a single-count Bill of Indictment on September 26, 2022 charging Mr. Pride with being a felon in possession of a firearm as well as forfeiture allegations.

Mr. Pride appeared for a change of plea hearing on December 7, 2022, the Honorable Catherine C. Eagles presiding. He entered a guilty plea pursuant to a plea agreement dated November 29, 2022. Judge Eagles signed an order of forfeiture on March 21, 2023. Judge Eagles also conducted a sentencing hearing on April 17, 2023 at which she gave Mr. Pride "credit for acceptance." She overruled the defense objection to a robbery cross-reference. Ultimately, Judge Eagles determined there was an offense level of 28 with a criminal history category of IV making the guideline range 110-120. She imposed a sentence of 110 months to be followed by three years of supervised release. Mr. Pride filed a *pro se* notice of

appeal on May 17, 2023. The Fourth Circuit issued an unpublished decision on November 28, 2023 affirming the district court's judgment. (App A).

REASONS FOR GRANTING THE WRIT

Petitioner asserts that the Writ should be issued because the district court erred in its sentencing decision. Judge Eagles erred by emphasizing her reaction to Mr. Pride's criminal history without reference to the other § 3553 factors and by overruling Mr. Pride's objection to the robbery enhancements per U.S.S.G. § 2B3.1.

Prior to sentencing Mr. Pride objected to application of a robbery enhancement questioning whether there was reasonable certainty that Mr. Pride used or possessed a firearm in connection with a robbery. During the sentencing hearing, Jaquaay Walton testified. Mr. Walton was the supposed victim of Mr. Pride's attempted robbery. However, the evidence adduced at court was less than clear on this point. Mr. Walton admitted that he had driven approximately two hours to the Durham mall to sell some jewelry and was staying away from Mr. Pride because had passed him earlier and knew that he had a gun.

During direct examination, Mr. Walton claimed that Mr. Pride "kept demanding me to get in the corner because I grabbed his wrist because I saw he had his hand at his gun and it looked like it was pointed toward me, and I grabbed his wrist and got out of the direction of the gun and we were pushing each other back and forth, and I held down his wrist. It looked like he was trying to put up a fight, and I grabbed my gun and shot." Mr. Walton fired eight shots hitting Mr. Pride several times as well as two bystanders.

On cross-examination, however, the evidence of a robbery was exposed as inadequate. Mr. Walton admitted on cross-examination that he gave Mr. Pride the jewelry to look at and it was returned. He immediately, though, tried to change his story. “I handed it to him. He gave it right back to me. I showed it to him. He never got it in his hands. I just presented it to him.” One aspect of the evidence from Mr. Walton that was clear was that Mr. Pride did not demand the jewelry or anything else and that Mr. Pride did not abscond with the item when it was “presented” to him. Although at some point Mr. Pride’s gun was discharged all the bodily injuries were caused by Mr. Walton’s gunshots.

Without the robbery enhancement, along with the associated serious bodily injury enhancement, the applicable sentencing factors would have been a level 20 which at criminal history category of IV would have had a sentencing range of 51-63 rather than the 110-137 range used by Judge Eagles.

Furthermore, 18 U.S.C. § 3553 lays out several factors for the district court to consider when fashioning a sentence. Judge Eagles asked both the government and the defense for arguments on the section 3553(a) factors which they provided. The district court, though, failed to compare or weigh the various factors and, instead, stated that “the thing that most concerns me here is his criminal history.” The court then referenced some of his prior convictions and pointed out that “it is really the risky behavior or carrying a loaded firearm when he is on probation, when he’s, you know, in a mall.”

Judge Eagles then stated that “when I look at all of these things together, a high sentence is appropriate, and that’s kind of regardless of the robbery. Certainly well above what his guideline would have been if I hadn’t thought there was a robbery, just based on his criminal history alone...”

The Circuit Court reviewed Mr. Pride’s sentence for reasonableness “under an abuse-of-discretion standard, [which applies] regardless of ‘whether [the sentence is] inside, just outside, or significantly outside the Guidelines range.’”

Pride, supra, at 2, quoting, *United States v. Nance*, 957 F.3d 204, 212 (4th Cir. 2020), quoting, *Gall v. United States*, 552 U.S. 38, 41 (2007). The Circuit Court determined that the sentence was both procedurally reasonable and substantively reasonable stating that “in addition to Pride’s criminal history, the district court considered the seriousness of the offense and the need to specifically deter Pride from committing future offenses. The court also weighed the mitigating factors of Pride’s case, including his significant health issues due to being shot, his challenging upbringing, and his acceptance of responsibility.” *Pride, supra*, at 4.

This rosy assessment, however, is far too forgiving. Judge Eagles clearly said that “the thing that most concerns me here is his criminal history.” Although other factors might have received a passing glance, she spent more time mentioning Mr. Pride’s criminal history than all other factors combined. Furthermore, to the extent that she mentioned other factors she put them in the context that Mr. Pride’s sentence would have been too light given his criminal history if she had not counted the robbery.

Mr. Pride, therefore, asks this Court to grant the writ to review his sentence and determine if it was, in fact, reasonable. “As a result of [this Court’s] decision [in *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005)], the Guidelines are now advisory, and appellate review of sentencing decisions is limited to determining whether they are ‘reasonable.’” *Gall v. United States*, 552 U.S. 38, 46, 128 S.C. 586, 169 L.E.2d 445 (2007). The *Gall* Court went further to “reject...an appellate rule that requires ‘extraordinary’ circumstance to justify a sentence outside of the Guidelines range.” Here, the sentence was within the guidelines range; however, Mr. Pride respectfully asserts that the sentence was excessive because of application of the robbery enhancement and the district court’s heavy emphasis of one 3553(a) factor.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits that his Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

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