No. 24-5794

IN THE SUPREME COURT OF THE UNITED STATES

JUAN DANIEL SIERRA-JIMENEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly applied the plain-error standard to petitioner's forfeited claim that the government breached his plea agreement.

RELATED PROCEEDINGS

United States District Court (D.P.R.):

United States v. Sierra-Jimenez, No. 13-cr-795 (Oct. 18, 2021)

United States v. Sierra-Jimenez, No. 21-cr-96 (Oct. 18, 2021)

United States Court of Appeals (1st Cir.):

United States v. Sierra-Jimenez, No. 21-1915 (Feb. 23, 2024)

United States v. Sierra-Jimenez, No. 21-1917 (Feb. 23, 2024)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A11) is reported at 93 F.4th 565.

JURISDICTION

The judgment of the court of appeals was entered on February 23, 2024. A petition for rehearing was denied on July 16, 2024 (Pet. App. B1-B2). The petition for a writ of certiorari was filed on October 15, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 2014, following a guilty plea in the United States District Court for the District of Puerto Rico, petitioner was convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (2012), and illegally possessing a machinegun, in violation of 18 U.S.C. 922(o). C.A. App. 27. Petitioner was sentenced to 35 months of imprisonment, to be followed by three years of supervised release. Id. at 28-29. Petitioner did not appeal. In 2017, petitioner was released from prison and began serving his term of supervised release. Id. at 32.

In 2021, following a guilty plea in the District of Puerto Rico, petitioner was convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). C.A. App. 63. Petitioner was sentenced to 58 months of imprisonment, to be followed by three years of supervised release. Id. at 64-65. The court also revoked petitioner's supervised release and required him to serve an additional 18 months of imprisonment for violations of his release conditions, to be served consecutively to the 58-month sentence imposed in the separate case. Id. at 60-62. The court of appeals affirmed. Pet. App. A1-A11.

1. a. In October 2013, police officers observed petitioner at a public housing complex retrieving what appeared to be a firearm from his front waistband area. 13-cr-795 Presentence

Investigation Report (PSR) ¶ 8. The officers later saw petitioner placing what appeared to be a firearm inside a black fanny pack that he was wearing across his chest. Ibid. Officers conducted a pat down of petitioner, and a subsequent search of his fanny pack revealed a Glock pistol that had been unlawfully modified to operate as a machinegun, as well as four double stack Glock magazines containing 53 rounds of ammunition. 13-cr-795 PSR ¶ 9.

In October 2013, a federal grand jury in the District of Puerto Rico returned an indictment charging petitioner with possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (2012), and illegally possessing a machinegun, in violation of 18 U.S.C. 922(o). C.A. App. 24-26. Petitioner pleaded guilty to both counts, and the district court sentenced him to 35 months of imprisonment, to be followed by three years of supervised release. Id. at 27-29. Petitioner did not appeal.

b. In July 2017, petitioner was released from prison and began serving his three-year term of supervised release. C.A. App. 32. In October 2019, petitioner violated the conditions of his release by lying to his probation officer about his location and failing to attend a meeting with his probation officer. Id. at 33. The district court issued a warrant for petitioner's arrest on supervised-release violations. See 21-cr-96 PSR ¶ 43.

Agents executed the arrest warrant at petitioner's residence, where they located petitioner in a bathroom and arrested him. See

21-cr-96 PSR ¶¶ 12-13. The bathroom also contained a Glock pistol that had been unlawfully modified to operate as a machinegun; the pistol was loaded with 14 rounds of ammunition. 21-cr-96 PSR ¶ 14. Agents also found a magazine containing 20 rounds of ammunition. Ibid.

2. a. After petitioner's arrest, in March 2021 a federal grand jury in the District of Puerto Rico returned an indictment in a new prosecution charging petitioner with possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), and illegally possessing a machinegun, in violation of 18 U.S.C. 922(o). C.A. App. 35-37.

Petitioner pleaded guilty to the felon-in-possession count pursuant to a written agreement. Pet. App. A3; see C.A. App. 38-50. Petitioner and the government agreed to recommend a total offense level of 17, which would result in a guidelines range of 37 to 46 months of imprisonment. Pet. App. A3; C.A. App. 40-41. The plea agreement also provided that both parties would recommend a sentence of imprisonment within the lower end of that guidelines range. C.A. App. 41. And both parties agreed to recommend that petitioner's revocation term of imprisonment for violating his supervised release run concurrently with the sentence for his new conviction. Ibid.

