

In the
Supreme Court of the United States

JAMES T. FOSTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether certiorari review should be granted where the eleventh circuit erred in affirming the district court's denial of Foster's objection to the enhancement for obstruction of justice.
2. Whether certiorari review should be granted where the eleventh circuit erred in affirming Foster's sentence where Foster's sentence was unreasonable in light of the statutory sentencing factors listed in 18 U.S.C. § 3553(a)-(f) and principles applied by the advisory federal sentencing guidelines.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Eleventh Circuit
No. 23-13454

United States of America, *Plaintiff-Appellee*, v.
James T. Foster, *Defendant-Appellant*.

Date of Final Opinion: May 2, 2024

Date of Rehearing Denial: June 25, 2024

U.S. District Court, Northern District of Florida,
Tallahassee Division

Case No. 4:23cr17-01

United States of America v. James T. Foster

Date of Final Judgment: October 18, 2023

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, JAMES T. FOSTER, (hereinafter “Foster”), by and through his undersigned counsel, respectfully prays that a Writ of Certiorari issue to review the opinion of the United States Court of Appeals for the Eleventh Circuit entered in the proceedings on May 2, 2024.



OPINIONS BELOW

The Court of Appeals for the Eleventh Circuit entered an unpublished opinion affirming the District Court’s Sentence, *United States of America v. James T. Foster*, on May 2, 2024. (App.1a).



JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals affirming the Judgment of the United States District Court was entered on May 2, 2024. (App.1a). The Eleventh Circuit Court of Appeals entered its Order Denying Foster’s Petition for Rehearing and Petition for Rehearing *En Banc* on June 25, 2024. (App.20a). The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1) and Sup. Ct. R. 10(a). This Petition for Writ of Certiorari is timely filed pursuant to Sup. Ct. R. 13.1.



CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V

The Fifth Amendment to the Constitution provides, in relevant part that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person . . . be deprived of life, liberty, or property, without due process of law

United States Constitution, Amendment VI

The Sixth Amendment to the Constitution provides in relevant part that:

In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.



STATEMENT OF THE CASE

1. Course of Proceedings.

On April 4, 2023, a federal grand jury issued a one (1) count indictment against James T. Foster, charging him with being a felon in possession of a firearm and ammunition in and affecting interstate and foreign commerce in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(8) and a forfeiture count. (DE:1).

On July 6, 2023, Foster pled guilty to Count I, being a felon in possession of a firearm and ammunition in and affecting interstate and foreign commerce in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(8) (DE:29;52).

On October 18, 2023, the District Court sentenced Foster to 140 months of incarceration followed by three (3) years of supervised release with an assessment of \$100.00. Foster was also placed in the RDAP program for in-house drug treatment program and granted Foster's request to be housed in a facility as near as possible to Tallahassee, Florida. (DE:53:46-49;46). Foster filed a timely Notice of Appeal and is confined. (DE:44)

2. Statement of the Facts.

a. The Offense Conduct.

On April 29, 2022, agents with FDLE began electronic surveillance of a residence located on Verdun Boulevard, in Tallahassee Florida. The house was suspected to be "stash house" for the Foster brothers, and was owned by James Taheen Foster, the defen-

dant. During the electronic surveillance agents noted Rayshun Foster move multiple items between the residence, a black Chevrolet Tahoe, a white Dodge Durango, and a black Toyota Corolla.

On October 28, 2022, agents executed a search warrant on the residence and located three adults and three children inside the home. Agents relocated the children and their mother, Tyece Foster, and the defendant's wife, Rayshun Foster, to the tailgate of a vehicle located in the driveway. Agents found the defendant hiding under clothes in the master bedroom closet. The defendant was arrested on several Failure to Appear (FTA) warrants and relocated to an FHP patrol vehicle.

Agents searched the home and found a Glock .40 caliber pistol with an extended magazine on the headboard of the bed. A Smith and Wesson revolver was also found on the bed in the master bedroom. Agents also located two long-guns (a Norinco rifle and Hatsan shotgun), two drum magazines loaded with 7.62 caliber rounds, and a drum magazine loaded with .40 caliber rounds under the bed. A Colt .45 caliber pistol was found in a basket on the floor. A second Glock .40 caliber pistol with extended magazine was found in a box on the floor. Additionally, various ammunition was found throughout the master bedroom. Agents also found a shoe box containing a large amount of U.S. currency wrapped in bands by denominations. The box of money was in the bedroom that appeared to be occupied by the children who lived in the home.

