No. 24-_____

IN THE
SUPREME COURT OF THE UNITED STATES

CARNEY TURNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Whether, in federal criminal cases where the district court has imposed a discretionary life sentence, the courts of appeal should employ a *de novo* standard of review.

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Petition for a Writ of Certiorari

Carney Turner petitions the Court for a writ of certiorari to review the United States Court of Appeals for the Eighth Circuit's February 29, 2024, opinion and judgment.

Introduction

In federal court, life sentences are rare. Discretionary life sentences, *i.e.*, life sentences that are not required by statute, are even rarer. Discretionary life sentences after guilty pleas are so rare as to warrant unique scrutiny by appellate courts.

After *United States v. Booker,* the courts of appeal have used an abuse-of-discretion standard to review federal criminal sentences. In his *Booker* dissent, Justice Antonin Scalia speculated that the majority's excision of the *de novo* standard of review would lead to a number of problems. In some fashion or other, most of Justice Scalia's predictions have come true. In no

area have the problems of abuse-of-discretion review been more pronounced than in discretionary life sentences.

Because the abuse-of-discretion standard is not mandated by statute and because this standard of review has led to many of the problems predicted by Justice Scalia, this Court should adopt a *de novo* standard of review for the courts of appeal in discretionary-life-sentence cases.

Opinions Below

The decision of the United States Court of Appeals affirming Turner's conviction and sentence is published. *United States v. Turner,* 94 F.4th 739 (8th Cir. 2024). A copy of the decision is included in the appendix to this Petition. (Pet. App. 1A-8A).

Jurisdiction

The judgment of the Eighth Circuit Court of Appeals was entered on February 29, 2024. Mr. Turner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a writ of certiorari within ninety days of the Eighth Circuit's judgment. *See* SUP. CT. R. 13(1)

Statutory Provisions Involved

18 U.S.C. § 3553(a)

> (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—

(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. § 3742(e)

(e) Consideration.—Upon review of the record, the court of appeals shall determine whether the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is outside the applicable guideline range, and

(A) the district court failed to provide the written statement of reasons required by section 3553(c);

(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2); or

(ii) is not authorized under section 3553(b); or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States….

Statement of the Case

On May 25, 2022, Appellant Carney Turner pled guilty without a plea agreement to all six counts of the superseding indictment. The superseding indictment alleged: one count of conspiracy to engage in sex-trafficking in violation

of 18 U.S.C. § 1594(c), three counts of sex trafficking a minor in violation of 18 U.S.C. § 1591(a), and two counts of coercion and enticement of a minor in violation of 18 U.S.C. § 2422(b). "He admitted that [a codefendant] and three minor victims had engaged in prostitution under his direction and for his financial benefit[;]" that he had "used text and electronic messaging to recruit two of the minor victims to his prostitution ring[;]" and that he had "posted online advertisements that included provocative photos of the girls, arranged commercial sex sales, and transported the girls to the hotels he booked for commercial sex acts." 94 F.4th at 741.

At sentencing, the statutory range of penalties was a minimum of ten years up to a maximum of life imprisonment. Noting that one of the guideline enhancements did seem to be "overkill," the district court concluded that Carney Turner's guideline range was life.

Turner argued against various guideline enhancements and the lack of empirical data supporting the applicable guideline. But mostly Turner focused upon his own victimization as a child, the economic hardships attendant to being recently released from prison, his attempts to find legitimate employment, and the short window of time (less than a year) that he had supported himself through prostitution. He presented evidence that he had been largely ignorant of the victims' ages and that he had worked to eliminate underaged girls from the ranks. He pointed out comparable cases within the district and noted that those sentences had been about 20 years. Lastly, Turner pointed out the rarity of a defendant

pleading guilty to a non-homicide case and receiving a discretionary life sentence. Turner, a defendant in Criminal History Category IV (of six categories), asked the district court to sentence him to 200 months.

