

No. _____

In the Supreme Court of the United States

DANIEL SANSONE, PETITIONER
v.
UNITED STATES OF AMERICA, RESPONDENT

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an indeterminate juvenile commitment is properly counted as a period of confinement of at least sixty days under the U.S. Sentencing Guidelines.

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Petitioner herein respectfully petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the First Circuit in this case.

OPINION BELOW

The United States Court of Appeals for the First Circuit entered judgment in this case. The opinion (App. 1A, *infra*) has not been reported.

JURISDICTION

The initial judgment of the First Circuit Court of Appeals was entered on January 4, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Pursuant to Supreme Court Rules 13.1 and 13.3 and 28 U.S.C. 92101(c), this petition is timely filed if deposited in the United States mail, with first-class postage prepaid, on or before April 3, 2024.

STATEMENT OF THE CASE

Petitioner pleaded guilty to one count of Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1). In his Presentencing Investigation Report (“PSR”), the U.S. Probation Office counted two juvenile commitments as two sentences of confinement of at least sixty days, even though such commitments in Massachusetts are indeterminate. The commitments were assessed two points each under the U.S. Sentencing Guidelines, which erroneously raised Petitioner’s criminal history category. The District Court imposed sentence at the high end of the resulting Guidelines sentencing range, which was nine months longer than if the sentence had been imposed at the high end of the preceding and proper criminal history category. The First Circuit affirmed the sentence.

This petition seeks relief because the First Circuit decision conflicts with the purposes of sentencing under the U.S. Sentencing Guidelines.

DISCUSSION

Police in Waterville, Maine arrested Petitioner on October 15, 2020, after responding to a report of a gunshot heard in the same area where a man on a red motorcycle had been seen. When officers arrived and saw Petitioner standing next to a red motorcycle, Petitioner began to flee. After the officers caught Petitioner, they found a .45 Smith and Wesson firearm, loaded with a six-round magazine and a seventh round in the chamber, along the path where Petitioner had ran. The government subsequently charged Petitioner with being a felon in possession of a

firearm, as Petitioner had been convicted earlier that year in Maine of unlawful trafficking of marijuana. Petitioner pleaded guilty on November 16, 2021.

Petitioner's PSR placed him in Criminal History Category ("CHC") IV, upon a finding that his criminal record resulted in a score of eight points. Half of those points were assigned due to his juvenile record, specifically for indeterminate commitments to the Massachusetts Department of Youth Services ("DYS") for two incidents when Petitioner was 15 (one was for receiving stolen property and the other for uttering a counterfeit note).

The juvenile court adjudicated both cases simultaneously, entering its initial judgment on July 6, 2015, continuing both cases without a finding and ordering nine months of supervised probation. After finding Petitioner had subsequently violated his probation, the juvenile court committed him to DYS custody on December 23, 2015. The PSR contained no record of a specific term that was imposed or any commitment conditions ordered, but merely noted he had been committed and subsequently was "Released to Community" on June 23, 2016. The PSR treated the juvenile court's action as two separate impositions of confinement of at least sixty days and assigned two points for each. *See* U.S.S.G. 4A1.2(d)(2)(A).

The PSR's determination that Petitioner belonged in CHC IV, coupled with a total offense level of 17, yielded an advisory Guidelines sentencing range of 37 to 46 months. On June 1, 2022, the District Court sentenced him to the high end, 46 months, a full nine months longer than the high end of CHC III, which is the

category that would have applied had Petitioner's indeterminate juvenile adjudications been properly assigned one point each. *See U.S.S.G. 4A1.2(d)(2)(B).*

REASONS FOR GRANTING REVIEW

1. The Appeals Court Decision Sanctions the Miscalculation of Petitioner's Criminal History and Subsequent Sentence Under an Incorrect Guidelines Range.

