

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

RODNEY TYRONE HENRY, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The United States Court of Appeals for the Eighth Circuit's decision misapplied the established precedent regarding circumstances that could support a finding that Henry acted with premeditation as an accomplice to the killing. Henry's petition should be granted because the circuit court's decision is a drastic departure from the court's prior decisions.

Whether Henry's life sentence was greater than necessary to accomplish the purposes of sentencing set forth in 18 U.S.C. § 3553(a), considering Henry's role in the offense and youthful age.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

None.

TABLE OF CONTENTS

	Page
I. OPINION BELOW	1
II. JURISDICTION	1
III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	1
IV. THE STATEMENT OF THE CASE.....	2
A. Introduction	2
B. Factual background	3
V. REASONS FOR GRANTING THE PETITION	5
VI. CONCLUSION.....	13
VII. APPENDIX	
A. Index of Appendices	
1. June 2, 2024 opinion of the United States Court of Appeals for the Eighth Circuit affirming United States District Court, <u>United States v. Henry</u> , 106 F.4th 763 (8th Cir. 2024)	A-1
2. August 21, 2024 Order denying Mr. Henry's Petition for Rehearing	A-12
3. Henry's Sentencing Memorandum	A-13
4. Henry's Motion for Downward Departure	A-31

TABLE OF AUTHORITIES

	Page
Cases	
<u>United States v. Thomas</u> , 664 F.3d 217, 223 (8th Cir. 2011)	5, 6
<u>Kimbrough v. U.S.</u> , 552 U.S. 85, 128 S.Ct. 558 (2007)	8
<u>Roper v. Simmons</u> , 543 U.S. 551 (2005).....	9
<u>Graham v. Florida</u> , 560 U.S. 48 (2010)	9
<u>Miller v. Alabama</u> , 567 U.S. 460, 132 S.Ct. 2455 (2012)	9
<u>Johnson v. Texas</u> , 509 U.S. 350, 367, 113 S.Ct. 2658 (1993)	9

IN THE SUPREME COURT OF THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI

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

I. OPINION BELOW

At issue in this petition is the July 2, 2024 opinion of the United States Court of Appeals for the Eighth Circuit. United State v. Rodney Henry, 106 F.4th 763 (8th Cir. 2024), appears at Appendix A-1. In its decision, the court of appeals affirmed the district court's decision regarding premeditation and the reasonableness of Henry's life sentence.

II. JURISDICTION

On July 2, 2024, the United States Court of Appeals for the Eighth Circuit issued an opinion affirming the district court. Appellant filed a timely petition for rehearing. Appellant's petition for rehearing was denied on August 21, 2024. A copy of the order denying rehearing appears at Appendix A-12.

Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S.S.G. § 2A1.1 (A) cmt. N.2(A): In the case of premeditated killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed.

18 U.S.C. § 3553(a):

(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need to reflect the seriousness of

the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for deterrence; (4) the need to protect the public; (5) the need to provide the defendant with needed educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwanted sentencing disparities; and (10) the need to provide restitution to victims.

IV. THE STATEMENT OF THE CASE

A. Introduction

Appellant, Rodney Henry, waived indictment and entered a plea of guilty to the superseding information charging him with murder while discharging a firearm in furtherance of a crime of violence. Prior to sentencing, Henry moved for a downward departure for his role in the offence and a variance based on his individual characteristics. Also, at issue was the application of U.S.S.G. § 2A1.1, specifically whether the killing was premeditated. At the sentencing hearing, the court denied all of Henry's requests and found that he acted with premeditation. Henry was sentenced to life in prison.

On appeal, Henry argued that the evidence did not support the district court's determination that Henry acted with premeditation. Further, Henry argued that a life sentence was substantively unreasonable because the district court failed to consider Henry's age at the time of the offense his particular circumstances. Henry appealed his sentence to the United States Court of Appeals for the Eighth Circuit. The trial court's

decisions were affirmed. Henry petitioned for a rehearing, and that petition was denied on August 21, 2024.