Instead, the district court sentenced Carney Turner to life imprisonment, the statutory maximum, on all six counts (to run concurrently) and a lifetime of supervised release. The district court did note that it had "looked at all of the [§] 3553(a) factors," but then immediately singled out one for extra weight: "first and *foremost*, the nature and circumstances of the offense." The district court noted that it had "looked at [Turner's] history and characteristics[,]" though it did not say which ones. The district court noted that it "had looked at…avoiding unwarranted sentencing disparities, and certainly have taken that into consideration."

The judgment was issued on November 14, 2022.

On appeal, Carney Turner asked the Eighth Circuit to review the substantive reasonableness of his life sentence. At oral argument, Mr. Turner's counsel noted that "life sentences are different." Oral Argument (recorded), *United States v. Turner,* Case No. 22-3462, November 14, 2022, at 1:40. For the reason, he "urg[ed] the Court not to put Mr. Turner's case in the [usual] substantive-reasonableness pile of cases." *Id.* He also noted that "[g]iven the fact that there is such a limited universe of life sentences in federal court, it is possible to make almost case-by-case comparisons between Mr. Turner's case – the facts of it, the crimes to which he pled guilty, etc. – and the other life-sentence cases." *Id.* at 3:00.

The Decision of the Court of Appeals

The Eighth Circuit reviewed the sentence for an abuse of discretion. *United States v. Turner,* 94 F.4th at 746. Using this highly deferential standard of review, the Eighth Circuit concluded that Turner's life sentence was not substantively unreasonable. *Id.*

Reasons for Granting the Petition

I. This Court should reexamine *Booker*'s universal abuse-of-discretion appellate-review standard for discretionary life sentences.

Regarding a limited class of cases – discretionary life sentences – Carney Turner asks this Court to reconsider its inference that appellate courts should review the substantive reasonableness of these sentences only for an abuse of discretion. Discretionary life sentences should be reviewed *de novo. De novo* review of these sentences would recognize both the gravity and rarity of being sentenced to die in prison.

A. The adoption of the abuse-of-discretion standard was by implication only.

In *United States v. Booker,* 543 U.S. 220, 262 (2005), this Court "replaced the *de novo* standard of review required by 18 U.S.C. § 3742(e) with an abuse-of-discretion standard that [the Court] called reasonableness review." *Rita v. United States,* 551 U.S. 338, 361 (2007) (Stevens, J. concurring) (*Booker* quotations omitted).

In *Booker,* after the Court decided that the mandatory-sentencing-guidelines scheme violated the Sixth Amendment, it turned to the remedy. *See* 543 U.S. at 244. The Court had to reconcile its opinion with two statutory provisions: 18 U.S.C. § 3553(b)(1), which made the guidelines mandatory, and 18 U.S.C. § 3742(e), which instructed courts of appeal to review *de novo* the application of the mandatory guidelines to the facts. *Id.* at 245. Ultimately, the *Booker* remedial majority elected to excise these provisions. *Id.* at 260.

Regarding the excision of § 3742(e) specifically, the *Booker* Court concluded that removal was not a problem at all "because, as we have previously held, a statute that does not *explicitly* set for a standard of review may nonetheless do so *implicitly*." *Id.* at 260 (*citing Pierce v. Underwood*, 487 U.S. 552, 558-60 (1988); *Cooter & Gell v. Hartmarx Corp.* 496 U.S. 384, 403-405 (1990); and *Koon v. United States*, 518 U.S. 81, 99 (1996)). Using an older (pre-PROTECT Act) version of 18 U.S.C. § 3742(e), which mentioned "reasonableness," the *Booker* Court concluded that the post-excision remnants of § 3742(e) implied a return to an abuse-of-discretion standard. *Id.* at 261.

The remedial majority's inference was not universally appreciated.

