

No. _____

In the
Supreme Court of the United States

TONY CARR,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

On December 16, 2002 Attorney General Merrick Garland issued a memorandum, which directed prosecutors to charge "pertinent statutory quantities that apply to powder cocaine" when pursuing crack cases and to "advocate for a sentence consistent with powder cocaine rather than crack cocaine" Is a defendant sentenced under the crack cocaine sentencing guidelines, just prior to the issuance of the Garland memorandum, entitled to a remand of his sentence for resentencing under the Garland memorandum?

PARTIES TO THE PROCEEDINGS

The parties are petitioner, Tony Carr, and respondent, United States of America. All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Tony Carr, respectfully prays that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals, entered in the instant proceeding on May 15, 2024, Ninth Circuit Court of Appeal No. 22-50232.

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit issued an unpublished memorandum decision in this matter. App. 1a. See *United States v. Carr*, No. 22-10207, 2024 WL 2269132 (9th Cir. May 15, 2024) (unpublished). The district court order from which Mr. Carr appealed is also unpublished. App. 6a. See *United States v. Carr*, U.S. District Court, Central District of California, No. 21-cr-66 (September 30, 2022).

STATEMENT OF JURISDICTION

The date on which the Ninth Circuit Court of Appeals filed its Memorandum in the instant matter was May 15, 2024. App 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

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 AND FACTS

A. Mr. Carr's Background

From a young age, Mr. Carr's life was traumatic and unstable. He was exposed to violent criminal activity, gang violence, murders, and drug trafficking. He was raised by a single mother who had substance abuse issues involving alcohol and crack cocaine. PSRs 25-26. Mr. Carr was thus often left alone to care for himself and his younger siblings. This was particularly unfortunate because Mr. Carr grew up in the Nickerson Gardens Projects, located in an extraordinarily high crime area with rampant criminal gang activity. PSRs 25-26.

From his earliest memories, Mr. Carr was in fear for his personal safety due to the violence, drug trafficking, murders and drive by shootings that surrounded his housing project. He witnessed murders of neighbors, family members and friends as young as 11 years old. PSRs 26.

Mr. Carr suffered from depression throughout his childhood but never received any mental health treatment. Consequently, at the

age of 9, Mr. Carr began smoking cannabis, at 12 he began drinking alcohol. When he was 26, he began using cocaine to which Mr. Carr became addicted. PSRs 28.

Following his incarceration in this matter, Mr. Carr devoted himself to self-improvement and his children. He participated in the Bureau of Prison's "Breaking the Cycle" program which addressed the causes of repeated incarceration and substance abuse issues with the goal of breaking the cycle. 1-ER-22, 25; 4-ER-400.

B. Mr. Carr's Arrest, the Indictment, and Arraignment

Beginning on or before August 19, 2019, and continuing until, on or about May 21, 2020, in Los Angeles County, and elsewhere, Mr. Carr allegedly conspired with multiple co-conspirators (including the co-defendants named in the Indictment) to manufacture, distribute, and possess with intent to distribute a total of at least 280 grams of cocaine base in the form of crack cocaine. 3-ER-558; 5-ER-724-725.

The government contended that Mr. Carr, an alleged member of the Bounty Hunter Bloods ("BHB"), and other members and

associates of BHB, would obtain powder cocaine and manufacture or "cook" crack cocaine from the powder cocaine, and package and deliver the crack cocaine to customers throughout the BHB-claimed territory in South Los Angeles, in particular in the area around the Nickerson Gardens Housing Projects in Watts, Los Angeles. The government further alleged that Mr. Carr engaged in a number of overt acts in furtherance of the conspiracy that included the facilitation of the sale of crack cocaine to a confidential informant.

3-ER-558-559; 5-ER-725-737.