The Probation Office prepared a presentence report that recommended a different advisory guidelines range for petitioner's new conviction. The Probation Office calculated petitioner's

total offense level as 23, which would make the applicable guidelines range 70 to 87 months. 21-cr-96 PSR ¶¶ 39, 72.

b. In a combined hearing on both issues, the district court sentenced petitioner for his new conviction and revoked petitioner's supervised release and required a term of imprisonment for his violation of the release conditions. See C.A. App. 98-130.

At the portion of the hearing that addressed petitioner's new conviction, petitioner's counsel explained to the district court that the "Plea Agreement calls for a sentence of 37 months." C.A. App. 108. Counsel for the government confirmed that "[t]he Government recommends the 37 months as contemplated by the agreement." Id. at 113; see id. at 109 (counsel for the government noting that "the Government * * * agreed on the sentence that we recommended which is 37 months").

The district court, however, found that the applicable guidelines range was 70 to 87 months of imprisonment and varied downward and sentenced petitioner to 58 months of imprisonment, to be followed by three years of supervised release. C.A. App. 116, 118. The court noted that "[n]ormally" it would "be more open to implement" a jointly recommended sentence, but it could not do so here "in good conscience" because petitioner committed the offense while under supervision and it was his third machinegun offense. Id. at 114-115.

During the revocation portion of the hearing, petitioner admitted that he had violated the terms of his supervised release and "request[ed] that the [district] [c]ourt follow the [plea] agreement," in which "the parties had agreed to recommend to the Court" a term of imprisonment "concurrent to the sentence imposed" for petitioner's new conviction. C.A. App. 123; see ibid. ("We ask that the Court follow the parties' agreement."). The court then asked if the government wished to make a statement, and the government replied "[n]o." Id. at 125. The court revoked petitioner's supervised release and required an 18-month term of imprisonment, to run consecutively to petitioner's 58-month sentence. Id. at 125-127.

The district court emphasized "that this is the third time [petitioner has been] brought to court for the possession of a machinegun" and "that this is the second time [petitioner] is facing revocation proceedings for criminal conduct related to possession of a machinegun." C.A. App. 127. And the court found that petitioner exhibited "a total disregard for the supervision process" and deemed a lengthier sentence "appropriate." Id. at 126-127.

3. On appeal, petitioner argued for the first time that the government breached the plea agreement by not recommending that his sentences be served concurrently. See Pet. App. A8-A10. Applying plain-error review, the court of appeals rejected that argument and affirmed. Id. at A1-A11.

The court of appeals explained that, when conducting plain-error review, a court "consider[s] whether: (1) there was error, (2) it was plain, (3) the error affected the defendant's substantial rights, and (4) the error adversely impacted the fairness, integrity, or public reputation of judicial proceedings." Pet. App. A9 (citation omitted). But the court found that here it "need not address the first and second prongs" because petitioner could not show that the error affected his substantial rights. Id. at A10.

The court of appeals found that "[t]here is nothing in the record to suggest that the district court would in fact have imposed the recommended sentence had the government affirmatively made the recommendation." Pet. App. A10. The court of appeals emphasized that "the district court was made aware of the parties' joint concurrency recommendation via the plea agreement, the [presentence report], and by [petitioner] himself during the revocation hearing," but "ultimately chose to reject the recommended concurrent sentence given [petitioner's] conduct." Id. at A10-A11.

The court of appeals additionally observed that the district court's "explicit findings" that petitioner "'clearly demonstrated . . . a total disregard for the supervision process, . . . a lack of interest in becoming a prosocial citizen, and his inability to live a law abiding lifestyle after his release from imprisonment,'" as well as its emphasis on "'the nature and

seriousness of [petitioner's] breach of trust,'" provided "more than ample support" for imposing consecutive sentences. Pet. App. A11 (brackets omitted). Thus, the court of appeals found that petitioner "has not met his burden in proving that the government's failure to orally recommend a concurrent sentence prejudiced him." Ibid.

ARGUMENT

Petitioner contends (Pet. 10-23) that the government's purported breach of the plea agreement constitutes reversible plain error. The court of appeals' fact-bound determination that petitioner failed to show that any error affected his substantial rights is correct and does not conflict with any decision of this Court or of another court of appeals. Further review is unwarranted.

1. The court of appeals correctly determined that petitioner failed to show that any alleged breach affected his substantial rights.

