

SUPREME COURT
OF THE
UNITED STATES OF AMERICA
CASE NO. _____

COREY GOINGS

PETITIONER

V.

PETITION FOR WRIT OF CERTIORARI

UNITED STATES OF AMERICA

DEFENDANT

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT IN COURT OF APPEALS
CASE NUMBER 22-3263**

Respectfully submitted,

s/ Jeffrey C. Rager

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QUESTIONS PRESENTED FOR REVIEW

- I. Whether the Plea Agreement's general waiver of appeal rights included a waiver of appealing a sentence based on the impermissible factor of race.

LIST OF ALL PARTIES TO THE PROCEEDING

PETITIONER/APPELLANT/DEFENDANT – COREY GOINGS

RESPONDENT/APPELLEE/PLAINTIFF – UNITED STATES OF AMERICA

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OPINIONS BELOW

The Defendant's Appeal to the Sixth Circuit was taken from a Judgment entered against him in his criminal case whereby the District Court imposed a sentence of 60 months and a fine of \$40,000.00 on March 18, 2022. The Judgment of the District Court is attached hereto in Appendix A. A timely appeal was taken from the Judgment and Sentence to the Sixth Circuit Court of Appeals. On May 3, 2024, the Sixth Circuit Court of Appeals dismissed Mr. Going's appeal based upon an appeal waiver found within the written Plea Agreement between the parties. Said Opinion is attached hereto in Appendix B.

STATEMENT OF JURISDICTION

The basis of the subject matter jurisdiction of the United States District Court for the Northern District of Ohio was 21 U.S.C. §846, §841 and 18 U.S.C. §922 for which the Defendant, Cory Goings, was initially indicted on May 15, 2019. A Final Judgment and Sentence was rendered by the District Court on March 18, 2022. The Defendant filed his Notice of Appeal on March 22, 2022. The basis for the jurisdiction of the Court of Appeals was Fed. R. App. P. 3 and 28 U.S.C. §1291. The jurisdiction of Supreme Court of the United States is invoked pursuant to 28 U.S.C. §1254(1) and SCR 10 and 13(3). The United States of America is a party and the Solicitor General of the United States has been served with this Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment 5 to U.S. Constitution: "...nor be deprived of life, liberty, or property, without due process of law"

2. Federal Criminal Rule of Procedure, Rule 11(b)(1)(N):

(b) Considering and Accepting a Guilty or Nolo Contendere Plea. (1) *Advising and Questioning the Defendant.* Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence;

3. United States Sentencing Guideline §5H1.10.

RACE, SEX, NATIONAL ORIGIN, CREED, RELIGION, AND SOCIO-ECONOMIC STATUS (POLICY STATEMENT)

These factors are not relevant in the determination of a sentence.

STATEMENT OF THE CASE

Mr. Goings was indicted for drug charges and for possession of a firearm by a prohibited person. The case involved several co-defendants and Mr. Goings was detained in pretrial detention for two years before entering a plea of guilty to one count of possession with intent to distribute approximately 996 grams (approximately 1 kilogram) of powder cocaine. Plea Agreement R.E. 708, ID#4894. In relation to the waiver of appeal rights and post-conviction attacks, the Plea Agreement contained the following provision:

21. Defendant acknowledges having been advised by counsel of his rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 USC. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255. Defendant expressly and voluntarily waives those rights, except as specifically reserved below. Defendant reserves the right to appeal: (a) any punishment in excess of the statutory maximum; (b) any sentence to the extent it exceeds the maximum of the Guidelines sentencing range, using the Criminal History Category found applicable by the Court; or (c) the Court's determination of Defendant's Criminal History Category. Nothing in this paragraph shall act as a bar to Defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack with respect to claims of ineffective assistance of counsel or prosecutorial misconduct.

Plea Agreement R.E. 708, ID# 4893.

After Mr. Goings pled guilty to the one count of possession with intent to distribute cocaine, he was not sentenced until 10 months later. After sentencing, Mr. Goings filed a Notice of Appeal. As part of the appeal process, the United States filed a Motion to Dismiss the appeal based upon the above waiver. *See* Court of Appeals Docket Entry 27. Thereafter, the Court of Appeals ordered that United States' Motion to

Dismiss was best left to the merit panel of the Court after briefing. *See* Court of Appeals Order Docket Entry 30.