In addition, the government contended that in furtherance of the drug trafficking conspiracy, Mr. Carr used telephones and coded language to arrange to sell and provide other sellers of crack cocaine with drugs, discuss the drug supply at sales locations, discuss the quality of drug supplies, discuss "cooking" crack cocaine, and/or discuss ways to avoid law enforcement detection. 3-ER-559; 1-ER-726.

The government finally alleged that on May 2020, Mr. Carr asked a co-defendant to store a firearm at her residence . On that

same date, Mr. Carr allegedly also possessed a pistol although he had previously been convicted of felony crimes, each punishable by a term of imprisonment exceeding one year. 5-ER-737.

As a result of these allegations and on February 19, 2021, an indictment was filed against Mr. Carr and eleven co-defendants. 5-ER-723. The district court arraigned Mr. Carr on February 28, 2020, where he pleaded not guilty. 5-ER-700, 706, 709-710, 714, 718. Pursuant to the government's request, the district court detained Mr. Carr pending trial. 5-ER-706,-707 709-710, 714, 718.

C. The Plea Agreement and Change of Plea

On May 2, 2022, Mr. Carr and the government entered into a plea agreement. 4-ER-548. Mr. Carr agreed, inter alia, to plead guilty to Counts One of the Indictment, Conspiracy to Manufacture, Possess with Intent to Distribute, and Distribute Cocaine Base in the Form of Crack Cocaine, in violation of 21 U.S.C. §§ 846, 841(b)(1)(A), 841(b)(1)(B); and Count Fourteen of the Indictment, Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §

922(g). 4-ER-549. Mr. Carr also agreed not to contest any administrative forfeiture. 4-ER-550-551.

The government agreed to recommend a two-level reduction in the applicable Sentencing Guidelines offense level, pursuant to U.S.S.G. § 3E1.1, and recommend, and if necessary, move for an additional one-level reduction if available under that section, provided that Mr. Carr demonstrated an acceptance of responsibility for the offense. It further agreed to move to dismiss the remaining counts against Mr. Carr. 5-ER-552-553.

The government also agreed to recommend that Mr. Carr be sentenced to a term of imprisonment no higher than the low end of the applicable Sentencing Guidelines range, provided that the offense level used by the Court to determine that range was 32 or higher. 2-ER-354.

The plea agreement noted that the United States Congress had before it the "Eliminating a Quantifiably Unjust Application of the Law Act." This was a bill also known as the "EQUAL Act," which was intended to address the disparity in penalties between violations of

federal law involving cocaine base ("crack cocaine") and violations involving other forms of cocaine. 4-ER-549, 553-554. On this basis, the parties agreed that :

If the current version of the EQUAL Act is enacted into law after the time of sentencing in this matter, the USAO agrees not to oppose a motion for sentence reduction by defendant that complies with, and is filed pursuant to, Section 2(c)(2) of the EQUAL Act, provided that such motion is based on the passage of the EQUAL Act and seeks only to take advantage of the penalty range applicable under 21 U.S.C. § 841(b)(1)(B)(ii) and to strike defendant's plea to the § 841(b)(1)(A) object. This provision does not prevent or limit the USAO from opposing any other motion by defendant under 18 U.S.C. § 3582(c)(1) that is unrelated to the passage of the EQUAL Act, nor would it restrict the Court's discretion to deny a motion filed pursuant to the EQUAL Act or the government's ability to defend on appeal the denial of any such motion.

4-ER 553-554.

In the plea agreement, Mr. Carr waived the right to appeal his conviction and agreed to a limited waiver of appeal of the sentence which stated:

Defendant agrees that, provided the Court imposes a total term of imprisonment on all counts of conviction within or below the range corresponding to an offense level of 21 and the criminal history category calculated by the Court, defendant gives up the right to appeal all of the following: (a) the procedures and calculations used to determine and impose any portion of the sentence; (b) the term of imprisonment imposed by the Court; (c) the fine imposed by the Court, provided it is within the statutory maximum; (d) to the extent permitted by law, the constitutionality or legality of defendant's sentence, provided it is within the statutory maximum; (e) the term of probation or supervised release imposed by the Court, provided it is within the statutory maximum; and (f) any of the following conditions of probation or supervised release imposed by the Court: the conditions set forth in General Order 20-04 of this Court; the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

4- ER-562-563.