To prevail on a forfeited claim, a defendant must show (1) "an error or defect"; (2) that the error or defect is "clear or obvious"; (3) that the error or defect "affected the [defendant's] substantial rights, which in the ordinary case" requires a demonstration that it "'affected the outcome of the district court proceedings'"; and (4) that the error or defect "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." Puckett v. United States, 556 U.S. 129,

135 (2009) (citation omitted). And as this Court has explained, "[a] defendant whose plea agreement has been broken by the Government will not always be able to show prejudice," such as where "he likely would not have obtained th[e] benefits [contemplated in the agreement] in any event." Id. at 141-142. Here, the court of appeals correctly determined that petitioner "likely would not have obtained" a concurrent sentence for his supervised-release violations even if the government had orally recommended one. Id. at 142; see Pet. App. A8-A11.

At petitioner's sentencing hearing, the district court first rejected the parties' joint recommendation that petitioner be sentenced to 37 months of imprisonment for his new crime because the court could not "in good conscience" "accept the plea agreement" where petitioner "committed this offense while under supervision" and this was petitioner's "third machinegun case." C.A. App. 114-115. Then, during the revocation portion of the hearing -- despite petitioner's counsel repeatedly informing the court of the parties' plea agreement recommendation for concurrent sentences -- the court determined that a lengthier sentence was appropriate. Id. at 123, 126-127.

In doing so, the district court emphasized petitioner's "total disregard for the supervision process," "lack of interest in becoming a prosocial citizen," and "inability to live a law abiding lifestyle after his release from imprisonment." C.A. App. 126-127; see p. 6, supra. The court also highlighted "that this

is the third time [petitioner] [has been] brought to court for the possession of a machinegun" and "that this is the second time [petitioner] is facing revocation proceedings for criminal conduct related to possession of a machinegun." C.A. App. 127. And the court determined that, under those circumstances, an 18-month sentence consecutive to the 58-month sentence imposed in the new criminal case was appropriate. Ibid.

In light of those facts, the court of appeals correctly determined that "[t]here is nothing in the record to suggest that the district court would in fact have imposed the recommended sentence had the government affirmatively made the recommendation." Pet. App. A10. The district court was aware of petitioner's sentencing arguments, the plea agreement, and the parties' written recommendation for concurrent sentences -- but chose to reject that recommendation because of the nature of petitioner's crimes and the and seriousness of petitioner's breach of the supervised release conditions. Id. at A10-A11. Petitioner accordingly cannot show that the government's alleged breach of the plea agreement "affected the outcome of the district court proceedings." United States v. Olano, 507 U.S. 725, 734 (1993).

2. Petitioner asserts (Pet. 13-15) that the decision below conflicts with decisions from the Fifth Circuit. That assertion is incorrect.

Petitioner misstates the Fifth Circuit's prejudice jurisprudence. The Fifth Circuit does not automatically deem the

prejudice element of plain-error review for an asserted plea-agreement breach to be satisfied in the absence of "an actual statement by the sentencing judge that he would have sentenced the Defendant to a certain particular term of imprisonment, irrespective of the Government or parties' recommendation," for a defendant to fail the prejudice prong. Pet. 15-16. To the contrary, as this Court instructed in Puckett v. United States, the Fifth Circuit's caselaw requires that courts review the record and determine whether it is "'likely'" or "unlikely" that the defendant would have received the benefit regardless of the government's breach. United States v. Hinojosa, 749 F.3d 407, 414 (2014) (citation omitted).

The Fifth Circuit, like the court below, accordingly recognizes that where "the record indicates that the district court would have imposed the same sentence regardless of the Government's breach," the defendant's substantial rights have not been affected. United States v. Kirkland, 851 F.3d 499, 503 (5th Cir. 2017). And like the court below, the Fifth Circuit examines the record before the district court and that court's statements explaining its choice of sentence. See id. at 503-505; Hinojosa, 749 F.3d at 414 (finding that the defendant failed to demonstrate prejudice based on the district court's statements at sentencing about the defendant's credibility and behavior). The Fifth

Circuit's approach therefore tracks that of the other courts of appeals.[1]