The firearms seized were swabbed for DNA and sent to FDLE Crime Laboratory for analysis. The currency was turned over to DEA. The defendant was

subsequently charged with Possession of a Firearm by a Convicted Felon.

On January 6, 2023, agents received the lab analysis for fingerprints on all the firearms seized. The results located the defendant's fingerprints on the Norinco MAK-90 7.62x39 caliber rifle found during the search. The other fingerprints from the other firearms were not suitable for comparison.

On May 4, 2023, agents arrested the defendant at their residence located on McCracken Road in Tallahassee, Florida, in response to the federal indictment and an issued federal arrest warrant. At the time of the arrest, the defendant's wife, Rayshell Foster, was present and gave limited consent to search the bedroom that the defendant and her occupied. The defendant's wife advised she maintained a firearm in her possession. Agents conducted a preliminary search of the master bedroom and located two firearms. The defendant's wife told agents she was unaware of the second firearm, and agents requested a search warrant for the entire residence.

Agents received and executed a search warrant and found one Taurus Model R35 revolver, .38 caliber in the bedside table next to the bed in the master bedroom; one Glock model 21, .45 caliber in the bedside table next to the bed in the master bedroom; seven rounds of .38 caliber ammunition in the revolver and inside the bedside table; 21 rounds of .45 caliber ammunition recovered from within the extended magazine of the Glock pistol; three rounds of assorted ammunition located in the entertainment center in the master bedroom; 17 rounds of assorted caliber 762 ammunition found in a magazine in one of the master bedroom closets.

Agents reviewed the defendant's criminal history and learned the defendant had at least 13 previous felony convictions and had been sentenced to more than one year of incarceration on four separate occasions. The defendant had not received a pardon, and his right to possess firearms had not been restored. At the time the defendant possessed the firearms and ammunition, he was aware he had been convicted of a felony.

b. Facts Pertaining to Foster's Sentence.

The probation office gave Foster a four level enhancement pursuant to U.S.S.G. § 2K2.1(b)(1)(B), for having between 8 and 24 weapons and a two level enhancement pursuant to U.S.S.G. § 3C1.1, for obstruction of justice (PSI:29; 32). The probation office did not give Foster any level decrease for acceptance of responsibility. (PSI:35)

Accordingly, the probation officer set Foster's total offense level at 32. (PSI:36). The probation office found that Foster had a total offense level of 32 and a criminal history category of V (PSI:113) As such, the guideline imprisonment range was 188 to 235 months. (PSI:113)

c. Foster's Sentencing Hearing.

Foster's sentencing hearing was held on September 27, 2023. (DE:53). The District Court acknowledged Foster's objections to the obstruction of justice enhancement and the denial of the reduction for acceptance of responsibility. (DE:53:3).

Foster took the stand. Foster testified it was his first time in federal court and that he was nervous at

his first appearance and that he only remembered testifying that his fingerprints were on the gun because he “was teaching my wife to clean them. So, if I did say about me not taking the guns, I don’t—it had to be nervous because I told the truth from the beginning.” (DE:53:5). Foster testified that the only way he made a misstatement was because he was nervous and he never intentionally provided false testimony and that he takes full responsibility for the firearms. (DE:53:5).

Foster testified that at the initial appearance that he testified that he was aware that the guns were in the house and where they were located. Foster testified that “before the guns were purchased, we—we sat down with a lawyer and he said that—he said that we could—as long as I wasn’t on probation that we could have the guns in the house. And the purpose of the guns—because my son, that’s in the back, had just became a celebrity, so it was more for protection. It wasn’t me running around with guns.” (DE:53:6).

Foster testified that his wife purchased the guns from a friend not long ago and that he was not sure but that she bought them from two people and one was Tara that lives in Orlando. (DE:53:7). Foster testified that the guns were from the first arrest and that no new guns were ever purchased. (DE:53:7-8).