At the change of plea hearing, Mr. Carr pleaded guilty to Counts 1 and 14 of the Indictment. 4- ER-542, 546 . The district court accepted the pleas. 4-ER-543-544.

D. The Presentence Report and the Parties' Sentencing Positions.

1. The Office of Probation's Presentence Reports

In advising the district court as to Mr. Carr's appropriate sentence, Probation filed a Presentence Report recommending a 188-month term of incarceration as to Count 1 and a 120-month term of incarceration on Count 14, to run concurrently. PSRs 33. Probation recommended 5 years of supervised release on Count 1 and 3 years of supervised release on Count 14, to run concurrently. PSRs 34.

In calculating Mr. Carr's sentencing guideline range, Probation relied on those guidelines based on crack cocaine as opposed to those merely relying on powder cocaine. PSRs 16. Probation calculated a guidelines range of 188 to 235 months. PSRs 8. It also noted that the minimum statutory term of imprisonment on Count 1 was 10 years and the maximum statutory term of imprisonment for Count 14 was 10 years.

2. The Government's Sentencing Position

The government made no objections to the PSR. 3-ER-392; PSRs 3. In keeping with Probation's recommendation, the government recommended that Mr. Carr be sentenced to a total of 188 months of imprisonment to be followed by five years of supervised release. 3- ER-393,395; PSRs 3. In making its recommendation, the government noted that, "The main mitigating factor in defendant's favor is his acceptance of responsibility. Not only did defendant plead guilty, but he did so early in comparison to his co-defendants and in a manner that fully accepted all the conduct charged against him in the indictment." 3-ER-394.

3. Mr. Carr's Sentencing Position

Mr. Carr filed a sentencing position requesting a sentence of 135 months in custody. 3-ER- 397; PSRs 3. In making this request, Mr. Carr described his traumatic, violent, and unstable childhood. 3-ER-399-401.

E. Sentencing and the Notice of Appeal

Mr. Carr's sentencing hearing took place on September 30, 2022. 1-ER-2, 11. In determining Mr. Carr's term of incarceration, the district court adopted Probation's Presentence Report. 1-ER-16.

At the sentencing hearing, the Mr. Carr discussed the pending nature of The EQUAL Act. 1-ER-18. The counsel noted that the Act had passed the U.S. House of Representatives with overwhelming bipartisan support but has "been hung up in the Senate. . ." 1-ER-18. Counsel further stated, ". . . once the Equal Act goes into effect which we expect and I hope does, the guidelines would be lower, and Mr. Carr would be entitled to be sentenced at a lower number. . ." 1-ER-18-19. Counsel further explained that ". . .The proposed Equal Act of 2021 . . . would raise it up to 500 grams versus the 280 grams. So it would lower the base offense -- I'm sorry. Raise the ten-year mandatory minimum and lower the base offense level based on the weight of the drug." 1-ER-30.

Mr. Carr explained that he was eager to enroll in the RDAP program and to undergo vocational training. He had completed the

Breaking the Cycle program. 1-ER-28. He also noted that even with the 11 year sentence that he was requesting, he would be well into his 60s when he was released. 1-ER-22-23.

The district court acknowledged the sincerity of Mr. Carr's statements. 1-ER-29. It then imposed a 188-month term of incarceration on Count 1 to run concurrently with the 120-month term imposed on Count 14. 1- ER 2, 31. The district court imposed 5 years of supervised release on Count 1 and 3 years to run on Count 14, to run concurrently. 1-ER-1, 32-33.

