

No. _____

SUPREME COURT OF THE UNITED STATES

**DASMORE T. COLEMAN,
Petitioner,**

VERSUS

**UNITED STATES OF AMERICA,
Respondent**

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

Respectfully Submitted,

GREENWALD LAW FIRM, L.L.C.

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ATTORNEY FOR PETITIONER

QUESTIONS PRESENTED FOR REVIEW

Whether Coleman's sentence is substantively unreasonable.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

District Court:

Honorable Terry A. Doughty
United States District Judge,
Western District of Louisiana
201 Jackson Street, Suite 215
Monroe, LA 71201

United States Fifth Circuit:

Honorable Jones, Southwick, and Ho
United States Court of Appeals, Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130

Defendant – Appellant:

Dasmore T. Coleman
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Beaumont, TX 77705

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**SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit is set forth at *Appendix A*. The Opinion was not designated for publication.

JURISDICTION

On December 18, 2023, the United States Court of Appeals for the Fifth Circuit issued its Opinion affirming the District Court’s Judgment. *Appx. A*.

No Petition for Rehearing was filed.

This Court has jurisdiction pursuant to *28 U.S.C. §1254(1)*.

The Petition for Writ of Certiorari is due by March 17, 2024.

**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

This issue presented in this Writ involves whether Coleman’s criminal sentence is unreasonably excessive. Specifically, whether the *18 U.S.C. §3553(a)* sentencing factors warrant a lesser sentence.

STATEMENT OF THE CASE

A. Brief overview of the case:

On September 13, 2022, Dasmore T. Coleman was indicted on four counts of Distribution of Methamphetamine, stemming from an undercover operation in Winnsboro, Louisiana. The total drug weight of the controlled buys was 840.2 grams of actual methamphetamine.

Pursuant to a written Plea Agreement, Coleman pleaded guilty to one count of Distribution.

On June 16, 2023, the Honorable Trial Court sentenced Coleman to 264 months incarceration, with five-years supervised release.

Coleman appealed the sentence arguing it was unreasonably excessive and, on December 18, 2023, the Court of Appeals affirmed the sentence.

Coleman respectfully petitions this Court for a writ of certiorari to review the Judgment of the Fifth Circuit Court of Appeals and ultimately hold that the sentence is unreasonably excessive.

B. Pre-Sentence Report:

The Pre-Sentence Report correctly calculated Coleman's base offense level at 34. Two points were added because a gun was found in his home. Coleman received a three-level reduction for acceptance of responsibility. His total offense level was 33.

Due to Coleman's criminal history, he qualifies as a career offender. On December 1, 2014, he pleaded guilty to two drug offenses and received a probated sentence (later revoked). The offenses were separated by an intervening arrest. In 2018, he pleaded guilty to another drug charge and was sentenced to three years hard-labor.

The career offender designation adjusted his total offense level to 34, and his criminal history to category VI. (Otherwise, it would have been a V). His guideline range was 262 to 327 months.

C. Sentencing:

On June 16, 2023, the Trial Court adopted the findings of the Pre-Sentence Report and sentenced Coleman to 264 months incarceration and five years supervised release. The Court stated the sentence was selected after considering the factors listed in *18 U.S.C. §3553(a)*.

REASONS FOR GRANTING THE WRIT

To provide clarity, guidance, and consistency for the lower courts' implementation of the *18 U.S.C. §3553(a)* sentencing factors, and to provide Coleman with a sentence which complies with the parsimony clause of the *18 U.S.C. §3553(a)*.

SUMMARY OF THE ARGUMENT

Coleman submits his sentence is substantively unreasonable. Coleman is a low-level drug dealer who was caught in an undercover operation selling meth to a known meth user. The total drug weight was 840.2 grams of actual meth and there is no evidence of any violent acts.

While his actions cannot be condoned, punishment should be based on the underlying conduct and not a formulaic, generic set of guidelines. 22 years of incarceration for selling drugs to a confidential informant who initiated the transactions is substantively unreasonable because it is greater than necessary to affect the purposes of sentencing. The parsimony clause of *18 U.S.C. §3553(a)* directs sentencing courts to “impose a sentence sufficient, but not greater than necessary, to comply with the specific purposes” of subsection (2). [Emphasis added]. Coleman’s sentence violates the parsimony limitation and is unreasonably excessive because it overstates the severity of the offense.

For the reasons contained herein, Coleman respectfully prays that his sentence be vacated, and the matter remanded for a new sentence.

ARGUMENT

I. Coleman's sentence is substantively unreasonable.

A. Standard of Review:

A sentence is reviewed for reasonableness under an abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). The court must ensure that the district court did not procedurally err by "failing to consider the [18 U.S.C.] § 3553(a) factors" or "selecting a sentence based on clearly erroneous facts." *Id.* If the sentence is procedurally sound, the court then reviews the substantive reasonableness of the sentence. *Id.* Substantive reasonableness "depends on 'the totality of the circumstances, including the extent of any variance from the Guidelines range.'" *United States v. Rhine*, 637 F.3d 525 (5th Cir. 2011)(quoting *Gall*, 552 U.S. at 51).

