

No. 24-5822

FILED
AUG 03 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Fernando de la Torre — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Seventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Fernando de la Torre 15255-424

(Your Name)

F.C.I. McKean
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(City, State, Zip Code)

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QUESTION(S) PRESENTED

- (1) Should this Supreme Court overturn the appellate Court's decision to bypass appellate review for abuse of discretion?
- (2) Does Concepcion permit a district court to reduce an aggregate sentence consisting of covered and non-covered offenses (of a mandatory nature) under Section 404 of the First Step Act?
- (3) Does the reduction of a mandatory life sentence in the context of compassionate release constitute a change in law or fact of the type that this Court declared could be relied on in consideration of a sentence reduction (Concepcion) under Section 404 of the First Step Act?
- (4) Is the 7th Circuit Court of Appeal's "Just one good reason" policy with respect to the 3553(a) factors out of step with this Supreme Court's jurisprudence on post-incarceration rehabilitation?

(5) Does Youth (Diminished Mental Capacity), Child-hood trauma, and post-incarceration rehabilitation constitute an extraordinary and compelling circumstance in the context of compassionate release?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v. Benabe, 654 F.3d 753 (7th Cir. 2011);
United States v. Benabe, 436 F.App'x 639 (7th Cir. Aug.
18, 2011);
De la Torre v. United States, 847 F.3d 837 (7th Cir.
2017).

Index of Appendices:

- (A) Denial opinion/order by the 7th Circuit Court of Appeals
- (B) Petition for Reconsideration/Rehearing En Banc
- (C) Denial order of Petition for Reconsideration/Rehearing En Banc

Table of Authorities Cited:

U.S. v. Concepcion, 142 S.ct. 2389 (2022)

Pepper v. U.S., 562 U.S. 476 (2011)

Gall v. U.S., 552 U.S. 38, 128 S.ct 586 (2007)

U.S. v. Cruz, 2021 U.S. Dist LEXIS 68857

(D.Conn. 2021)

U.S. v. Glynn, 2022 U.S. Dist. 32794 (S.D.N.Y. 2022)

U.S. v. Ramsay, 538 F. Supp. 3d 407 (S.D.N.Y. 2021)

U.S. v. Moses, 2023 U.S. Dist. LEXIS 118738 (D.Md.

July 10, 2023)

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

Northern District of Illinois, Eastern
Division
Compassionate Release Motion 03-CR-90-1

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 6, 2024, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Statutes And Rules:

Section 404 of the First Step Act

Title 18 3582(c)(1)(A)

1959 (a)(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment Right to Due Process of Law;
Section 404 of the First Step Act;
Title 18 3582(c)(1)(A)

STATEMENT OF THE CASE

On March 21, 2022 (Case No. 1:03-CR-90) the Petitioner caused to be filed (through private counsel) in the Northern District of Illinois, Eastern Division, a motion for Compassionate Release. The Petitioner's request for relief was denied without a hearing on March 6, 2023 (1:03-CR-90).

Unable to pay for appellate representation the Petitioner proceeded pro se, and filed his brief in the 7th Cir. Court of Appeals (See Appellate Case No. 23-1502). After requesting several continuances the government responded.

The Petitioner then submitted his reply brief. Ultimately, the Court of Appeals affirmed the lower court's decision, and the Petitioner's request for a rehearing En Banc was also denied.

In the Petitioner's initial filing he listed as extraordinary and compelling reasons: his youth at the time of offense, childhood trauma, and his post-sentencing/incarceration rehabilitation.

The Petitioner also submitted to a psychological evaluation in which it was determined by

Dr. Joblyn Hall that the Petitioner had matured substantially and that at the time of his crimes he had not yet fully cognitively matured. In addition, Dr. Hall concluded that the Petitioner's traumatic childhood further hampered his cognitive development.

Furthermore, in his filing the Petitioner demonstrated that he was eligible for a sentence reduction pursuant to the First Step Act (i.e. Section 404).

The district court determined that although the Petitioner was eligible for a sentence reduction pursuant to Section 404 of the First Step Act that some of the counts for which he was convicted carried mandatory life and that the court was not permitted to reduce mandatory life sentences.

With respect to the Petitioner's request for compassionate release the district court specifically determined that youth at the time of offense, child-hood trauma, and post-sentencing rehabilitation were not extraordinary and compelling. The court reached this determination despite the Petitioner having cited to cases in which these factors were considered to be extraordinary and compelling by

Other district courts (i.e. Ramsay, Crutts, Glynn, and Moses).

On appeal the trend of providing youth offenders with relief in the context of compassionate release continued (See U.S. v. Moses). With respect to this continued trend the Petitioner explained to the appellate court that in the District of Maryland mandatory life sentences (or otherwise) were being reduced to sentences in the 30 year range via compassionate release. The government replied in opposition of any form of relief, the Petitioner submitted his reply brief, and the appellate court affirmed the district court's decision. Thereafter, the Petitioner filed a petition for rehearing/reconsideration En Banc (See attached En Banc Petition which encompasses the gist of the Petitioner's arguments).

REASONS FOR GRANTING THE PETITION

- (1) Appellate review is supposed to serve as a judicial oversight mechanism by reviewing a lower court's decision for abuse of discretion. In sum, the appellate court in the Petitioner's case by-passed any review for abuse-of-discretion on account of its view that the district court denied the Petitioner's motion for an independent reason. The independent reason that the Appellate Court homed in on relied solely on the Petitioner's crimes of conviction and ignored entirely who the Petitioner is today. See attached 7th Cir. Court of Appeals denial order.

As a result of the 7th Circuit's decision the Petitioner did not receive any closure in the form of judicial review for abuse of discretion regarding his claim that youth, trauma, and post-sentencing rehabilitation were indeed extraordinary and compelling reasons in the context of compassionate release (as these factors related to his case circumstances).

In addition, by not taking a position on these issues (i.e. youth, trauma, post-sentencing rehabilitation) the 7th Circuit ignored the impact that a

favorable decision would have on a district court's application of the 3553(a) factors when faced with a youth offender who has suffered from documented child-trauma, and has reformed significantly post-initial sentencing.

Yes, the district court denied the Petitioner's request for relief. However, had the 7th Circuit reviewed his (i.e. the district court's decision) decision for abuse of discretion and decided favorably to the Petitioner, then on remand the district court's decision may have shifted in favor of relief.

(2) This Supreme Court should (A) extend Concepcion to compassionate release motions, and (B) state clearly that 404 of the First Step Act enables a district court to go below mandatory minimum sentences.

(3) This Supreme Court should clarify that in the context of compassionate release defendants should be viewed as they stand on the day of their request for relief, not as they stood at the time of their crimes or initial sentences.

In addition, this Supreme Court should strike down the Seventh Circuit's "just one good reason" policy with respect to the 3553(a) factors.

(4) This Supreme Court should also clearly establish that youth, childhood trauma, and post-sentencing rehabilitation may be considered as extraordinary and compelling in the context of compassionate release.

Finally, a reading of the Petitioner's petition for rehearing and the other filings that he submitted to the 7th Circuit Court of Appeals will provide this Supreme Court with a clearer picture of his issues.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date:

7/31/24