B. Factual background

On October 3, 2019, a six-count indictment was filed against Appellant Rodney Henry and Daryl Strickland. Mr. Henry and Mr. Strickland were each accused of committing a robbery at Wise Buck Pawn Shop and at Alon Gas Station. Both were also accused of discharging a firearm and causing the death of Brandon McHan in violation of 18 U.S.C. § 924(c) and 924(j)(1). Special findings were alleged, which could qualify Henry and Strickland for a sentence of death. Ultimately, the Department of Justice decided to not seek the death penalty, and Mr. Henry pleaded guilty to a one-count superseding information, whereby he agreed to plead guilty to violating 18 U.S.C. § 924(c) and 924(j)(1). Pursuant to that plea agreement, the parties agreed to litigate whether Mr. Henry acted with premeditation in the killing of Mr. McHan and whether Mr. Henry was entitled to a role reduction. Mr. Henry also reserved the right to appeal the substantive reasonableness of his life sentence.

On November 12, 2018, Mr. Henry and Mr. Strickland attempted to rob Wise Buck pawn, which resulted in the death of Brandon McHan. At sentencing, the government introduced a CD containing surveillance video that captured the crime. The disc contained multiple files, showing various angles of the crime. The videos all show the date and a relatively accurate timestamp in the top right corner of the videos.

At timestamp 5:34:52, Mr. Strickland can be seen entering the pawn shop alone and immediately shooting into the shop. When Mr. Strickland enters the shop, Mr. McHan is located behind the counter to the right of the entrance. Mr. Booth is outside the counter in the store itself directly across from the entrance. Approximately six seconds after Strickland opens fire, Mr. Henry reaches the entrance of the shop. Henry runs into Strickland as Strickland is exiting the shop and both run away from the shop. Mr. Henry fired no shots. After Mr. Strickland exits the first time, Mr. Booth retreats behind the counter where Mr. McHan is located to the right of the entrance. This can be seen at timestamp 5:35:18. Both remain behind the counter until the police arrive.

At 5:36:42, both Mr. Strickland and Mr. Henry return to the entrance with Mr. Strickland in front leading the way. At 5:37:00, Mr. Henry fires four shots through the glass door. The shots by Mr. Henry are fired directly into the shop and away from the counter where Mr. Booth and Mr. McHan are taking cover. The Video and location of the projectiles at the crime scene confirm this. Twenty seconds later law enforcement arrives, and Mr. Henry and Strickland flee the scene.

Later that evening, Mr. Henry and Strickland rob a gas station near Mr. Strickland's girlfriend's house where Henry and Strickland are staying. Video of this robbery is also included in the exhibit introduced by the government. No shots were fired, and no one was injured.

Henry filed a sentencing memorandum describing his specific characteristics and his specific request at sentencing. A-13. Mr. Henry filed a separate motion seeking a

downward departure for his role in the offense. A-31. Mr. Henry lodged objections to his criminal history calculation and resulting guideline range, and the district court overruled those objections. After reviewing the exhibits introduced at sentencing and the arguments of counsel, the district court found that Mr. Henry exercised premeditation in the killing of Mr. McHan. Before pronouncing sentence, the court received several victim impact statements. Also, Mr. Henry's mother, Lisa Wright, and his aunt, Victoria Hannah, testified to Mr. Henry's character. At the conclusion of the sentencing hearing the court sentenced Mr. Henry to life in prison. On June 28, 2023,

V. REASONS FOR GRANTING THE PETITION

A. *The United States Court of Appeals for the Eighth Circuit's decision misapplied the established precedent regarding circumstances that could support a finding that Henry acted with premeditation as an accomplice to the killing. Henry's petition should be granted because the circuit court's decision is a drastic departure from the court's prior decisions.*

At issue on appeal was application note 2(A) of U.S.S.G. § 2A1.1. The note states, “in the case of premeditated killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed.” U.S.S.G. § 2A1.1 cmt. N.2(A). The district courts’ application of this note has not received much scrutiny by the circuits or this court.