On the government's motion, the district court dismissed the remaining counts against Mr. Carr. 1-ER-4, 44, 48. On October 13, 2022, Mr. Carr filed a timely notice of appeal. 5-ER-760.

F. Attorney General Garland's December 16, 2023 Memorandum

On December 16, 2002, two months after Mr. Carr was sentenced, Attorney General Merrick Garland issued a memorandum for all federal prosecutors. 3-ER-341. In that Memorandum, the

Attorney General directed prosecutors to charge "pertinent statutory quantities that apply to powder cocaine" when pursuing crack cases and to "advocate for a sentence consistent with powder cocaine rather than crack cocaine." 3-ER-345.

With respect to sentencing the Memorandum further stated:

At sentencing, prosecutors should advocate for a sentence consistent with the guidelines for powder cocaine rather than crack cocaine.

Where a court concludes that the crack cocaine guidelines apply, prosecutors should generally support a variance to the guidelines range that would apply to the comparable quantity of powder cocaine.

3-ER-345.

G. The Plea Agreements of Mr. Carr's Co-Defendants

Mr. Carr was the first of the 12 defendant's to plead guilty in this matter. 3-ER-391. Following the issuance of the Garland Memorandum, Mr. Carr's co-defendants quickly entered into plea agreements. 2-ER-84, 101, 119, 138, 155, 182, 203, 223, 239; 3-ER-261, 280, 298, 319, 346, 364, 368. In each of the plea agreements, the

government agreed to follow the Garland Memorandum and sentence Mr. Carr's co-defendants based only use the powder cocaine guidelines. 2-ER-91, 110, 127, 145, 171, 194, 213, 230, 249; 3-ER-269, 288, 310.

H. The Court of Appeals' Memorandum

The Court of Appeals filed an unpublished memorandum affirming Mr. Carr's conviction and sentence on May 15, 2024. App 1a.

REASONS FOR GRANTING THE WRIT

I. A COURT OF APPEALS' FAILURE TO REMAND A DEFENDANT'S SENTENCE FOR RESENTENCING BASED ON THE GARLAND CRACK COCAINE MEMORANDUM IS A VIOLATION OF THE DEFENDANT'S FIFTH AMENDMENT RIGHT, AND IT IS A COMPELLING REASON TO GRANT THE INSTANT PETITION.

Although review on a writ of certiorari is not a matter of right, but of judicial discretion, a petition for a writ of certiorari will be granted for compelling reasons. U.S. Sup. Ct. R. 10. As explained below, Mr. Carr's sentence violated his Fifth Amendment rights to due process, and this violation is a compelling reason to grant the instant petition.

In his appeal in the instant matter, Mr. Carr pointed out that his sentence was unreasonable because it is greater than necessary

to achieve the goals of sentencing; excessive in light of the need to protect the public from further crimes, the need to deter criminal conduct, and the need to provide just punishment for the offense; and, excessive in light of his history and characteristics.

Under 18 U.S.C. § 3553(a)(6), a district court must consider the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. That provision requires a baseline of federal defendants with similar records who engaged in similar conduct. Thus, the baseline is assessed not simply by comparing the sentences of co-defendants, but all similarly-situated federal defendants nationwide. See *United States v. Davis*, 437 F.3d 989, 997 (10th Cir. 2006); *United States v. Vasquez*, 770 F.App'x 938, 943-944 (10th Cir. 2019)

Courts however may consider a defendant's sentence in relation to the sentence meted out to co-defendants. *United States v. Kleinman*, 880 F.3d 1020, 1040 (9th Cir. 2017) In so considering, the district court should analyze the extent to which the disparity is

warranted due to differing circumstances. *Id.* In the instant matter, Mr. Carr's sentence is disparate in relation to his co-defendants as well as to all similarly-situated federal defendants nationwide.

