

NO. 24-\_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2024

MATIAS ZARATE

Petitioner,

UNITED STATES OF AMERICA,

Respondent,

---

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

---

PETITION FOR WRIT OF CERTIORARI

Bart E. Beals  
161 N. Clark, Suite 1700  
Chicago, Illinois 60601  
(312) 523-2001

---

QUESTION PRESENTED FOR REVIEW

- I.     Whether a sentence within the guidelines range is unreasonable when the defendant has already served more time on supervised release than originally sentenced?

## TABLE OF CONTENTS

QUESTIONS PRESENTED .....	i
TABLE OF AUTHORITIES .....	iii
OPINION BELOW .....	1
JURISDICTION .....	2
RELEVANT CONSTITUTIONAL PROVISION .....	2
STATEMENT OF THE CASE .....	3
REASONS FOR GRANTING THE WRIT .....	4
I. THE SEVENTH CIRCUIT COURT OF APPEAL'S DECISION WAS INCORRECT BECAUSE IT IGNORED MR. ZARATE'S CIRCUMSTANCES.....	4
CONCLUSION.....	7
APPENDICES	
Appendix A, Seventh Circuit Decision .....	1a

## TABLE OF AUTHORITIES

CASES	Page
<i>United States v. Booker</i> , 543 U.S. 220 (2005) .....	5
<i>United States v. Granderson</i> , 511 U.S. 39, 50, 114 S. Ct. 1259, 127 L. Ed. 2d 611 (1994) .....	5
<i>United States v. Aldeen</i> , 792 F.3d 247, 252 (2d Cir. 2015) .....	5
<i>United States v. Allgire</i> , 946 F.3d 365, 367 (7 <sup>th</sup> Cir. 2019) .....	5
<i>United States v. Dean</i> , 414 F.3d 725 (7 <sup>th</sup> Cir. 2005) .....	5
<i>United States v. Hollins</i> , 847 F.3d 535, 539 (7th Cir. 2017) .....	5
<i>United States v. Long Soldier</i> , 431 F.3d 1120, 1123 (8th Cir. 2005) .....	5
<i>United States v. Wallace</i> , 458 F.3d 606, 609 (7 <sup>th</sup> Cir. 2006) .....	4
<i>United States v. Wachowiak</i> , 496 F.3d 744, 748 (7 <sup>th</sup> Cir. 2007) .....	5
<i>United States v. Yankey</i> , 56 F.4th 554, 560 (7th Cir. 2023) .....	4
<i>United States v. Matias Zarate</i> , 2024 U.S. App. Lexis 4448 (7 <sup>th</sup> Cir. 2024) .....	4

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

MATIAS ZARATE

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

---

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

---

The Petitioner Matias Zarate respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit which was entered in the above-entitled case on February 27, 2024.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, entitled *United States v. Matias Zarate*, is reported at 2024 U.S. App. Lexis 4448 (7<sup>th</sup> Cir. 2024), and is attached hereto in the Appendix A.

JURISDICTION

On February 27, 2024, the United States Court of Appeals for the Seventh Circuit

affirmed the sentence of the district court. No petition for rehearing was sought.

Petitioner seeks review of the Seventh Circuit judgment in this Court pursuant to 28 U.S.C. § 1254 (1).

#### STATUTE INVOLVED

Title 18, United States Code, Section 3553, provides, in pertinent part:

(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--

Title 18, United States Code, Section 3583(e)(3), provides, in pertinent part:

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case;

#### **STATEMENT OF THE CASE**

On January 18, 2018, Mr. Zarate pleaded guilty to one count of Conspiracy to Transport Undocumented Aliens in the United States in the Southern District of Texas Federal Court. On May 9, 2018, Mr. Zarate was sentenced to twenty-four (24) months in custody and three (3) years of supervised release. He was placed on supervised release on July 20, 2019. He transferred his supervised release to the Central District of Illinois. On March 31, 2021, he was arrested for a warrant to violate his supervised release in the Central District of Illinois. On July 16, 2021 he was sentenced to eight (8) months in

custody for the violation. On February 24, 2023, a new petition to violate his supervised release was filed based on submitted a urine sample that tested positive for cocaine. At the time of the petition to violate Mr. Zarate's supervised release, he had already been on supervised release or in custody for over three years. He was sentenced to twenty-one (21) months in custody on June 9, 2023.