Justice Stevens, who had authored the merits majority in *Booker,* dissented from the remedial majority. *See* 543 U.S. at 271-303 (Stevens, J. dissenting in part). Justice Stevens's dissent focused primarily upon Congress's intent in creating the

mandatory guidelines regime (through § 3553(b)) and how the remedial majority had exceeded its authority by enacting a discretionary system. *Id.*

Justice Scalia's dissent, however, went a step further, taking pains to imagine the sentencing world that these changes would bring. Justice Scalia first noted that "[o]nly in Wonderland" could the Court excise an explicitly stated standard of review and then infer a different "implicit" standard of review. 543 U.S. at 309 (Scalia, J. dissenting in part). Justice Scalia predicted a bevy of real-world problems with this new regime. Justice Scalia first speculated that "a court of appeals might handle the new workload by approving virtually any sentence within the statutory range that the sentencing court imposes, so long as the district court goes through the appropriate formalities, such as expressing his consideration of and disagreement with the Guidelines sentence." *Id.* at 312. Justice Scalia anticipated that "'unreasonableness' review will produce a discordant symphony of different standards, varying from court to court and judge to judge, giving lie to the remedial majority's sanguine claim that 'no feature' of its avant-garde Guidelines system will 'ten[d] to hinder' the avoidance of 'excessive sentencing disparities.'" *Id.* Justice Scalia concluded his dissent by asking:

> Will appellate review for 'unreasonableness' preserve *de facto* mandatory Guidelines by discouraging district courts from sentencing outside Guidelines ranges? Will it simply add another layer of unfettered judicial discretion to the sentencing process? Or will it be a mere formality, used by busy appellate judges only to ensure that busy district judges say all the right things when they explain how they have exercised their newly restored discretion?

Id. at 313.

To be sure, Justice Scalia's criticisms of the remedial majority's excision of § 3742(e) sprung largely from his appreciation of historically *limited* appellate review of sentences. *Id.* at 307-308. Nonetheless, Justice Scalia's concerns about the new standard of review have been born out, particularly in the imposition of discretionary life sentences.

B. The abuse-of-discretion standard has been applied unevenly.

Since *Booker,* the abuse-of-discretion standard is oft-cited to the detriment of criminal defendants and, at times, ignored to the benefit of the government.

Data from the U.S. Sentencing Commission reveals that in Fiscal Year 2023, 2662 original sentences were appealed by the defendant and 407 sentences, or 15.3%, were reversed or remanded. U.S. Sentencing Commission, 2023 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2023 (last accessed on May 28, 2024) at Table A-2. Of these 407 sentences, only 363 related to "reasonableness issues." *Id.* at Table A-4. In that same time frame, the United States appealed 23 original sentences with 16 reversed or remanded, a 69.5% success rate. *Id.* at Table A-3. In Fiscal Year 2023, only four original sentences were reversed or remanded based upon substantive (or "general") unreasonableness. *Id.* at Table A-6.

Such disparities in appellate success have been consistent for a decade, with the government's success rate in challenging sentences outpacing the success rate of individual defendants:

FY	Individual appeal	Government appeal
FY 2022	15.8 %[1]	63 %[2]
FY 2021	16.8 %[3]	96.9 %[4]
FY 2020	14.1 %[5]	89.6 %[6]
FY 2019	15.6 %[7]	87.1 %[8]
FY 2018	14.9 %[9]	76 %[10]

1 U.S. Sentencing Commission, 2022 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2022 (last accessed on May 28, 2024) at Table A-2.
2 *Id.* at Table A-3.
3 U.S. Sentencing Commission, 2021 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2021 (last accessed on May 28, 2024) at Table A-2.
4 *Id.* at Table A-3.
5 U.S. Sentencing Commission, 2020 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2020 (last accessed on May 28, 2024) at Table A-2.
6 *Id.* at Table A-3.
7 U.S. Sentencing Commission, 2019 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2019 (last accessed on May 28, 2024) at Table A-2.
8 *Id.* at Table A-3.
9 U.S. Sentencing Commission, 2018 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2018 (last accessed on May 28, 2024) at Table A-2.
10 *Id.* at Table A-3.