None of the specific Fifth Circuit decisions petitioner identifies (Pet. 13-15) conflicts with the decision below. In United States v. Kirkland, for example, the Fifth Circuit found prejudice where the government "aggressively argued for the high end of the guidelines range" and "presented testimony in support of that recommendation" at the sentencing hearing, in violation of the plea agreement, in which the government had agreed to recommend a sentence at the low end of the guidelines range. 851 F.3d at 504; see id. at 502-503. The Fifth Circuit found prejudice because the record indicated that the district court "consider[ed] and g[a]ve weight to the Government's recommendation"; "[i]ndeed, the district court asked the Government for its recommendation several times." Id. at 504. In petitioner's case, in contrast, the

[1] See, e.g., United States v. Simmonds, 62 F.4th 961, 968-969 (6th Cir.) (rejecting claim of prejudice where the district court repeatedly emphasized its rejection of the recommendations in the plea agreement), cert. denied, 144 S. Ct. 163 (2023); United States v. Navarro, 817 F.3d 494, 501 (7th Cir. 2016) ("[C]ases where we have found that the defendant failed to prove the prejudice prong are ones in which the record compellingly reflects the sentencing court was not influenced by the government's recommendation."); United States v. Gonzalez-Aguilar, 718 F.3d 1185, 1187-1189 (9th Cir. 2013) (declining to find prejudice where the district court's sentencing explanation reflected that it had conducted its own independent evaluation of the propriety of the stipulated sentence and relied extensively on the presentence report in imposing a lengthier sentence than recommended in the plea agreement); see also United States v. Flores-Sandoval, 94 F.3d 346, 352 (7th Cir. 1996) ("[E]ven were the government required by the agreement to recite orally its recommendation, its failure to do so did not prejudice [the defendant].").

government did not contradict its clear recommendation in the plea agreement that petitioner's sentences be imposed concurrently.

In the other Fifth Circuit decisions petitioner cites, the government "conceded" that there was plain error, and the court summarily found that "nothing in the record * * * indicate[d] that the district court" would have imposed the same sentence had the government complied with the plea agreement. United States v. Williams, 821 F.3d 656, 658 (2016) (emphasis added; citation omitted); see United States v. Cabrera, No. 20-51000, 2022 WL 2340561, at *1 (June 29, 2022) (per curiam) (similar). This case, in contrast, does not involve such a concession, and there is ample evidence in the record that indicates that the district court would have prescribed consecutive sentences in any event. See pp. 8-10, supra.

At bottom, petitioner presents only a fact-bound disagreement with the court of appeals' conclusion that he failed to show prejudice. That disagreement does not have significance beyond the specific circumstances of this case and does not warrant this Court's review. See Sup. Ct. R. 10.[2]

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[2] To the extent that petitioner is suggesting (e.g., Pet. 22) that this Court should overrule its decision in Puckett, he identifies no sound basis for doing so. Overruling precedent requires "a 'special justification,' over and above the belief 'that the precedent was wrongly decided.'" Allen v. Cooper, 589 U.S. 248, 259 (2020) (quoting Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 266 (2014)). Petitioner provides no special justification for revisiting Puckett; indeed, he does not discuss the prerequisites for doing so at all.

3. At all events, this case would be a poor vehicle for reviewing the question presented because even a favorable decision likely would not affect the outcome in petitioner's case. Even assuming that petitioner could show prejudice, he has not demonstrated that his claim satisfies the first two requirements of plain-error review -- that there was "an 'error' that is 'plain.'" Olano, 507 U.S. at 732 (citation omitted).

In the plea agreement, the government agreed to recommend a sentence of 37 months of imprisonment for petitioner's new conviction and that the sentence for his new conviction be served concurrently with the term of imprisonment for the revocation of his supervised release. C.A. App. 40-41. And at the plea hearing, the government repeatedly recommended a sentence of 37 months of imprisonment. See p. 5, supra. After the district court rejected that request, petitioner argued that the two terms of imprisonment should be imposed concurrently, see p. 6, supra, repeatedly noting that "the parties had agreed to recommend" a concurrent sentence. C.A. App. 123; see ibid. ("request[ing] that the Court follow the [plea] agreement" and "ask[ing] that the Court follow the parties' agreement").

The district court therefore was clearly on notice, based on petitioner's arguments and the plea agreement, that the government concurred in the recommendation that the two sentences be served concurrently. In light of those facts -- which at most indicate that the government failed to orally reiterate part of its

sentencing request -- it is not obvious that the government breached the plea agreement. Accordingly, it is not clear that there was any error -- let alone plain error. Cf. Puckett, 556 U.S. at 143 ("Not all breaches will be clear or obvious.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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