

ORIGINAL

No. _____

23-7304

IN THE

FILED
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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

MICHAEL ANTHONY GRANADO — PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Anthony Granado

(Your Name)

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Terre Haute, IN 47808

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

The United States Sentencing Guidelines directs courts to use uncharged offenses in its calculation of a defendant's guideline range if the uncharged offenses constitute "relevant conduct" under U.S.S.G. § 1B1.3. The Sixth Circuit Court of Appeals held that possession of firearms in You Tube music videos constituted "relevant conduct", notwithstanding the fact that each music video is separated by approximately a year, as well as the fact that there is no common purpose or similar modus operandi between the uncharged conduct and the instant conviction. Are district courts being allowed to overreach and misapply the "relevant conduct" section of the Guidelines?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- United States v. Granado, 23-1171 (6th Cir. 2024)
- United States v. Granado, 1:22-cr-00138 (W. Dist. Mich. 2022)

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

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 22, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
 An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.
 A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
 An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1):

It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 924(a)(8):

Whoever knowingly violates subsection (d) or (g) of section 922 shall be fined, imprisoned for not more than 15 years, or both.

STATEMENT OF THE CASE

I, Michael Anthony Grando, am petitioning this Court for a writ of certiorari to review the Sixth Circuit Court of Appeals' affirmation of my sentence in the Western District of Michigan.

On October 4, 2022, I was indicted in the Western District of Michigan for the offense of felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). I entered a guilty plea to the one-count indictment on October 21, 2022.

On January 9, 2023, the United States Probation Office (USPO) filed a presentence report to which I made several objections. Particularly, I objected to the USPO's finding of a base offense level of 26 and the two-level enhancement pursuant to U.S.S.G. § 2K2.1(a)(1) because the firearms cited by the USPO were possessed solely for entertainment purposes in music videos that were posted on YouTube, and therefore are not part of the same course of conduct or common scheme or plan as the instant offense. Additionally, I objected to the 4-point enhancement pursuant to U.S.S.G. § 2K2.1(b)(6)(B) because there was no connection between the firearm and the controlled buys that were conducted by the Lansing Police Department.

At the sentencing hearing the District Court overruled the aforementioned objections and sentenced me to a 144-month term of imprisonment followed by a 3-year term of supervised release.

On appeal, the Sixth Circuit Court of Appeals affirmed the District Courts sentence in an unpublished opinion, filed on February 22, 2024.

REASONS FOR GRANTING THE PETITION

The Court should grant this petition because the case presents issues of first impression in the United States Supreme Court. The provisions and commentary of the "relevant conduct" section (U.S.S.G. § 1B1.3) of the Sentencing Guidelines is relatively ambiguous and leaves sentencing courts guessing and often times stretching its applicability. Circuit courts have been inconsistent in determining what exactly temporal proximity is when considering whether two or more offenses are part of the same course of conduct. See United States v. Damato, 672 F.3d 832, 840 (10th Cir. 2012) ("We have described a fifteen month interval as temporally distant." (internal quotations omitted)); United States v. Hahn, 960 F.2d 903, 910-911 (9th Cir. 1991) (Holding that a temporal gap as brief as five months cut against a finding that an activity was part of the same course of conduct as the offense of conviction.); United States v. McGowan, 478 F.3d 800, 802 (7th Cir. 2001) (Eight month "gap is long enough to cast doubt on the relevance of the earlier conduct."); United States v. Ortiz, 431 F.3d 1035, 1041 (7th Cir. 2005) (Ten-month "gap suggest the lack of a common plan or course of conduct."); United States v. Mullins, 971 F.2d 1138, 1144 (4th Cir. 1992) (Temporal proximity factor is "extremely weak . . . if present at all, as the uncharged conduct took place over six months prior to the two phone calls underlying the offense of conviction."). It is imperative, to the many defendants whose sentences are immensely affected by the "relevant conduct" provision of the Sentencing Guidelines, that this Court reviews this case and sets Supreme Court Precedent on the matter.