This Court should grant certiorari in this case because it presents an important issue regarding federal sentencing law and how defendant's juvenile convictions are counted under the Guidelines. This Court noted decades ago, "youth...is a time and condition of life when a person may be most susceptible to influence and to psychological damage." *Johnson v. Texas*, 509 U.S. 350, 367 (1993). Youthful immaturity and irresponsibility "often result in impetuous and ill-considered actions and decisions." *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (quoting *Johnson, supra*, at 367). The worst behavioral tendencies of adolescents, such as "recklessness, impulsivity, and heedless risk-taking," are common, which is why "children are constitutionally different from adults for sentencing purposes." *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

The Commonwealth of Massachusetts recognizes those tendencies, setting up its juvenile justice system to be "primarily rehabilitative, cognizant of the inherent differences between juvenile and adult offenders, and geared toward the correction and redemption to society of delinquent children." *Commonwealth v. Magnus M.*, 461 Mass. 459, 461 (2012) (internal citations omitted); *Commonwealth v. Connor C.*, 432 Mass. 635, 646 (2000) (adhering "to long-standing jurisprudence that an

‘adjudication’ that a child has violated a law generally is not a ‘conviction’ of a crime”).

Massachusetts juvenile courts distinguish between whether the offender is “a delinquent child” or a “youthful offender,” depending on the severity of the committed offense. *See M.G.L. c. 119, § 52.* In general, while a youthful offender can be sentenced to imprisonment, a delinquent juvenile can be committed to DYS custody until 18, or be placed in a probation officer’s care, or have the case put on file. *Commonwealth v. Samuel S.*, 476 Mass. 497, 502-503 (2017).

When juvenile offenses are counted as part of a federal defendant’s criminal history, the Guidelines direct a sentencing court to:

- (A) add 2 points under §4A1.1(b) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense;
- (B) add 1 point under §4A1.1(c) for each adult or juvenile sentence imposed within five years of the defendant’s commencement of the instant offense not covered in (A).

U.S.S.G. §§ 4A1.2(d)(2)(A)-(B).

The PSR does not indicate that the court imposed a specific term of confinement of any length because the court had no discretion to do so. Statutorily, a DYS commitment for a delinquent juvenile is indeterminate, meaning it will normally last until the juvenile is 18. “If the child is adjudicated a delinquent, the juvenile court may only sentence him to the care of the Department of Youth

Services until he becomes an adult.” *United States v. Peguero-Martinez*, 771 F. Supp. 2d 137, 139 (D. Mass. 2010). Also, “once a judge commits a youthful offender or a delinquent juvenile to DYS, the actual terms of that commitment, as a general matter, are wholly within the discretion of DYS, an executive agency.” *Samuel S.*, 476 Mass. at 504. “[T]he Juvenile Court judge generally has no authority to dictate the terms of a juvenile’s commitment to DYS, and a commitment to DYS can result in a variety of consequences for the juvenile — some that look more like confinement, others less so.” *Id.* at 505-506.

It is therefore the DYS and not the judiciary that “determines the placement appropriate for each [juvenile] offender, which could range from parental release to confinement at a secure facility.” *United States v. Gibbons*, 553 F.3d 40, 45 (1st Cir. 2009). As part of its discretion DYS also controls the length of those placements, which could involve multiple placements during one commitment period, depending on what is appropriate for the juvenile.

As there was no record of actual confinement, which is what the Guidelines address, the Probation Office had no basis on which to assign his two delinquent adjudications two points each under § 4A1.2(d)(2)(A), rather than one point each under § 4A1.2(d)(2)(B). And because Massachusetts’ juvenile adjudications are indeterminate, with confinement only one option when the juvenile is committed to DYS, it is more likely than not Petitioner was not confined for a period of sixty days or more.

That Petitioner did not provide records showing he was not confined for the required length is immaterial under the First Circuit's own holding. *See Gibbons*, 553 F.3d at 43 (confirming it is the government's burden to prove defendant's "juvenile offenses were punished by at least sixty days confinement"). And the additional points, which raised his CHC from III to IV, significantly affected him at sentencing. *See United States v. Correa*, 114 F.3d 314, 316 (1st Cir. 1997) (explaining "[C]riminal history points can profoundly affect the length of a sentence"). The First Circuit's decision to affirm Petitioner's sentence under plain error review allows federal sentencing courts, along with officers within the U.S. Probation Office, to continue applying excessive criminal history points for juvenile offenses which the states themselves did not adjudicate in such a punitive manner.

This Court must grant certiorari to reverse this action.

CONCLUSION

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

Respectfully submitted,

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APRIL 3, 2024