### REASONS FOR GRANTING THE WRIT

#### **THE SEVENTH CIRCUIT COURT OF APPEAL'S DECISION WAS INCORRECT BECAUSE IT IGNORED MR. ZARATE'S CIRCUMSTANCES**

##### 1. The District Court's Sentence Was Unreasonable Under The Circumstances

The Appellate Court reasoned that since "Zarate identifies no authority requiring a court to credit his prior reimprisonment and supervision," Mr. Zarate cannot overcome the presumption of reasonableness." *United States v. Matias Zarate*, 2024 U.S. App. Lexis 4448 (7<sup>th</sup> Cir. 2024). The standard of review in the instant case is unreasonableness. *United States v. Yankey*, 56 F.4th 554, 560 (7th Cir. 2023).

The defense challenged the reasonableness under the 3553 factors in appeal. A reasonableness review has two prongs: (1) is it reasonable in light of the 3553 factors, and (2) will the sentence "ultimately be deemed a reasonable one." *United States v. Wallace*, 458 F.3d 606, 609 (7<sup>th</sup> Cir. 2006). A sentence within the guidelines range on appeal is presumed to be reasonable. *United States v. Yankey*, 56 F.4th 554, 560 (7th Cir. 2023). "[A] judge must consider the

Guidelines policy statements and the §3553(a) sentencing factors made applicable to revocation by §3583(e)." *Id* at 559.

The district court was required to follow the dictates of 18 U.S.C. § 3553(a). *United States v. Dean*, 414 F.3d 725, 728 (7<sup>th</sup> Cir. 2005). Section 3553(a) delineates seven (7) factors. While district courts must in all cases consider the guideline range, the guidelines do not subordinate the other factors in 3553(a). *United States v. Booker*, 543 U.S. 220, 245-46 (2005). “[T]he sentencing judge has considerable discretion to individualize the sentence to the offense and offender as long as the judge's reasoning is consistent with §3553(a).” *United States v. Wachowiak*, 496 F.3d 744, 748 (7<sup>th</sup> Cir. 2007). Although reasonableness of a sentence is reviewed for abuse of discretion, the district court does abuse its discretion when it fails to consider a relevant factor(s) that should have received significant weight. *United States v. Long Soldier*, 431 F.3d 1120, 1123 (8th Cir.2005).

“A district court must fashion a term of reimprisonment upon revocation of supervised release according to the factors outlined in 18 U.S.C. § 3553(a), as they apply to revocations, along with any relevant policy statements in the Sentencing Guidelines.” *United States v. Allgire*, 946 F.3d 365, 367 (7<sup>th</sup> Cir. 2019)(quoting *United States v. Hollins*, 847 F.3d 535, 539 (7th Cir. 2017)). “[S]upervision is not, fundamentally, part of the punishment,” *United States v. Aldeen*, 792 F.3d 247, 252 (2d Cir. 2015). Supervision is not meant to be a punishment in “lieu of incarceration.” *United States v. Granderson*, 511 U.S. 39, 50, 114 S. Ct. 1259, 127 L. Ed. 2d 611 (1994).

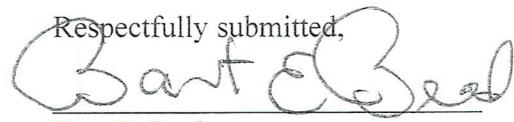
The Circumstance Surrounding the Length of Supervision in Combination with the Length of Time Mr. Zarate Spent in Custody Dictated a Lesser Sentence

Mr. Zarate was originally sentenced to three (3) years of supervised release in 2019. The sentence was unreasonable based on the length of the sentence in light of the basis for the revocation, the characteristics of Mr. Zarate, his family situation, and the length of time he had already spent on supervised release. Mr. Zarate was originally sentenced to three (3) years of supervised release in 2019. A year before his original term of supervised release was set to expire, he was sentenced to eight (8) months incarceration pursuant to a petition to violate his supervised release based in part on a nonviolent drug possession issue (positive urine sample). Over a year after Mr. Zarate was released from custody, he was again sentenced to incarceration based on another petition to violate his supervised released. He was sentenced in 2023, four years after he had been originally placed on a term of three years supervised release. The district court was not required to give Mr. Zarate credit for time in custody based on a previous violation of supervised release, the district court should have given some weight to the fact that Mr. Zarate had already served more than the three years on supervised release by the time of the revocation hearing.

Mr. Zarate suffered hardships to him and his family due to his absence based on being detained prior to his revocation hearing. The main reason for Mr. Zarate's violation was a health issue of substance abuse. The district court should have given more weight to those factors in fashioning the sentence.

## CONCLUSION

WHEREFORE, for the reasons stated above, Petitioner Matias Zarate respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States of Appeals for the Seventh Circuit entered on February 27, 2024.