Foster rested and the government called Special Agent Adam Bradley who works for the ATF and who investigated the two guns that were recovered from Foster’s residence to testify. (DE:53:8-9). Special Agent Bradley testified that one of the guns was a Glock .45 caliber that was originally purchased by Xavier Major on February 5, 2023 and that it was reported stolen by Mr. Major during 2023. (DE:53:9-10).

Foster's Counsel then argued their objection to the obstruction of justice enhancement. (DE:53:14). Foster's Counsel argued that "nothing that Mr. Foster said during his initial appearance hearing hindered the government's investigation in this matter in any way. The government was well aware of what the allegations were before Mr. Foster was indicted and before he made his appearance at—his initial appearance in the case. . . . If there were misstatements made by Mr. Foster—and I'm not contesting that. We have the transcript of what was said. But my point is that they were not intentionally made in an effort by Mr. Foster to deceive the Court. And based upon them not—being made not with a deceptive or an illegal purpose behind his misstatements, there's cases that state that if someone makes a mistake, that is not the same as someone committing perjury and intentionally providing false testimony to the Court. So, I would make the argument that based on the totality of the circumstances, as well as Mr. Foster's statement multiple times that he knew the firearms were in the house—which, if he was going to lie about the guns, he would just completely lie and say he didn't know they were there. So based upon the totality of the circumstances, we would ask the Court to find that he did not obstruct justice in the case and also that he has fully accepted responsibility, which would result in a five-level decrease as requested on his guidelines. (DE:53:14-15). The District Court found that the obstruction enhancement did apply. (DE:53:17).

The District Court then heard argument regarding whether Foster would be entitled to a two or three level reduction for acceptance of responsibility. (DE:53:20).

Foster called Michael Smith to testify. (DE:53:22). Pastor Smith testified that he has known Foster since 2006 or 2007 and that Foster loves his family and that:

“[w]ith his son’s recent shine to fame, he’s trying to do the best to protect his family with the type of lifestyle that comes with being a music artist. But more than that, this man has been a help with the church, not as recent as we are talking about now, but in his history . . . I know he has, you know, had a colored past, but I’ve seen him change. . . . So all I’m asking for you to do, in your consideration is to have mercy.” (DE:53:23). Foster’s son Tayshun Foster also testified on behalf of Foster saying “he’s the solid rock for my family”

(DE:53:24). Foster’s son, Jalen Foster also testified that Foster is the head of the family and he is a good dad. (DE:53:26-27).

Akeem Watson also testified on behalf of Foster and concluded that “the guy at least deserves mercy because he’s a pretty good guy. (DE:53:29-30). Foster’s sister, Carmella Foster Bentley also testified. Ms. Bentley testified that “he’s changed a lot. He’s grown up. . . . So he may not have been perfect his whole life, but he’s made a change. He has beautiful children. He has grandchildren that misses him.” (DE:53:31). Foster’s wife, Rayshell Foster also testified. (DE:53:32). Ms. Foster testified:

“I’m the person who was mostly involved with purchasing of the firearms, so—and I know that they were only for our protection.

They were never intended for us to go out and to do anything. It was only because our son—his career succeeded so fast and there were threatening things that were surrounding us, being that we had to move out of our home and everything else—relocate. And I just know that for—since—his last sentence was eight years ago. I think it was about eight years ago. I know that James has really, really changed and tried to be, you know a more contributing factor to the society as far as his past. . . . I feel responsible because a lot of the actions I took upon my own out of my own fear of things that was going around, and had I known better, because, like he stated as well, we talked to an attorney that stated that we were able to have guns. Before then we didn't have any because of—that was the thing we knew. But once we thought that we knew—not saying anything with court, but we thought we knew better, that was the only reasons why I engaged in obtaining firearms for our safety.”

(DE:53:32-33).

Foster then took the stand. (DE:53:34). Foster testified:

“[w]hen I came home, I was home eight years. I was doing a business. I was living correct. I wasn't doing anything foul, I was living correct. . . . We have a thriving detail mobile business. And I call it a generational business because I want to leave it to my grandkids. . . . All I can say is, Your Honor,

just to have mercy on me. I'm not that person that you read about and think—that's in my past. That's all it is is my past. I've came home and I done different. I've been very productive in society.”

(DE:53:35-36).