Just weeks after Mr. Carr was sentenced in this matter, the Attorney General issued a memorandum denouncing the disparate treatment of defendants convicted of crack cocaine offenses as opposed to those convicted of powder cocaine offenses, stating:

"First, the crack/powder disparity is simply not supported by science, as there are no significant pharmacological differences between the drugs: they are two forms of the same drug, with powder readily convertible into crack cocaine. Second, as documented by the Sentencing Commission, the crack/powder sentencing differential is still responsible for unwarranted racial disparities in sentencing. Third, the higher penalties for crack cocaine offenses are not necessary to achieve (and actually undermine) our law enforcement priorities, as there are other tools more appropriately tailored to that end." Justice Department Statement, Senate Judiciary Committee 6 (June 22, 2021).

3-ER-344.

On this basis, The Justice Department expressed that it, “. .

.supports elimination of the crack-to-powder sentencing disparity and has testified before Congress in support of the EQUAL Act, S. 79, which would remove that disparity.” 3-ER-344. The Attorney General thus directed prosecutors to “advocate for . . . sentence[s] consistent with the guidelines for powder cocaine rather than crack cocaine” when recommending sentences based on crack cocaine offenses. 3-ER-345. Because of the Attorney General’s direction, all of Mr. Carr’s co-defendant’s will be sentenced under the powder cocaine guidelines as opposed to the crack cocaine guidelines. 2-ER-91, 110, 127, 145, 171, 194, 213, 230, 249; 3-ER- 269, 288, 310. Thus, receiving lower guidelines ranges.

In calculating Mr. Carr’s sentencing guidelines range, The Office of Probation relied on those guidelines based on crack cocaine as opposed to those merely relying on powder cocaine. PSRs 16. Based on the crack cocaine guidelines, Mr. Carr’s guidelines range was elevated to 188 to 235 months. PSRs 8. In this regard, “. . . The proposed Equal Act of 2021 . . . would raise it up to 500 grams versus

the 280 grams. So it would lower . . . the base offense level based on the weight of the drug.” 1-ER-30.

Mr. Carr took prompt responsibility for the actions that led to his arrest in this matter and entered a guilty plea early in his case, long before his eleven co-defendants. 4-ER-548; PSRs 10. And what was Mr. Carr’s reward for taking prompt responsibility? He was sentenced under the more punitive crack cocaine guidelines rather than the more lenient powder cocaine guidelines under which his co-defendants were sentenced. 2-ER-91, 110, 127, 145, 171, 194, 213, 230, 249; 3-ER- 269, 288, 310. As a result all of his co-defendant’s received more lenient sentences. 1-FER- 2, 31, 37, 53, 70, 82, 92-93, 99, 132, 145, 170, 185, 214, 247-248, 258, 268-269, 283, 287, 317-320, 327, 333, 338, 354, 356, 381.

The ramifications of Mr. Carr’s prompt guilty plea is not limited to the disparate sentences between him and his co-defendants. Because of the Attorney General’s December 16, 2022 Memorandum, similarly situated defendants throughout the federal system have

and will continue to be sentenced under powder cocaine guidelines rather than crack cocaine guidelines, thereby receiving lesser terms of incarceration than Mr. Carr for similar conduct. This is quintessential disparate sentencing, and such disparate sentencing is a violation of Mr. Carr's due process rights. Because the violation of Mr. Carr's due process rights is a scenario that affects other defendants sentenced under the crack cocaine guidelines rather than under the powder cocaine guidelines, there is a compelling interest for this Court to grant this petition.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: August 8, 2024

Respectfully submitted,

/s/ Andrea R. St. Julian

Andrea R. St. Julian
Attorney for Defendant-Appellant,
TONY CARR

APPENDICES

FILED

NOT FOR PUBLICATION

MAY 20 2024

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TONY CARR, AKA Tony Carnell, AKA
Tony Coronel Carr, AKA T-Bone,

Defendant-Appellant.