Respectfully submitted,  
  
Bart E. Beals  
Petitioner for Matias Zarate

Bart E. Beals  
161 N. Clark, Suite 1700  
Chicago, Illinois 60601  
(312) 324-4892  
bealslaw@gmail.com

---

No. 24- \_\_\_\_\_

---

IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM,

MATIAS ZARATE

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondents.

**PROOF OF SERVICE**

I, Bart E. Beals, do swear or declare that on this date, May 11, 2024 as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The name and addresses of those served are as follows:

Clerk	Solicitor General of the United States
Supreme Court of the United States	Room 5614
Washington, D.C. 20543	10 <sup>th</sup> and Constitution Avenue
	Washington, D.C. 20530

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 11, 2024

Bart Beals  
(Signature)

## APPENDICE

Opinion Below

Appendix A

*United States v. Matias Zarate*, is reported at 2024 U.S. App. Lexis 4448 (7<sup>th</sup> Cir. 2024) ..... 1a

## United States v. Zarate

United States Court of Appeals for the Seventh Circuit

January 30, 2024, Argued; February 27, 2024, Decided

No. 23-2182

### **Reporter**

2024 U.S. App. LEXIS 4448 \*; 2024 WL 808807

UNITED STATES OF AMERICA, Plaintiff-  
Appellee, v. MATIAS ZARATE, Defendant-  
Appellant.

**Notice:** PLEASE REFER TO *FEDERAL RULES  
OF APPELLATE PROCEDURE RULE 32.1*  
GOVERNING THE CITATION TO  
UNPUBLISHED OPINIONS.

**Prior History:** [\*1] Appeal from the United States  
District Court for the Central District of Illinois.  
No. 20-cr-20063-001. Colin S. Bruce, Judge.

**Disposition:** AFFIRMED.

### **Case Summary**

#### **Overview**

**HOLDINGS:** [1]-Defendant's sentence of 21 months in prison after district court revoked his release for second time was proper and not plainly unreasonable because defendant could not overcome the presumption of reasonableness and he identified no authority requiring a court to credit his prior reimprisonment and supervision pursuant to *18 U.S.C.S. § 3583(e)(3)* and *(h)*. The district court judge reasonably concluded that defendant's previous supervised release—or rather his repeated violations of the conditions—cut against further lenience; [2]-As to defendant's argument that revocation sentence was unreasonable as his drug use had been nonviolent, but as the judge observed, his drug use broke the law, could be dangerous, and contributed to his difficulties with overall

compliance. The district court judge amply considered policy statements and *18 U.S.C.S. § 3553(a)*.

#### **Outcome**

Judgment affirmed.

### **LexisNexis® Headnotes**

Criminal Law &  
Procedure > Sentencing > Imposition of  
Sentence > Factors

Criminal Law &  
Procedure > Sentencing > Supervised Release

Criminal Law &  
Procedure > Sentencing > Appeals > Proportionality & Reasonableness Review

Criminal Law &  
Procedure > ... > Probation > Revocation > Standards

#### ***HNI*[] Imposition of Sentence, Factors**

The appellate courts review of a revocation sentence is highly deferential; the appellate courts will uphold the new prison term unless it is plainly unreasonable. When revoking supervised release, a judge must consider the Sentencing Guidelines policy statements and the *18 U.S.C.S. § 3553(a)* sentencing factors made applicable to revocation by

18 U.S.C.S. § 3583(e). A within-range sentence is presumptively reasonable.

Criminal Law & Procedure > ... > Probation > Revocation > Proceedings

Criminal Law & Procedure > Sentencing > Supervised Release

## HN2 Revocation, Proceedings

In the context of supervised release, 18 U.S.C.S. § 3583(e)(3) and (h) authorize reimprisonment and a renewed period of supervised release after the first revocation and further reimprisonment upon the second revocation, without credit for the previous revocation sentence or previous periods of release.

**Counsel:** For UNITED STATES OF AMERICA, Plaintiff - Appellee: Katherine Virginia Boyle, Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Urbana, IL.

For MATIAS ZARATE, Defendant - Appellant: Bart E. Beals, Attorney, BEALS LAW FIRM, Chicago, IL.

**Judges:** Before DIANE S. SYKES, Chief Judge. THOMAS L. KIRSCH II, Circuit Judge. DORIS L. PRYOR, Circuit Judge.

## Opinion

### ORDER

While on federal supervised release, Matias Zarate used cocaine. The district judge revoked his release (for the second time) and imposed a sentence of 21 months in prison, the bottom of the recommended Sentencing Guidelines range. Because the judge adequately explained the reasons for this revocation and prison term, we affirm.

