

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

JOHN PEDELAHORE
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 23-60264

PETITION FOR WRIT OF CERTIORARI

Omodare B. Jupiter (MB #102054)
Federal Public Defender
N. and S. Districts of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510

Leilani Leith Tynes (MB #100074)
Assistant Federal Public Defender
2510 14th Street, Suite 902
Gulfport, Mississippi 39501
Telephone: 228-865-1202
Facsimile: 228-867-1907

Attorney for Defendant-Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the district court erred by ordering Mr. Pedelahore to serve 30 months in prison for nonviolent supervised release violations when the recommended range under the Sentencing Guidelines was only three to nine months.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED FOR REVIEW	ii
PARTIES TO THE PROCEEDING	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES.....	v
I. OPINIONS BELOW	1
II. JURISDICTIONAL STATEMENT	4
III. STATUTE INVOLVED.....	5
IV. STATEMENT OF THE CASE	7
A. Basis for federal jurisdiction in the court of first instance	7
B. Statement of material facts	7
V. ARGUMENT.....	9
A. Review on certiorari should be granted in this case.....	9
B. The district court ordered a substantively unreasonable sentence	9
VI. CONCLUSION.....	12
CERTIFICATE OF SERVICE.....	13
(Appendices 1 and 2)	

TABLE OF AUTHORITIES

Page(s)

Cases:

<i>United States v. Granderson</i> , 511 U.S. 39 (1994)	9
<i>United States v. Johnson</i> , 529 U.S. 53 (2000)	9
<i>United States v. Miller</i> , 634 F.3d 841 (5th Cir. 2011).....	9

Statutes:

18 U.S.C. § 2422	1
18 U.S.C. § 3231	7
18 U.S.C. § 3553	6, 7
18 U.S.C. § 3582	7
18 U.S.C. § 3742	5
28 U.S.C. § 994	5
28 U.S.C. § 1254	4
28 U.S.C. § 2255	2

Rules:

Rule 13.1, Supreme Court Rules	4
Rule 29.5, Supreme Court Rules	13

United States Sentencing Guidelines:

U.S.S.G. § 1B1.4	8
U.S.S.G. § 7B1.4	10

I. OPINIONS BELOW

A Federal Grand Jury for the Eastern District of Louisiana indicted Mr. Pedelahore for violation of 18 U.S.C. § 2422(b), which makes it unlawful to use the internet to coerce or entice a minor to engage in illegal sexual activity. On May 10, 2005, Mr. Pedelahore accepted responsibility for his actions by pleading guilty to the charge. On August 16, 2005, the district court sentenced Mr. Pedelahore to 60 months imprisonment followed by five years of supervised release. After serving his debt to society, Mr. Pedelahore was released from prison. His supervision commenced fourteen years ago on August 3, 2009.

Jurisdiction over Mr. Pedelahore's supervised release was transferred to the Southern District of Mississippi on March 23, 2015. On March 30, 2015, a revocation petition was filed alleging that John Pedelahore had violated the terms of his supervised release.

In a 2015 hearing, Mr. Pedelahore's counselor, Dr. Strebeck, testified that Mr. Pedelahore has an addictive disorder, but has been unable to receive needed specialized, one-on-one treatment because the U.S. Probation Office only authorized group therapy. Dr. Strebeck noted that Mr. Pedelahore was "amenable to treatment" and "welcome and receptive" to treatment.

Mr. Pedelahore admitted the supervised release violation and was sentenced to three months in prison and ten years supervised release on April 16, 2015. He

filed a timely notice of appeal on April 29, 2015. On March 18, 2016, Mr. Pedelahore's sentence was affirmed by the United States Court of Appeals for the Fifth Circuit.

On January 5, 2017, a revocation petition was filed alleging Mr. Pedelahore had violated the terms of his supervised release by acquiring a cellular phone, accessing the internet, and not answering truthfully when asked if he had accessed the internet. Mr. Pedelahore admitted guilt and was sentenced to two years in prison and eight years supervised release on February 6, 2017.

On July 17, 2017, Mr. Pedelahore filed a *pro se* motion arguing the restrictions on his use of the internet denied him his constitutional right to free speech which the court construed as a 28 U.S.C. § 2255 motion. The court denied his § 2255 motion and denied a certificate of appealability.

On May 1, 2023, a third revocation petition was filed alleging that Mr. Pedelahore had accessed the internet and not been truthful about the access when asked. Mr. Pedelahore pled guilty and was sentenced to 30 months in prison and eight years supervised release on May 15, 2023. The district court's revocation judgment is attached hereto as Appendix 1.

Mr. Pedelahore filed timely notice of appeal on May 17, 2023. The Fifth Circuit entered an order affirming the district court's rulings on February 6, 2024.

It entered a judgment on the same day. The order and judgment are attached hereto as composite Appendix 2.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its order and its judgment in this case on February 6, 2024. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. STATUTE INVOLVED

(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--

* * * * *

(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;

* * * * *

(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.

- (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.