The part of Mr. Going's argument concerning whether his appeal should be dismissed was that his sentence was based upon the District Court invoking his race as an African American during sentencing. During Sentencing, the District Court made the following statement as a basis for Mr. Going's sentence:

THE COURT: But let me say one final thing. I realize, and I'm giving you credit in my sentencing decision and otherwise, the positive work you did in your community. But the simple fact that you were about to undercut that work – in fact, the mere acquisition of that cocaine undercut it entirely.

But you know better than I. You spoke about your incredibly brutal and difficult upbringing. And the fact that you got a college degree in itself is remarkable and a remarkable commentary.

But you know perhaps better than anybody what cocaine has done primarily to the African-American community and what heroin and fentanyl are doing today. It was a betrayal of your own community for you to purchase that, and, of course, ultimately to see to it that it got distributed probably, not exclusively perhaps, but substantially, to feed the addictions of those in your own community whose lives that addiction has ruined. And you know probably as well as anybody that addiction doesn't have one victim. Its victims multiply and members of the victim's family, the victims of the crimes that the addict/victims have to commit, often predominantly in the black community, to purchase that cocaine to feed their addiction, the guns that so many people get because they think they need protection, and the homicides, already 70 this year in Toledo alone – the highest rate ever – and it all goes back in my view, not entirely, but to a vast degree, to the drug plague that has been infesting the black community. And for whatever reason, whatever justification, the fact is that nothing can justify what you intended to do, which was to feed that addiction and help that plague spread.

And that's the basis for my sentence. It is to deter you in the future, and to acknowledge the social harm that you did and to which you contributed, and also to deter the public.

Sentencing Transcript R.E. 989 ID#8498-99.

After the case was fully briefed, the Sixth Circuit Court of Appeals dismissed the appeal by enforcing the waiver. The Court of Appeals found the above statements by the District Court were only in response to prior references to race made by Mr. Goings during the District Court proceedings and that imposition of both Mr. Goings sentence and the substantial fine was not based on the impermissible factor of race. *See* Order Dismissing Appeal Record Entry 30 and attached as Exhibit B to the Appendix herein.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

Corey Goings' case presents an important question concerning Federal Sentencing law at both the District and Circuit Court levels that reach beyond just his case. The issue revolves around whether the clear statement of the District Court during sentencing that the District Court based the defendant's sentence, in part, being African American and his community. Although set forth above, the District Court stated that Mr. Goings knew better than anyone what cocaine had done to the African Community in the past and what heroin and fentanyl are doing to the black community today. The Court then anecdotally stated that much of the violence in Toledo, Ohio "all goes back in my view, not entirely, but to a vast degree, to the drug plague that has been infesting the black community." Sentencing Transcript R.E. 989 ID#8498-99. When ninety-seven (97%) percent of all Federal Convictions are resolved by plea, the scope of an appellate waiver is exceptionally important, especially when the issue is whether a waiver is enforceable against an appeal of the sentence imposed on the impermissible factor of race. *See Missouri v. Frye*, 566 U.S. 134 (2012).

I. THE PLEA AGREEMENT'S WAIVER OF APPEAL RIGHTS
SHOULD NOT APPLY TO A SENTENCE BASED ON THE
IMPERMISSIBLE FACTOR OF RACE

“If a defendant validly waives his right to appeal pursuant to a plea agreement, this court is bound by the agreement, and will review a sentence only in limited circumstances, such as where the sentence imposed is based on racial discrimination or is in excess of the statutory maximum. *See United States v Ferguson* 669 F.3d 756, 764 (6th Cir. 2012) (citing to *United States v. Caruthers*, 458 F.3d 459, 471 & n. 5 (6th Cir.2006). U.S.S.G. §5H1.10 is very succinct and clear that race is “not relevant in the determination of a sentence.” U.S.S.G. §5H1.10.