ARGUMENT:

I. The Sixth Circuit Court of Appeals erred when it affirmed the district court's determination that the guns possessed in the You Tube music videos were relevant conduct to the offense of conviction because the conduct was not the same course, or similar plan or scheme.

In order for a defendant's offense level to be increased for uncharged possessions of firearms, the conduct must be "part of the same course of conduct or common scheme or plan" as the instant conviction. See U.S.S.G. § 2K2.1, App. Note 14(E)(ii) (citing U.S.S.G. § 1B1.3(a)(2)). In order for such conduct to be considered a common scheme or plan, the two instances must be "substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose, or similar modus operandi." U.S.S.G. § 1B1.3 App. Note 5(B)(i). In order for such conduct to be considered the same course of conduct, the two instances must be "sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses. Factors that are appropriate to the determination of whether offenses are sufficiently connected or related to each other to be considered as part of the same course of conduct include degree of similarity of the offenses, the regularity (repetitions) of the offenses, and the time interval between the offenses. When one of the above factors is absent, a stronger presence of at least one of the other factors is required." U.S.S.G. § 1B1.3 App. Note 5(B)(ii).

In this case, the court used firearm possessions in music videos that were posted on You Tube as relevant conduct to increase my offense level. The videos were posted on December 3, 2019, December 19, 2020, July 21, 2021, and June 23, 2022. The firearm possession in the offense of conviction occurred on September 6, 2022.

First, the court erred in using the music videos because there is no way to pinpoint when the videos were actually recorded. Just because the videos were posted on the aforementioned dates does not mean they were recorded on those dates. All of the videos could have been recorded on the same day and been posted in intervals for marketing purposes, which would be one incident and not an ongoing series of offenses as the court below described. This is significant because regularity and time interval between offenses are factors considered when determining if two or more offenses are part of the same course of conduct. Therefore, the possession of firearms in the videos and the possession in the offense of conviction could have been separated by an untold amount of time.

Second, the court erred by relying on United States v. Phillips, 516 F.3d 479 (6th Cir. 2008). In Phillips, the court held that two year time intervals in between illegal possessions of firearms could be considered relevant conduct because "repeated possession of firearms appear[ed] linked by a common purpose: self defense." Id., at 485. In the instant case, there is no common victim, accomplice, purpose or modus operandi between the uncharged conduct and the offense of conviction. The firearms in the music videos were possessed solely for entertainment purposes, while the firearm found in my home was possessed for self-defense, as I explained in my post-arrest interview with the ATF.

The fact that there is no way to prove exactly when the firearms in the videos were possessed negates any argument for regularity (repetitions) of the offenses, and leaves us completely in the dark as to the time interval in between offenses. That, in conjunction with the fact that the firearms in the videos were possessed for completely different purposes than the firearm in the instant offense clearly shows that the You Tube videos cannot justly be considered in the calculation of my sentencing guideline. The only factor left to support such a conclusion is

similarity of the offenses and in order to show, by a preponderance of evidence, that a stronger presence of similarity exist, something more than the fact that both offenses involved illegal possession of a firearm is necessary to overcome the lack of course of conduct, regularity, and temporal intervals in between offenses factors. See United States v. Hill, 79 F.3d 1477, 1484 (6th Cir. 1996) ("two offenses did not 'constitute a single course of conduct simply because they both involved drug distribution.' The court reasoned that describing the defendant's conduct 'at such a level of generality would eviscerate the evaluation of whether uncharged criminal activity is part of the same course of conduct or common scheme or plan as the offense of conviction.'" (quoting United States v. Maxwell, 34 F.3d 1006, 1011 (11th Cir. 1994)). This case simply does not meet the bar set by the various Circuit Courts of Appeals in the context of using uncharged conduct as relevant conduct and the usage of the videos to increase my offense level by eight levels was certainly erroneous.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael L. Moore

Date: 4/19/24