FY 2017	15.9 %[11]	81 %[12]
FY 2016	16.5 %[13]	71.4 %[14]
FY 2015	15.4 %[15]	81.8 %[16]
FY 2014	13.4 %[17]	76.8 %[18]

While the Sentencing Commission's data does not reveal the "victor" in its data on substantive-reasonableness reversals and remands, the numbers are consistently small: FY 2022: 5;[19] FY 2021: 14;[20] FY 2020: 8;[21] FY 2019: 6;[22] FY

11 U.S. Sentencing Commission, 2017 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2017 (last accessed on May 28, 2024) at Table 56.
12 *Id.* at Table 56A.
13 U.S. Sentencing Commission, 2016 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2016 (last accessed on May 28, 2024) at Table 56.
14 *Id.* at Table 56A.
15 U.S. Sentencing Commission, 2015 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2015 (last accessed on May 28, 2024) at Table 56.
16 *Id.* at Table 56A.
17 U.S. Sentencing Commission, 2014 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/research/sourcebook-2014 (last accessed on May 28, 2024) at Table 56.
18 *Id.* at Table 56A.
19 U.S. Sentencing Commission, 2022 Sourcebook of Federal Sentencing Statistics, *infra* n. 1, at Table A-6.
20 U.S. Sentencing Commission, 2021 Sourcebook of Federal Sentencing Statistics, *infra* n. 3, at Table A-6
21 U.S. Sentencing Commission, 2020 Sourcebook of Federal Sentencing Statistics, *infra* n. 5, at Table A-6.
22 U.S. Sentencing Commission, 2019 Sourcebook of Federal Sentencing Statistics, *infra* n. 7, at Table A-6.

2018: 10;[23] FY 2017: 7;[24] and FY 2016: 5.[25] If the overall sentencing-appeal success rates are any kind of a barometer for substantive-reasonableness success, an individual appellant almost never persuades a court of appeals to countermand the district court. *See, e.g., United States v. John*, 27 F.4th 644, 651 (8th Cir. 2022) (affirming a "harsh" 290-month sentence in a firearm case with a guideline range of 121-151 months).

The government, however, is a different story.

In *United States v. Irey*, a deeply divided Eleventh Circuit, sitting *en banc*, found "substantively unreasonable" a 17-and-½-year sentence. 612 F.3d 1160 (11th Cir. 2010)(*en banc*). The *Irey* majority began its opinion by quoting *Rita:* "'The federal courts of appeals review federal sentences and set aside those they find unreasonable.' With that statement the Supreme Court opened its opinion in the *Rita* case." 612 F.3d at 1165. After blockquoting *Rita*, the *Irey* Court noted that it "believe[d] that the Supreme Court meant what it said in the *Rita* opinion and elsewhere about our duty to correct sentencing mistakes." *Id.* Engaging in a thorough factual (re-)assessment of Mr. Irey's crimes, *ibid* at 1166-68, the Eleventh Circuit noted that the statutory maximum Mr. Irey faced was 360 months and that

23 U.S. Sentencing Commission, 2018 Sourcebook of Federal Sentencing Statistics, *infra* n. 9, at Table A-6.
24 U.S. Sentencing Commission, 2017 Sourcebook of Federal Sentencing Statistics, *infra* n. 11, at Table 59.
25 U.S. Sentencing Commission, 2016 Sourcebook of Federal Sentencing Statistics, *infra* n. 13, at Table 59.

his guideline range was 360-360 months. *Id.* at 116-70. The *Irey* Court engaged in a lengthy discussion of the history of appellate review of sentencing, noting at its conclusion that this Court had made "'pellucidly clear that the familiar abuse-of-discretion standard of review now applies to appellate review of sentencing decisions." *Id.* at 1188 (*quoting Gall v. United States*, 552 U.S. 38, 46 (2007)). The *Irey* Court then engaged in its own § 3553(a) analysis and, after many protestations that it was not usurping the district judge's role, concluded that "no downward variance from the guidelines range is reasonable in this case. Nothing less than the advisory guidelines sentence of 30 years, which is the maximum available, will serve the sentencing purposes set out in § 3553(a)." *Id.* at 1222. Citing *Rita* again, the *Irey* Court stated, "This is what appellate courts are supposed to do." *Id.* at 1223.