No. 22-50232

D.C. Nos.
2:21-cr-00066-FLA-2
2:21-cr-00066-FLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Fernando L. Aenlle-Rocha, District Judge, Presiding

Submitted May 15, 2024**
Pasadena, California

Before: GOULD, N.R. SMITH, and MENDOZA, Circuit Judges.

Tony Carr appeals his 188-month sentence arising from his involvement in a conspiracy to manufacture, distribute, and possess with intent to distribute crack

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

cocaine.¹ We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and we affirm the district court’s sentence.²

Carr does not argue that the district court improperly calculated the Sentencing Guidelines range. Instead, Carr first argues that the district court imposed a substantively unreasonable sentence, because the district court did not consider his mitigating factors, including his age and difficult background. Carr next argues that the district court imposed a substantially unreasonable sentence, because there were unwarranted sentence disparities between him and similarly situated defendants. Specifically, Carr argues that, after he was sentenced, the United States Attorney General issued a memorandum (the Memorandum) changing how federal prosecutors should treat crack cocaine convictions, and defendants sentenced after him benefitted from this policy change by receiving lower sentences for similar conduct.

1. The record reflects that the district court considered the 18 U.S.C. § 3553(a)(1) factors. Notably, the district court acknowledged Carr’s “challenging

¹ The government conceded that Carr’s plea agreement did not preclude him from appealing the district court’s imposition of a sentence based upon an offense level 32, because Carr’s plea agreement limited his waiver of appeal of sentence if Carr was sentenced within the range of an offense level 21. Accordingly, we do not address this issue on appeal.

² Carr’s motion to file further excerpts of record under seal (Dkt. 40) is granted.

circumstances” and weighed those circumstances with the other § 3553(a) factors.

The district court then imposed a sentence at the low end of the Guidelines range.

On appeal, Carr does not present any new arguments or explain why the district court’s imposition of the 188-month sentence was an abuse of discretion. Instead, Carr “simply reargues the leniency argument[s] he made before the district court.”

United States v. Overton, 573 F.3d 679, 700 (9th Cir. 2009). The district court’s refusal to impose a lower sentence is not an abuse of discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

2. The record reflects that the district court considered any possible sentencing disparity under 18 U.S.C. § 3553(a)(6). During Carr’s sentencing hearing, the district court and counsel discussed the status of legislation regarding crack cocaine sentences.³ However, the government did not request and the district court did not make any adjustments to Carr’s sentence in light of the pending legislation. The district court stated that it was sentencing Carr consistent with the sentences of defendants with similar criminal records who had been previously convicted of similar crimes.

³ At that time, the Eliminating a Quantifiably Unjust Application of the Law Act (“EQUAL Act”) was pending before Congress. The Act, which has not been passed, aims to eliminate the sentencing disparity between the amount of crack cocaine and powder cocaine that triggers a mandatory sentence.

Two months after Carr's sentence, the Attorney General issued the Memorandum, which provided guidance for federal prosecutors regarding charging and sentencing decisions, including crack-to-powder sentencing disparities. The Memorandum instructed prosecutors to "advocate for a sentence consistent with the Guidelines for powder cocaine, rather than crack cocaine" and "generally support a variance" to the Guidelines range that would apply to the comparable quantity of powder cocaine. Following this policy change, Carr's co-defendants pleaded guilty. In each of Carr's co-defendants' sentencing hearings, the district court and the government were cognizant that Carr did not benefit from the policy change. To address this issue, the district court declined to apply a Guidelines range for powder cocaine to Carr's co-defendants. However, the district court did accept the government's requested variances. Carr argues that these variances resulted in him receiving an unreasonable sentence, because his sentence was disparate from similarly situated defendants.