Foster's Counsel then asked the Court:

“to take into consideration that Mr. Foster was at home. Both times when the firearms were found, he was at home. He was not out doing any crimes. He was not robbing anybody, stealing from anyone. He wasn't selling drugs. He was not doing any of those things that would cause someone with a firearm to present a danger to the community. He was in his own home. Another fact we would ask the Court to consider is the remoteness since his last criminal conviction.”

(DE:53:38-39).

Foster's Counsel then argued:

“[s]o given the totality of the circumstances of what happened in the past, what happened in this incident, the challenges to 18 U.S.C. § 922(g), which may ultimately result in the changing where maybe it will only be applied to people who have nonviolent—I mean, who only have violent offenses and not nonviolent offenses, maybe there will be a time period where, if you remain crime free, you can have your gun rights restored. . . . So with all of that in mind, Judge, we are asking for a sentence with a small amount of incor-

ceration with him having the special conditions of having a drug and alcohol evaluation; to follow treatment as recommended in that incident, if it's recommended by the counselors; for a mental health evaluation to follow treatment, if it's recommended by the counselors as well; and to have an anger management course, if that's also recommended by the counselors after an evaluation. I think he has proven himself he can be a productive member of the community. His last period of incarceration was 40 months. He would like to ask the Court for a period of time shorter than that with the understanding that he would also be subject to a longer period of supervision, including home incarceration if the Court found that was appropriate, where he would be confined to his home other than him going out of the home for work purposes."

(DE:53:41-42).

The District Court then announced that:

"[The] obstruction increase was properly applied. I think the acceptance of responsibility issue is close. My finding is that Mr. Foster has accepted responsibility. That reduces the offense level to 29, a criminal history category of V, and that produced a guideline range of 140 to 175. I am going to sentence Mr. Foster to 140 months, the low end of the guideline range."

(DE:53:45-52).

A. The Eleventh Circuit Erred in Affirming the District Court’s Denial of Foster’s Objection to the Enhancement for Obstruction of Justice.

The affirming of the District Court’s denial of Foster’s objection to the enhancement of Obstruction of Justice was clearly in error and not supported by the evidence.

B. Foster’s Sentence Should Not Have Been Affirmed by the Eleventh Circuit Where Foster’s Sentence Was Not Substantively Reasonable Considering the Factors Enumerated Pursuant to 18 U.S.C. § 3553(a)-(f).

A sentence will be found to be “substantively reasonable” if when considering the totality of the circumstances, the purposes of 18 U.S.C. § 3553(a) are met by the District Court. *United States v. Pugh*, 515 F.3d at 1191.

Foster’s sentence was unreasonable in light of the sentencing factors listed in 18 U.S.C. § 3553(a)-(f) and the totality of the circumstances; more particularly, the fact that Foster took immediate acceptance of responsibility and the remoteness since his last criminal conviction.” (DE:53:38-39). It is quite clear that the Eleventh Circuit was more influenced by the fact that a felon cannot have a firearm, then the actual facts of this case and the factors of 18 U.S.C. § 3553(a). (DE:585:43,56)

Moreover, the sentence was not minimally sufficient or “appropriate” as the Eleventh Circuit alluded to, but greater than necessary to comply with

the purposes of sentencing under 18 U.S.C. § 3553(a). In reviewing the totality of the circumstance, Foster's sentence was far too severe and therefore his Petition for Writ of Certiorari must be granted.



REASONS FOR GRANTING THE PETITION

I. CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF FOSTER'S OBJECTION TO THE ENHANCEMENT FOR OBSTRUCTION OF JUSTICE.

In determining whether the District Court applied correctly an obstruction-of-justice enhancement, we review for clear error the District Court's factual findings and review *de novo* the court's application of the guidelines to those facts. *United States v. Bradberry*, 466 F.3d 1249, 1253 (11th Cir. 2006). "Under the clearly erroneous standard, we must affirm the district court unless review of the entire record leaves us with the definite and firm conviction that a mistake has been committed." *United States v. McPhee*, 336 F.3d 1269, 1275 (11th Cir. 2003).

U.S.S.G. § 3C1.1 provides for a two level enhancement for defendants who "willfully obstruct or impede, or attempt to obstruct or impede, the administration of justice during the course of the investigation, prosecution, or sentencing of the instant offense of conviction . . ." A defendant may obstruct or impede justice by "committing, suborning, or attempting to suborn perjury." U.S.S.G. § 3C1.1, comment. (note 4(b)).