Zarate pleaded guilty to conspiring to transport

persons who are unlawfully in the United States, § U.S.C. § 1324(a)(1)(A)(ii), (v)(D). A judge in the Southern District of Texas sentenced Zarate to 24 months in prison and 36 months of supervised release. In 2019 Zarate began this first round of supervised release, and his supervision was transferred to the Central District of Illinois.

But Zarate struggled to meet the conditions [\*2] of supervision. He tested positive for cocaine and was referred to counseling; he was arrested (and later convicted in Illinois court) for misdemeanor domestic battery, leading to a modification of the terms of release to include 60 days of home confinement; and he then admitted to using more drugs and alcohol, and so agreed to 90 more days of home confinement.

Those modifications did not end Zarate's troubles. When faced with a first revocation petition, he admitted to failing to participate in substance-abuse testing and treatment, for which the judge imposed an 8-month prison term followed by 28 months of additional supervised release. *See 18 U.S.C. § 3583(e)(3)* (authorizing reimprisonment upon revocation); *id. § 3583(h)* (authorizing a new supervision term after reimprisonment).

Then during the renewed supervision, Zarate stumbled again, leading to a second revocation and reimprisonment. This petition to revoke followed Zarate's arrest for trespassing and damaging property; a related state criminal case is pending. Zarate also admitted to drinking alcohol, and he twice tested positive for cocaine.

At Zarate's second revocation hearing, he admitted to using cocaine twice, and the government dropped the other grounds [\*3] for revocation. The judge then calculated the advisory reimprisonment range under the policy statements in the Sentencing Guidelines. Zarate's criminal history category was VI (his prior offenses included, among other things, robbery, kidnapping, and several burglaries). Zarate's conceded Grade B violation resulted in an advisory range of 21 to 27 months of reimprisonment subject to a 24-month statutory

maximum under § 3583(e)(3).

The judge imposed a revocation sentence of 21 months in prison and no further supervision, noting Zarate's extensive criminal history and demonstrated lack of rehabilitation. Zarate had been given multiple chances to conform his conduct to the terms of supervision, to no avail. Although the judge recognized that Zarate appeared to suffer from drug and alcohol problems, he had shown little success addressing them on release. Finally, the judge understood that Zarate had already served an earlier prison sentence upon revocation and spent several months in jail awaiting this revocation hearing. Still, the judge explained, he did not see any commitment by Zarate to tackle his substance abuse; further supervision would therefore be futile.

Zarate now contends that the 21-month [\*4] revocation sentence was plainly unreasonable because (1) his time already spent on supervised release exceeded his original term of three years and (2) his violation was nonviolent. HN1[↑] Our review of a revocation sentence is highly deferential; we will uphold the new prison term unless it is plainly unreasonable. United States v. Yankey, 56 F.4th 554, 560 (7th Cir. 2023). When revoking supervised release, a judge must consider the Guidelines policy statements and the § 3553(a) sentencing factors made applicable to revocation by § 3583(e). Id. at 559. A within-range sentence is presumptively reasonable. Id. at 560.

Zarate cannot overcome the presumption of reasonableness. He first contends that his sentence should be lower because he had already served the 36-month period of supervised release originally imposed for conspiring to transport persons illegally into the United States. HN2[↑] But § 3583(e)(3) and (h) authorize reimprisonment and a renewed period of supervised release after the first revocation and further reimprisonment upon the second revocation, without credit for the previous revocation sentence or previous periods of release. And Zarate identifies no authority requiring a court

to credit his prior reimprisonment and supervision. See United States v. Perry, 743 F.3d 238, 242 (7th Cir. 2014) (declining to subtract prior prison terms following revocation [\*5] from the statutory maximum for subsequent revocations). Indeed, the judge reasonably concluded that Zarate's previous supervised release—or rather his repeated violations of the conditions—cut against further lenience. See United States v. Clay, 752 F.3d 1106, 1109 (7th Cir. 2014) (concluding that a within-range revocation sentence following "repeated, flagrant violations" of release conditions was reasonable).

Zarate next asserts that the revocation sentence is unreasonable because his drug use has been nonviolent. But as the judge observed, drug use breaks the law, can be dangerous, and contributed to Zarate's difficulties with overall compliance. Zarate's reimprisonment term of 21 months lies at the bottom of the range recommended by the policy statements. And the judge appropriately stressed Zarate's extensive criminal history and continued noncompliance with the terms of his supervised release. This reflects ample consideration of the policy statements and § 3553(a) factors. See Yankey, 56 F.4th at 560 (requiring only a limited explanation of a revocation term). The nonviolent nature of Zarate's violation does not entitle him to a below-range sentence.

AFFIRMED

---

End of Document