18 U.S.C. § 3553(a).

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a supervised release revocation judgment entered against Mr. Pedelahore. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the underlying criminal conviction entered against Mr. Pedelahore arose from the laws of the United States of America.

B. Statement of material facts.

On May 11, 2023, the district court held the subject revocation hearing. Probation Officer Brandon Bang testified that he observed Mr. Pedelahore with a cell phone on an unannounced visit. Mr. Pedelahore took responsibility for his actions. He admitted that he owned the iPhone, that he used the iPhone to access the internet and that he was not honest when questioned about the issue by the probation officer.

There was nothing illegal on the iPhone. One of the applications on the iPhone was medical-related. Mr. Pedelahore's sister Jaimee Pedelahore testified that her brother suffers from significant medical issues, and he does not leave the house.

The district court considered the evidence, the policy statements, and the sentencing factors under 18 U.S.C. § 3553(a) and 18 U.S.C. § 3582 and sentenced

Mr. Pedelahore to 30 months in the Bureau of Prisons and eight years of supervised release. The court noted that the 30-month prison sentence was above the recommended sentence range under the United States Sentencing Guidelines, which was only three months to nine months in prison.¹

¹ The district court did not state the Guidelines range at the revocation hearing. However, we know that Mr. Pedelahore's criminal history category was I at his original sentencing. We also know that the subject supervised release violation was grade C. Under U.S.S.G. § 7B1.4(a), this combination yields a recommended sentence range of three months to nine months in prison.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

Mr. Pedelahore admitted the two supervised release violations at issue – using the internet and failing to be honest with his probation officer about using the internet. Obviously, neither of these admitted violations involved either violent conduct or illegal drugs, or any other type of illegal activity.

The district court ordered Mr. Pedelahore to serve 30 months in prison, which was well above the recommended Sentencing Guidelines range of three months to nine months. Given the facts of this case, this Court should grant certiorari and address whether ordering a 30-month prison term was unreasonably long.

B. The district court ordered a substantively unreasonable sentence.

Under Fifth Circuit law, “the goal of revocation is to punish a defendant for violating the terms of the supervised release.” *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011). Under the law of this Court, the purpose of supervised release is rehabilitation *United States v. Johnson*, 529 U.S. 53, 59 (2000) (“supervised release fulfills rehabilitative ends, distinct from those served by incarceration”); *United States v. Granderson*, 511 U.S. 39, 50 (1994) (“Supervised release, in contrast to probation, is not a punishment in lieu of incarceration.”).

“Psychology researchers have identified effective methods, or ‘what works’, to reduce crime –the overwhelming consensus of the literature is that treatment works, incarceration does not.” Howard E. Barbaree *et al.*, *Canadian Psychological Association Submission to the Senate Standing Senate Committee on Legal and Constitutional Affairs* 6 (Jan. 2012) This principal applies in Mr. Pedelahore’s case.

In a 2015 hearing, Mr. Pedelahore’s counselor, Dr. Strebeck, testified that Mr. Pedelahore has an addictive disorder, but has been unable to receive needed specialized, one-on-one treatment because the U.S. Probation Office only authorized group therapy. Dr. Strebeck noted that Mr. Pedelahore was “amenable to treatment” and “welcome and receptive” to treatment. Mr. Pedelahore’s amenability to treatment is a mitigating factor.

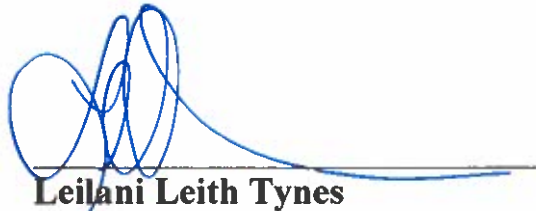
Despite the lack of proper treatment, Mr. Pedelahore has engaged in no criminal activity since his supervision commenced. He admitted violating the conditions of his supervised release, but there was nothing illegal on the iPhone. The violations leading to Mr. Pedelahore’s revocation involved only Grade C violations, which are the least serious recognized by the Policy Statements governing supervised release. U.S.S.G. § 7B1.4. While it is true that Mr. Pedelahore accessed the internet and failed to disclose such access to his probation officer, his use of the internet was not criminal in nature. Under these facts, the

district court's sentence was an unreasonably harsh and a disproportionate response to Mr. Pedelahore's conduct. As such, it was an unreasonable sentence.

VI. CONCLUSION

Based on the arguments presented above, Mr. Pedelahore asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted April 16, 2024, by:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right, positioned above a horizontal line.

Leilani Leith Tynes
Assistant Federal Public Defender
Southern District of Mississippi
2510 14th Street, Suite 902
Gulfport, Mississippi 39501
Telephone: 228-865-1202
Facsimile: 228-867-1907

Attorney for Defendant-Petitioner

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

JOHN PEDELAHORE
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 23-60264

CERTIFICATE OF SERVICE

I, Leilani Leith Tynes, appointed under the Criminal Justice Act, certify that today, April 16, 2024, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. 775974729263, addressed to:

The Honorable Elizabeth B. Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Leilani Leith Tynes
Assistant Federal Public Defender