Perjury, for purposes of applying this enhancement, has been defined by the United States Supreme Court as “false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.” *United States v. Dunnigan*, 507 U.S. 87, 94, 113 S.Ct. 1111 (1993); *see United States v. Hubert*, 138 F.3d 912, 915 (11th Cir. 1998) (holding that “[p]erjury under oath on material matters, not due to confusion or mistake, justifies such an increase.”). For purposes of USSG § 3C1.1, “[m]aterial” . . . means evidence, fact, statement, or information that, if believed, would tend to influence or affect the issue under determination.” USSG § 3C1.1, comment. (note 6). Based upon the above definitions and notes, it is quite clear that the statement that the District Court found to warrant the enhancement clearly was not “material”.

Foster also argues that the Eleventh Circuit failed to “identify the materially false statement”. The Eleventh Circuit argues that “[a]lthough it is preferable that the district court make specific findings by identifying the materially false statements individually, it is sufficient if the court makes a general finding of obstruction” However, case law tells us that when applying the obstruction of justice enhancement, that “the district court [should] make specific findings as to each alleged instance of obstruction by identifying the materially false statements individually” *United States v. Arguedas*, 86 F.3d 1054, 1059 (11th Cir. 1996). There is an exception to wit: that “a general finding that an enhancement is warranted suffices if it encompasses all of the factual predicates necessary for a perjury finding.” *United States v.*

Lewis, 115 F.3d 1531, 1538 (11th Cir. 1997); *see United States v. Diaz*, 190 F.3d 1247, 1256 (11th Cir. 1999). In the case at hand, however, the enhancement is not warranted as the “false statement” was not material and furthermore, the general finding made by the District Court and affirmed by the Eleventh Circuit failed to “encompass all of the factual predicates necessary for a perjury finding”. Therefore because neither the District Court nor the Eleventh Circuit made specific findings, the denial of Foster’s objection to said enhancement should have been reversed and not affirmed. In addition, the alleged statements made do not meet the definition of “perjury” and therefore Foster’s total base offense should not have been enhanced pursuant to U.S.S.G. § 3C1.1. Accordingly, the Eleventh Circuit should have reversed the enhancement by two levels for obstruction of justice; and because it did not, Foster’s Petition for Writ of Certiorari must be granted.

II. CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT ERRED IN AFFIRMING FOSTER’S SENTENCE THAT WAS NOT SUBSTANTIVELY REASONABLE CONSIDERING 18 U.S.C. § 3553(a)-(f)

At the sentencing hearing, the government must prove by a preponderance of the evidence any fact to be considered by the District Court, *United States v. Duncan*, 400 F.3d 1297, 1304 (11th Cir. 2005), including the applicability of any guideline enhancements, *United States v. Ndiaye*, 434 F.3d 1270, 1300 (11th Cir. 2006). “The findings of fact of the sentencing court may be based on evidence heard during trial, facts admitted by a defendant’s plea of guilty, undisputed statements in the presentence report, or evidence

presented at the sentencing hearing.” *United States v. Saunders*, 318 F.3d 1257, 1271 n. 22 (11th Cir. 2003). In reviewing Foster’s sentence for substantive reasonableness, this Court must consider whether the factors of 18 U.S.C. § 3553(a) support his sentence based upon the facts of this case. *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586 (2007); *see also, United States v. Johnson*, 485 F.3d 1264 (11th Cir. 2007). Foster argues that the District Court abused its discretion when it failed to give proper weight and consideration to the factors enumerated in 18 U.S.C. § 3553(a) and instead entered the sentence basing it on “impermissible factors”. *United States v. Sarras*, 575 F.3d 1191, 1219 (11th Cir. 2009). And that the Eleventh Circuit failed to consider said argument.

Although the District Court may have discretion in deciding the weight of said factors, said discretion is not unbridled and the District Court must assure that a just and reasonable sentence is given. *See, United States v. Williams*, 456 F.3d 1353 (11th Cir. 2006). It is clear that the sentence imposed by the District Court in this case, was both procedurally and substantially unreasonable. Therefore, said sentence should not have been affirmed; but reversed.

