
No. _____

IN THE
Supreme Court of the United States

WARREN ALEXANDER,
Petitioner.

vs.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Should the Court grant the petition in order to resolve a conflict among the circuits as to whether a district court in imposing sentence is required to pronounce orally those conditions of supervisory release that it intends to order, where those conditions have been set forth in the recommendations of the presentence report that have been reviewed by the defendant?

Parties

There was one co-defendant, Shelly Washington, in the district court.

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October Term, 2024

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vs.

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Respondent.

Petition for Writ of Certiorari
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Petitioner Warren Alexander respectfully prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Second Circuit and its denial of a motion for reconsideration, holding that, in imposing a sentence, a district court is not required to pronounce orally the standard conditions of supervised release that are a component of its sentence.

Opinions Below

The decision of the Court of Appeals is an unpublished opinion and is set forth at A-067. Its decision denying the motion for reconsideration is set forth at A-086. The judgment of the District Court is set forth at A-060.

Jurisdiction

The Court of Appeals opinion in this case was filed on May 17, 2024. A timely motion to reconsider was filed on May 23, 2024. The Court of Appeals denied the motion to reconsider on July 1, 2024. A-086. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

The basis for the jurisdiction of the court of appeals was 28 U.S.C. § 1291 (appeals from final judgments of district courts), Rule 4(b), Fed. R. App. Proc. (appeals from criminal convictions), 18 U.S.C. § 3557 and 18 U.S.C. § 3742 (appeals from sentences).

The basis for subject matter jurisdiction in district court was 18 U.S.C. § 3231 (jurisdiction over offenses against the United States).

Constitutional Provisions Involved

United States Constitution, Amendment V

No person shall be . . . deprived of life, liberty, or property, without due process of law

Statement of the Case

Factual and procedural background: Warren Alexander appealed from the district court's judgment of conviction following his guilty plea to one count of possessing ammunition after a felony conviction, in violation of 18 U.S.C.

§922(g)(1). A-018. The district court imposed upon Alexander a sentence that included three years of supervised release with mandatory, standard, and special conditions of supervision. A-060.

During the course of the sentencing proceeding, the following exchange took place:

THE COURT: The term of supervised release shall be subject to the mandatory, the standard, and the special conditions of supervision set forth at pages 24 through 26 of the presentence report [PSR], which you have told me today you have read.

Does either counsel feel it necessary or appropriate for me to read all of the conditions at this point?

MR. BURNETT: No, your Honor.
[Prosecutor]

THE COURT: Mr. Kirton?

MR. KIRTON: No, your Honor.
[Defense Counsel]

THE COURT: Okay.

A-058. The written judgment repeated verbatim all of the supervised release conditions -- mandatory, standard and special -- that had been set forth in the PSR.

A-063.

On appeal, we challenged the district court's imposition of the mandatory, standard, and special conditions of supervised release, arguing that the district court erred in adopting by reference the conditions that were included in the PSR, as opposed to orally pronouncing them on the record. We also contended that the district court erred in imposing the three special conditions because it failed to

explain its reasons for imposing them and we argued that there was insufficient basis in the record to support such conditions in his case.

The appeals panel recognized that a defendant is entitled to be present at his sentencing and that the right to be present encompasses the requirement that the sentencing judge pronounce the sentence orally on the record, including any conditions of supervised release. A-069-070. The panel also held, however, that by expressly agreeing that it was not necessary or appropriate for the district court to read aloud the mandatory, standard and special conditions set forth in the PSR, Alexander waived any challenge to the district court's decision to proceed in that manner. *Id.*

We do not contend that there is disagreement among the Courts of Appeal regarding this holding.