A presumption of reasonableness applies to a sentence imposed within a properly calculated guidelines range. *United States v. Campos-Maldonado*, 531 F.3d 337, 338 (5th Cir. 2008). "The presumption is rebutted only upon a showing that the sentence does not account for a factor that should receive significant weight, it gives significant weight to an irrelevant or improper factor, or it represents a clear error of judgment in balancing sentencing factors." *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009); *United States v. Leschyshyn* 705 F. App'x 340 (5th Cir. 2017).

B. Coleman's sentence is substantively unreasonable.

Coleman is a non-violent, street-level drug dealer who was caught in a sting operation selling drugs to a known drug addict. For his crimes, he received a sentence of over two decades in prison. The sentence is unduly punitive and completely excessive considering the facts of the case.

The Trial Court's overreliance on the sentencing guidelines and career offender designation to the exclusion of the facts of the case warrant a new sentence. A review of the *18 U.S.C. §3553(a)* sentencing factors clearly shows the sentence is excessive.

The Trial Court's sentence failed to reflect and balance the statutory sentencing factors of *18 U.S.C. §3553(a)*. Coleman submits there were several factors weighing in favor of a lesser sentence. The seriousness of the offense and amount of drugs were relatively minor in comparison to other cases. *§3553(a)(2)(A)*. On four separate occasions, Coleman sold meth to a confidential informant. The transactions were initiated by the informant and the drug amounts determined by law enforcement. The offenses did not involve violence, threats of violence or harm to others. Coleman is not a "repeat violent offender" or "drug trafficker", but a low-level pusher with a criminal past. While illegal narcotics are a problem and cannot be sanctioned, the punishment should always fit the crime. Here, the punishment dwarfs the crime.

“Adequate deterrence to criminal conduct” and “respect for the law” are important considerations which can be achieved with a shorter sentence.

§3553(a)(2)(B). Not factoring any reductions in sentence, Coleman will remain incarcerated until 2044, when he is 50 years old. Such a sentence fails to consider the defendant as a person and the profound affect it will have upon him. Coleman’s children will be adults upon his release, many family members will have passed away, basically deprived of two decades of existence. The Trial Court’s sentence only considered the “punishment” factors of §3553(a) without any corresponding consideration of Coleman.

Protecting the public from further crimes can likewise be achieved without warehousing Coleman for the next two decades. §3553(a)(2)(C). Rehabilitation, as part of the prison process, should ensure Coleman comes out a better person and less likely to reoffend.

Again, Coleman should benefit from the “correctional treatment” he will receive while incarcerated. §3553(a)(2)(D). However, such treatment should not take 22 years. Surely, the sentencing goals can be achieved without depriving Coleman of his freedom for two decades.

The purpose of the sentencing factors is to produce a “just” sentence, one which is morally right and fair, involving equality and justice. Such a sentence should account for the underlying facts of the case and not seemingly rely solely on

rigid, formulaic guidelines. Coleman's sentence, which is seemingly based solely on the guidelines, cannot be deemed "just".

While his actions were illegal, they do not warrant a sentence of 264 months.

CONCLUSION

The Trial Court's sentence is substantively unreasonable because it is far greater than necessary to achieve the §3553(a)(2) sentencing factors. While the factors are important, a "just" sentence must consider the defendant and the devastating affect the sentence imposes. If a lower, or non-guideline, sentence could fulfill the same sentencing objectives, then the sentence is greater than necessary to comply with §3553(a) and violates the parsimony provision. Punishment that is more severe than is necessary to achieve valid and applicable purposes is morally unjustifiable. Coleman's sentence is morally unjust.

For the above-enumerated reasons, Mr. Coleman prays this Honorable Court grant the Petition for Writ of Certiorari, and ultimately find that his sentence is substantively unreasonable. He further prays for any such relief as to which he may justly be entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Joseph W. Greenwald, Jr., the undersigned counsel, hereby certify that on this 7th day of March, 2023, one copy of the Petition for Writ of Certiorari and Motion for Leave To Proceed *In Forma Pauperis* in the above-entitled case was delivered to FedEx for next day delivery to the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington D.C. 20530-0001 and was e-mailed to the Office of the Solicitor General

at SupremeCtBriefs@usdoj.gov and one copy was mailed to Assistant U.S. Attorney, Camille Ann Domingue, 800 Lafayette St., Ste. 2200, Lafayette, LA 70501-6865, and was e-mailed to Camille.Domingue@usdoj.gov.

I further certify that all parties required to be served have been served.

Respectfully Submitted,

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