Because of the sentence imposed, Foster was denied his right to due process of law and a reasonable sentence pursuant to the dictates of *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005), *Gall* and *Kimbrough v. United States*, 552 U.S. 85, 128 S.Ct. 558 (2007). Foster’s sentence did not promote the administration of justice nor law. It did not provide just punishment considering the fact that Foster pled guilty and accepted responsibility and the fact that Foster was at home. Both times when

the firearms were found, he was at home. Foster was not out committing any crimes. Foster was not robbing anybody, stealing from anyone. Foster wasn't selling drugs. Foster was not doing any of those things that would cause someone with a firearm to present a danger to the community. Foster was in his own home. Also neither the District Court nor the Eleventh Circuit gave the proper weight to the "remoteness since his last criminal conviction." Considering the above facts and the sentence that Foster received, the Eleventh Circuit should have vacated the sentence, not affirmed it. *Koon v. United States*, 518 U.S. 81, 116 S.Ct. 2035 (1996); *United States v. Livesay*, 525 F.3d 1081 (11th Cir. 2008). Based on the errors of both the District Court and the Eleventh Circuit, this Court must grant Foster's Petition for Writ of Certiorari to prevent a further miscarriage of justice. *See also, United States v. Bonilla*, 579 F.3d 1233 (11th Cir. 2009).

It is quite clear that the strict application of the advisory sentencing guidelines produced a sentence greater than necessary for punishment under 18 U.S.C. § 3553(a) for Foster. The statutory factors set forth in 18 U.S.C. § 3553(a) weigh strongly in favor of a sentence outside of and below the advisory sentencing guidelines. Case law is clear that where circumstances warrant, a District Court can impose sentences that vary downward significantly from the advisory guidelines range and the Appellate Court will affirm such sentences as reasonable. *Kimbrough v. United States*, 552 U.S. 85, 128 S.Ct. 558 (2007); *see also, United States v. Phaknikone*, 605 F.3d 1099 (11th Cir. 2010).

The Panel acknowledges that "a district court's sentence must be sufficient, but not greater than necessary, to achieve the goals of sentencing; reflect

the seriousness of the offense, promote respect for the law, provide just punishment, deter future criminal conduct, protect the public, and provide the defendant with any needed training or treatment". In reviewing the evidence and testimony, the Panel erred in affirming Foster's sentence since it clearly was greater than necessary, over achieved the goals of sentencing; enhanced the seriousness of the offense, failed to promote respect for the law as it relates to due process, provided unjust and unfair punishment, and no matter what the sentence, same will not deter future criminal conduct. As such, the Panel should have vacated the sentence and not affirm the sentence.

Because of the above, the sentence imposed by the District Court should have been reversed by the Eleventh Circuit as there was a "definite and firm conviction that the District Court committed a clear error of judgment in weighing the 18 U.S.C. § 3553(a) factors". *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008). Accordingly, the Eleventh Circuit should have reversed the sentence and because it did not, Foster's Petition for Writ of Certiorari must be granted.

In considering all of Foster's arguments, it is clear that Foster has met his burden of demonstrating that the sentence imposed by the District Court was substantially unreasonable based upon the facts of the case and the factors enumerated pursuant to 18 U.S.C. § 3553(a) and therefore the sentence should have been vacated. *United States v. Tome*, 611 F.3d. 1371 (11th Cir. 2010); *United States v. Thomas*, 446 F.3d 1348 (11th Cir. 2006); *see also, United States v. Saac*, 632 F.3d 1203 (11th Cir. 2011). Because Foster's

sentence was affirmed by the Eleventh Circuit, his Petition for Writ of Certiorari must be granted.



CONCLUSION

The Eleventh Circuit is required to vacate a sentence “if we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the 18 U.S.C. § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *United States v. Shaw*, 560 F.3d 1230 (11th Cir. 2009); *See also, United States v. Bonilla*, 579 F.3d 1233.

In the case at hand, reviewing the totality of circumstances, said sentence lies outside the range of what the facts of this case dictate as being a reasonable sentence and is vastly disproportionate to the crime. *United States v. Shaw*, 560 F.3d 1230 (11th Cir. 2009). Because the Eleventh Circuit failed to vacate said sentence. Foster’s Petition for Writ of Certiorari must be granted.

Respectfully submitted,

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