The standards and phrases used by the Eleventh Circuit – *e.g.,* "abuse of discretion," "totality of the circumstances," "definite and firm conviction" – drip with subjectivity. One judge, who had concurred in both the vacated *Irey* panel opinion *and* the *en banc* opinion noted that his "original concurrence was based entirely on my perception of the extent of discretion due the trial judge." 612 F.3d at 1225 (Hill, J. concurring). How likely is it that the late Judge Hill, who was at the time of *Irey* in his 32nd year as an appellate judge, was alone in his uncertainty regarding the deference due in an abuse-of-discretion regime? This admission seems to bolster Justice Scalia's concern about "a discordant symphony of different standards,

varying from court to court and judge to judge, giving lie to the remedial majority's sanguine claim that 'no feature' of its avant-garde Guidelines system will 'ten[d] to hinder' the avoidance of 'excessive sentencing disparities.'" *Booker*, 543 U.S. at 312.

Only in a *de novo* system can appellate judges – engaged in an *actual* review of the sentence – be upfront about their review of the sentence. With the mandatory Guideline regime shuttled, the *Booker* Court should have retained the *de novo* standard passed by Congress.

C. Discretionary life sentences are a proper place to start *de novo* review.

If there is a class of case that could benefit from a second (and third and fourth) set of eyes, it is discretionary life sentences. With due respect to the plurality in *Woodson v. North Carolina*, life sentences are "different," too. *See* 428 U.S. 280, 303-304 (1976) (ruling that the death penalty is "different from all other sanctions in kind rather than degree.")

A recent study commissioned by the United States Sentencing Commission, demonstrated just how *rare* sentences like Carney Turner's are. *Life Sentences in the Federal System* revealed that the 709 life sentences imposed between fiscal years 2016 and 2021 accounted for just 0.2 % of all federal defendants during that period. U.S. Sentencing Commission, *Life Sentences in the Federal System*, July 2022, at 1. Of the life sentences, almost half (48.7%) of them were for murder. *Id.* at 2. And of the 709 life sentences imposed between

Fiscal Years 2016 and 2021, 86 of those were mandatory life sentences for drug trafficking. *Id.* at 7-8 and Figures 2 & 3. The Commission surmised that the 2018 passage of the First Step Act – which reduced the frequency of mandatory life sentences in drug cases – was responsible for the profound drop of total life sentences in FY21: 60, *i.e.,* just 0.1% of all federal cases. *Id.* at 6-7 & Figure 1.

In fact, of the life sentences imposed between FY16-21, 43.8% of them were convicted under a statute carrying a mandatory minimum penalty of life imprisonment. *Id.* at 14. That is, in almost half of all life-sentence cases, life was the only sentence available.

In cases of such significance – where the defendant has been sentenced to die in a prison – the defendant should receive the added protection of three circuit judges reviewing *de novo* his sentence for substantive reasonableness.

In *United States v. Scott*, 732 F.3d 910 (8th Cir. 2013), the Eighth Circuit Court of Appeals reviewed (and found substantively reasonable) a life sentence for a defendant convicted of bank robbery, use of a firearm, and felon in possession of a firearm. In dissent, Judge Bright called such a sentence "'gilding the lily.' It is unreasonable and excessive." 732 F.3d at 919. "I ask what more is required[,]" wrote Judge Bright. "The sentence in this case is unreasonable and simply represents an effort to send a message of being tough on crime. But that's not the purpose of a sentence." *Id.* at 919 (Bright, J. dissenting). Judge Bright called the sentence "clearly excessive" and commented that it "illustrates very graphically the broken

criminal justice system in the federal courts." *Id.* To be sure, in *Scott*, two other circuit judges disagreed with Judge Bright. But the expression of such opinions from respected appellate jurists is nonetheless valuable and presently so rare.