The panel also held, however, that even if Alexander had not waived this challenge, the district court may satisfy the oral-pronouncement requirement by expressly incorporating conditions set forth in a PSR that had been reviewed by the defendant. A-070-071; *citing United States v. Thomas*, 299 F.3d 150, 152 (2d Cir. 2002) (finding error where the district court “did not set forth any conditions of the supervision during the sentencing hearing, nor did it indicate that it would incorporate the conditions listed in the PSR”); *United States v. Washington*, 904 F.3d 204, 208 (2d Cir. 2018) (finding error where defendant “could not have known before issuance of the written judgment that the District Court would include” a condition from the PSR).

Warren Alexander moved for reconsideration, A-080, pointing out that the Second Circuit's holding conflicted with the holdings of other courts of appeals, but his motion for reconsideration was denied, A-086. This Petition followed.

Reasons for Granting the Petition

This Court should grant the petition in order to resolve a conflict among the circuits as to whether Due Process requires a district court in imposing sentence to pronounce orally the conditions of supervised release that it intends to impose, where those conditions have been set forth in a presentence report reviewed by the defendant.

The panel's holding followed long-standing Second Circuit precedent holding that a district court's oral pronouncement of sentence need not include any reference to the standard conditions of supervised release, and that the subsequent incorporation of the standard conditions into the written judgment, although those conditions were unmentioned at sentencing, does not amount to a *conflict* between the oral pronouncement and written judgment, but rather reflected a *clarification* of what the oral pronouncement meant when it imposed a term of "supervised release." *United States v. Truscello*, 168 F.3d 61, 63 (2d Cir. 1999).

Five other circuits disagree. Until last year, the Ninth Circuit was the only other court of appeals that concurred.

The Ninth Circuit, however, sitting en banc in order to overrule prior circuit precedent, has become the most recent circuit court to hold that standard conditions of supervised release must be orally pronounced at sentencing "in order to protect a defendant's due process right to be present at sentencing." *United States v. Montoya*, 82 F.4th 640, 644-45 (9th Cir. 2023) (en banc). The court

reasoned that although the sentencing court need not orally pronounce the mandatory conditions of supervised release, “[i]f a condition is discretionary, the district court must orally pronounce it in the presence of the defendant, without regard to how it is classified by the Guidelines.” Such a rule, the court held, “ensures that a defendant’s right to be present at sentencing is protected and more faithfully adheres to the text of [18 U.S.C.] § 3583(d).” *Id.* at 651.

In so ruling, the Ninth Circuit joined the five other circuits that disagree with the Second Circuit. *See United States v. Geddes*, 71 F.4th 1206, 1215 (10th Cir. 2023); *United States v. Matthews*, 54 F.4th 1, 6 (D.C. Cir. 2022); *United States v. Rogers*, 961 F.3d 291, 296–97 (4th Cir. 2020); *United States v. Diggles*, 957 F.3d 551, 558–59 (5th Cir. 2020); *United States v. Anstice*, 930 F.3d 907, 910 (7th Cir. 2019).¹

The holdings of six circuits, then, are in conflict with the holding of the Second Circuit in this and in similar appeals.

Conclusion

¹It must be noted, however, that in holding that a district court must orally pronounce all discretionary conditions of supervised release in the presence of the defendant, the Ninth Circuit also held that this pronouncement requirement is satisfied if the defendant is informed of the proposed discretionary conditions before the sentencing hearing and the district court orally incorporates by reference some or all of those conditions, which gives the defendant an opportunity to object. *Montoya*, 82 F.4th at 652–53. *Contra, Anstice*, 930 F.3d at 909 (two conditions not referenced during sentencing vacated, although they were set forth in PSR); *But see Geddes*, 71 F.4th 1215–16 (district court should have pronounced orally at sentencing the standard conditions, although standard conditions were referred to in PSR); *Rogers*, 961 F.3d at 299–301 (although court-wide standing order provided notice of standard conditions of supervised release to be imposed in every case, failure explicitly to reference standing order was error).

In order to resolve this conflict among the circuits, the respondent Warren Alexander respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals for the Second Circuit.

Respectfully submitted,



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Date: July 29, 2024