The disparity of sentences for powder cocaine and crack cocaine has been recognized for years. *See Kimbrough v. United States*, 552 U.S. 85, 109 (2007). However, this disparity does not result in an unreasonable sentence. Congress has mandated different punishments for these drug offenses, and this court has recognized that if "the Guidelines range was correctly calculated, the district court

was entitled to rely on the Guidelines range in determining that there was no ‘unwarranted disparity.’” *United States v. Treadwell*, 593 F.3d 990, 1011 (9th Cir. 2010), *overruled on other grounds by United States v. Miller*, 953 F.3d 1095 (9th Cir. 2020). Although Carr argues that his sentence is disparate from other defendants nationwide, he only presented evidence of the sentences that his co-defendants received.

On this record, we cannot say that the district court abused its discretion in imposing a 188-month sentence. First, the Memorandum does not reflect a change in the law but rather a change in internal policies, which does not confer “a substantive or procedural right or benefit, enforceable at law.” Second, Carr was not similarly situated to his co-defendants. Carr was a large player in the conspiracy. Although Carr and the leader of the conspiracy were closer in their level of involvement, Carr’s criminal history level was V, compared to the leader’s criminal history level of III. Therefore, Carr did not present clear evidence that his sentence was disparate from similarly situated defendants with similar records. Third, the prosecutorial discretion to request variances or Guidelines reductions does not make Carr’s 188-month sentence unreasonable. *See United States v. Banuelos-Rodriguez*, 215 F.3d 969, 974 (9th Cir. 2000) (en banc) (explaining that “the Guidelines have sought to achieve uniformity in sentencing only by

attempting to equalize the sentences of those who have engaged in similar criminal conduct, have similar criminal backgrounds, and have been convicted of the same offense”); *see id.* at 975–76 (noting that “a review of the legislative history suggests that the disparity that Congress sought to eliminate did not stem from the exercise of prosecutorial discretion”). Finally, “sentencing disparity is only one factor a court considers in crafting an individualized sentence under § 3553(a).” *Treadwell*, 593 F.3d at 1012.

Thus, even though Carr’s co-defendants and other defendants may have benefitted from the policy changes in the Memorandum, Carr has not established that the district court abused its discretion in sentencing him to 188 months when, at the time Carr was sentenced, the Memorandum did not exist. Accordingly, the sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) factors and the totality of the circumstances, including Carr’s criminal history and the seriousness of his offense. *See Gall*, 552 U.S. at 51.

AFFIRMED.

United States District Court
Central District of California

JS-3

UNITED STATES OF AMERICA vs.

Defendant 2) Tony Carr
akas: Tony Coronel Carr; Tony Carnell; T-BoneDocket No. 2:21-cr-00066-FLA-2Social Security No. 5 2 7 0
(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

MONTH	DAY	YEAR
09	30	2022

In the presence of the attorney for the government, the defendant appeared in person on this date.

COUNSEL	<u>Robert M. Bernstein, CJA</u>
	(Name of Counsel)

PLEA	<input checked="" type="checkbox"/> GUILTY, and the court being satisfied that there is a factual basis for the plea.	<input type="checkbox"/>	NOLO	<input type="checkbox"/>	NOT
			CONTENDERE		GUILTY

FINDING	There being a finding/verdict of GUILTY, defendant has been convicted as charged of the offense(s) of:
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Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute, Cocaine Base in the Form of Crack Cocaine in violation of 21 U.S.C. section 846, 21 U.S.C. sections 841 (b)(1)(A)(iii), 841 (b)(1)(B)(iii), as charged in Count One of the Indictment AND Felon in Possession of Firearm in violation of 18 U.S.C. section 922(g), 18 U.S.C. section 924(a)(2) as charged in Count Fourteen of the Indictment

JUDGMENT AND PROB/ COMM ORDER	The court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the court that the defendant, Tony Carr, is hereby committed on Counts 1 and 14 of the Indictment to the custody of the Bureau of Prisons for a term of 188 months. This term consists of 188 (One Hundred Eight-Eight) months on Count 1 and 120 (One Hundred Twenty) months on Count 14 of the Indictment, to be served concurrently.
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It is ordered that the defendant shall pay to the United States a special assessment of \$200, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline § 5E1.2(a), all fines are waived as the court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

The court recommends that the Bureau of Prisons conduct a mental health evaluation of the defendant and provide all necessary treatment.