D. Carney Turner's case is an excellent vehicle for resolving this issue.

> Of the 402,404 federal cases between FY 2016 and FY 2021, only 173 people – 0.043% – pled guilty and got a life sentence. An undetermined number of these guilty-plea life sentences were accepted by defendants to avoid a capital prosecution.

Carney Turner has landed in that 0.043% despite having an offense wholly dissimilar to other federal life-sentence holders, including: **Terry Nichols**, Timothy McVeigh's coconspirator in the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City that killed 168 people, including 19 children in a daycare; **Eric Rudolph**, who pled to carrying out four bombings that killed three people between 1996 and 1998, including the Centennial Olympic Park bombing in Atlanta; **Joaquin Guzman**, a.k.a. "El Chapo," the former leader of the Sinaloa drug cartel who was convicted after a three-month jury trial of drug- trafficking, money laundering, and murder; **Michael Swango**, a physician who pleaded guilty to fatally poisoning four patients; **Robert Hanssen**, a former FBI agent, convicted of espionage in 2002 for passing classified information to the Soviet Union and later Russia that led

to the execution of U.S. agents; and **James Marcello**, a "Front Boss" of the "Chicago Outfit," convicted of a racketeering conspiracy for participating in 18 murders and directing criminal activities, including extortion, gambling, loan sharking, and bribery.

In fact, many defendants sentenced for murder fared better than Carney Turner. The Sentencing Commission reported that the mean/median sentences for *murder* in fiscal year (FY) 2020 was 255/228 months. U.S. Sentencing Commission, *2020 Annual Report and 2020 Sourcebook of Federal Sentencing Statistics*, Table 28 (p. 82). The same report noted that the mean/median sentences for murder for Category IV defendants (the category Mr. Turner fell into) in FY20 was 261/260 months. *Id.*

Notwithstanding the uniqueness of Carney Turner's sentence, using the abuse-of-discretion standard, the Eighth Circuit needed just one paragraph – six sentences – to dispose of Carney Turner's claim that his life sentence was unreasonable. The first and last were standard introductory and conclusory sentences: (Sentence 1) "We conclude that the district court did not abuse its discretion in sentencing Turner to life imprisonment." and (Sentence 6) "Turner's life sentence is thus not substantively unreasonable." 94 F.4th at 746. The four sentences sandwiched in between, however, amount to a review of what the district court said: (Sentence 2) "The court *considered*…";[26] (Sentence 3) "The court

26 *Turner*, 94 F.4th at 746 (emphasis added).

concluded, however, that 'these guidelines are…appropriately factored[;]"[27] (Sentence 4) "The court *considered*…";[28] and (Sentence 5) "The record makes clear that the district court '*considered* the parties' arguments and ha[d] a reasoned basis for exercising his own legal decision making authority.' *Rita v. United States,* 551 U.S. 338, 356, 127 S.Ct. 2456, 168 L.Ed.2d 203 (2007)."[29]

This sort of review validates Justice Scalia's concerns, amounting to little more than "a mere formality," "busy appellate judges" "ensur[ing] that [the] busy district judge[] [has said] all the right things." *Booker,* 543 U.S. at 309 (Scalia, J. dissenting in part).

Conclusion

The *Booker* Court struck down a Congressionally adopted *de novo* standard of review and replaced it – by implication – with a more deferential standard. Application of this abuse-of-discretion standard in federal sentencing has proven to be subjective and uneven, with appellate judges more frequently "correcting" district-judge "errors" of leniency than errors of heavy-handedness. But even more often, this abuse-of-discretion standard has – as Justice Scalia predicted – invited appellate judges to simply make sure that district judges have said "all the right things," reducing sentencing to a recitation of factors and sentencing review to the completion of a checklist.

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27 *Id.* (emphasis added)
28 *Id.* (emphasis added)
29 *Id.* (emphasis added)

This Court should re-consider whether the *Booker* excision of the *de novo* standard implies an abuse-of-discretion standard. A logical starting point for that reconsideration is in cases, like Carney Turner's, involving discretionary life sentences – a pool of cases that is both limited in size and significant in import.

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