The most salient Sixth Circuit case on this issue is *United States v. Albaadani*, 863 F.3d 496, 504 (6th Cir. 2017), this Court addressed whether race could be a factor in sentencing. The *Albaadani*, Court held:

A defendant's race or nationality may play no adverse role in the administration of justice, including at sentencing." Kaba , 480 F.3d at 156 (quoting *United States v. Leung* , 40 F.3d 577, 586 (2d Cir. 1994)); Sufi , 456 Fed.Appx. at 530 ; U.S. Sentencing Guidelines Manual § 5H1.10 (stating that certain factors, including national origin, "are not relevant in the determination of a sentence"). Thus, "although '[r]eference to national origin and naturalized status is permissible' during sentencing, it is allowed only 'so long as it does not become the basis for determining the sentence.' " Kaba, 480 F.3d at 156 (quoting *United States v. Jacobson* , 15 F.3d 19, 23 (2d Cir. 1994)).

Albaadani at 504. In the case at bar, there is no question that the Court statements concerning Mr. Goings and the black community were a part of its determination for its sentence. Right after making the race statements and inferences, it went on to say, “And that’s the basis for my sentence.” Sentencing Transcript R.E. 989, ID#8499.

Many of the Circuit cases dealing with this issue have cited to the Second Circuit case of *United States v. Leung*, 40 F.3d 577 (2nd Cir. 1994) that rejected “the view that a

defendant's ethnicity or nationality may legitimately be taken into account in selecting a particular sentence to achieve the general goal of deterrence. A defendant's race or nationality may play no adverse role in the administration of justice, including at sentencing.” *United States v. Leung*, 40 F.3d 577, 586 (2nd Cir. 1994) (citing to *United States v. Edwardo–Franco*, 885 F.2d 1002, 1005–06 (2d Cir.1989); *United States v. Borrero–Isaza*, 887 F.2d 1349, 1355–56 (9th Cir.1989); *see also Gomez*, 797 F.2d at 419 (sentencing more harshly solely because of nationality or alien status “obviously would be unconstitutional”)). In *Leung*, the District Court’s comments were along the lines that America had enough home-grown criminals and did not need to import more criminals from Asia. The District Court wanted the message to heard by those in the Asian community. Since this language created the appearance of race being used as a basis for the sentence, remand of the sentence was required. *See Leung* at 586-7.

However, in the case at bar, Mr. Goings’ appeal was dismissed based upon his appeal waiver even though the District Court clearly referenced his race and the local African American community of Toledo. Therefore, Mr. Goings requests this Court grant his Petition for Writ of Certiorari to determine whether his appellate waiver included waving the Court’s sentence that was imposed in part because of his race. Furthermore, the District Court even stated that it was part of the basis for Mr. Goings’ sentence. Is it constitutionally permissible for a sentencing Court to clearly resort to race even when the Defendant argues positive impact on his community, refers to statistics of African American incarceration rates, or that Black people are arrested more frequently than Hispanics? Furthermore, should a Circuit Court dismiss such an appeal based on a general waiver of appeal rights?

CONCLUSION

The heart of Mr. Goings' Petition is that his appeal of the impermissible racial basis for his sentence should not have been dismissed. Since the vast, vast majority of criminal cases are resolved by plea, the scope of an appellate waiver is of exceptional importance when the issue that has been deemed waived is one based on race. Therefore, Mr. Going's respectfully requests that his Petition for Writ of Certiorari be granted.

Respectfully Submitted,

s/ Jeffrey C. Rager

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CERTIFICATE OF SERVICE

I, Jeffrey C. Rager, attorney for the petitioner, Corey Goings, hereby certify that the original and ten copies of this Petition for Writ of Certiorari were mailed to the Office of the Clerk, Supreme Court of the United States, One 1st Street NE Washington, DC 20543; and that a true copy of the foregoing Petition was served by mail with first-class postage prepaid, upon the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; Alissa Michelle Sterling, United States Attorney's Office for Northern Ohio, Four Seagate, Suite 308, Toledo, OH 43604; Corey Goings, Inmate No. 66494-060, 1448 Kenyon Drive, Toledo, OH 43614 by first class mail and direct email, on this the 22nd day of May, 2024;

s/ Jeffrey C. Rager

Jeffrey C. Rager

APPENDIX A

APPENDIX A: Judgment of the District Court, United States v. Goings, Case No. 3:19-CR-00294-7 entered on March 18, 2022, at District Court Docket Entry 938.

APPENDIX B

APPENDIX B: Opinion of the Court of Appeal for the Sixth Circuit dismissing based on appeal waiver, United States of America v. Goings, Case No. 22-3263 entered on May 3, 2022, at Docket Entry 37-2.