The court recommends the defendant be considered, if he is willing, for participation in the Bureau of Prison's Residential Drug Abuse Program (RDAP) given his daily use of cocaine and marijuana, and frequent use of alcohol.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **five years**. This term consists of **five years on Count 1 and three years on Count 14 of the Indictment**, all such terms to **run concurrently** under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04.

2. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
3. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using alcohol and illicit drugs, and from abusing prescription medications during the period of supervision.
4. During the course of supervision, the Probation Officer, with the agreement of the defendant and defense counsel, may place the defendant in a residential drug treatment program approved by the U.S. Probation and Pretrial Services Office for treatment of narcotic addiction or drug dependency, which may include counseling and testing, to determine if the defendant has reverted to the use of drugs. The defendant shall reside in the treatment program until discharged by the Program Director and Probation Officer.
5. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the court-ordered treatment to the aftercare contractors during the period of community supervision. The defendant shall provide payment and proof of payment as directed by the Probation Officer. If the defendant has no ability to pay, no payment shall be required.
6. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
7. The defendant shall cooperate in the collection of a DNA sample from the defendant.
8. The defendant shall submit the defendant's person, property, house, residence, vehicle, papers, telephones, cell phones or other areas under the defendant's control, to a search conducted by a United States Probation Officer or law enforcement officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search pursuant to this condition will be conducted at a reasonable time and in a reasonable manner upon reasonable suspicion that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation.
9. The defendant shall not associate with anyone known to the defendant to be a member of the Bounty Hunter Bloods (BHB) Gang and others known to the defendant to be participants in the BHB Gang's criminal activities, with the exception of the defendant's family members. The defendant may not wear, display, use or possess any gang insignias, emblems, badges, buttons, caps, hats, jackets, shoes, or any other clothing that defendant knows evidence affiliation with the BHB Gang, and may not display any signs or gestures that defendant knows evidence affiliation with the BHB Gang.
10. As directed by the Probation Officer, the defendant shall not be present in any area known to the defendant to be a location where members of the BHB Gang meet or assemble.

The court authorizes the Probation & Pretrial Services Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

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The court recommends to the United States Bureau of Prisons that the defendant be housed at Lompoc so he may be close to family.

Defendant is informed of his right to appeal.

On the Government's motion, counts 2, 3, 4, 6 and 7 in the underlying Indictment **as to this defendant only**, ordered dismissed.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

October 6, 2022

Date


U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

October 6, 2022

Filed Date

By Twyla Freeman
Deputy Clerk


The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996. Assessments, restitution, fines, penalties, and costs must be paid by certified check or money order made payable to "Clerk, U.S. District Court." Each certified check or money order must include the case name and number. Payments must be delivered to:

United States District Court, Central District of California
 Attn: Fiscal Department
 255 East Temple Street, Room 1178
 Los Angeles, CA 90012

or such other address as the court may in future direct.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

When supervision begins, and at any time thereafter upon request of the Probation Officer, the defendant must produce to the Probation and Pretrial Services Office records of all bank or investments accounts to which the defendant has access, including any business or trust accounts. Thereafter, for the term of supervision, the defendant must notify and receive approval of the Probation Office in advance of opening a new account or modifying or closing an existing one, including adding or deleting signatories; changing the account number or name, address, or other identifying information affiliated with the account; or any other modification. If the Probation Office approves the new account, modification or closing, the defendant must give the Probation Officer all related account records within 10 days of opening, modifying or closing the account. The defendant must not direct or ask anyone else to open or maintain any account on the defendant's behalf.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

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RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____ to _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____

Date

Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____

Filed Date

Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ Date _____
Defendant

U. S. Probation Officer/Designated Witness Date