Per the eighth circuit, a killing is premeditated when it is intentional and the result of planning or deliberation. United States v. Thomas, 664 F.3d 217, 223 (8th Cir. 2011). The amount of time needed for premeditation of a killing depends on the person and the circumstances. Id. It must be long enough for the defendant, after forming the

intent to kill, to be fully conscious of his intent, and to have thought about the killing. For there to be premeditation, the defendant must think about the taking of a human life before acting. Id. The amount of time required for premeditation cannot be arbitrarily fixed. The time required varies as the minds and temperaments of people differ and according to the surrounding circumstances in which they may be placed. Id. Any interval of time between forming the intent to kill, and acting on that intent, which is long enough for the defendant to be fully conscious and mindful of what he intended and willfully set about to do, is sufficient to justify the finding of premeditation. Id.; see Eighth Circuit Model Criminal Jury Instruction 6.18.1111A-2 (2021).

Here, the court had before it several videos of the attempted robbery and shooting that took place at the Wise Buck Pawn Shop on November 12, 2018. The initial video showing the shooting shows that both Strickland and Henry first approached the pawn shop while it was closing. Once they were turned away, however, the video clearly establishes that Strickland, not Henry, approached the pawn shop and immediately opened fire upon reaching the doorway. Henry—who did not approach the pawn shop until several seconds later—ran into Strickland as he was leaving the pawn shop. He did not fire his weapon. Almost two minutes later, Strickland again approached the pawn shop doorway, this time with Henry right behind him. At this point, the victims have returned fire, and Strickland again enters the doorway alone. He almost immediately jumps out of the way of returning fire. Henry, who never enters the pawn shop, can be seen firing his weapon through a glass door into the left-hand side

of the shop. Henry fired four shots into the pawn shop. However, physical evidence—shell casings recovered that matched Henry’s .45-caliber weapon—establish that none of Henry’s shots were pointed toward either victim. A-31. Rather, as seen on the video from inside the pawn shop, the victims had retreated to the other side of the store before Henry took his first shot. Strickland and Henry approach the pawn shop a third time, again with Strickland in front and Henry trailing behind. Strickland fires multiple rounds from the entryway of the pawn shop, and again Henry never enters the doorway. Henry does not fire another shot into the pawn shop.

No evidence indicates that Henry knew Strickland was going to immediately open fire on the inhabitants of the pawn shop. No evidence supports that Henry organized or led the robbery. In fact, based on the video evidence, Strickland was in the lead during each approach to the pawn shop. Strickland shot at both victims, and he shot and killed McHan. Henry lagged sufficiently behind Strickland on the crucial first approach, and when Henry did eventually fire his weapon, he did so in a direction away from where the victims had retreated. Concluding that Henry did not have the premeditation to kill is also bolstered by letters from Henry’s family and friends presented by the defense to the district court illustrating that Henry was “more of a follower” than a leader, and “followed the crowd.” A-13. Based on the video evidence presented to the district court, Henry was following Strickland’s lead.

Shortly after leaving the pawn shop, the defendants committed a robbery at a convenience store, which provides additional support for finding that Henry did not

have the premeditated intent to kill. In the video from that incident, Strickland again first enters the store with his weapon drawn. Henry does eventually draw his gun, but he does not point it directly at the victim during the robbery. Instead, he collects money and a gun from the cash register. And, at one point, Henry awkwardly stands between Strickland and the victim. Henry does not shoot while in the convenience store, and it is clear his intention inside the store is to rob the place, not kill anyone.

Because the circuit court incorrectly applied clear precedent regarding premeditation, Henry's petition should be granted.

A. *Whether Henry's life sentence was greater than necessary to accomplish the purposes of sentencing set forth in 18 U.S.C. § 3553(a), considering Henry's role in the offense and youthful age.*

Reasonableness is the standard controlling appellate review of sentences. Kimbrough v. U.S., 552 U.S. 85, 128 S.Ct. 558 (2007). Here the district court gave Henry a sentence that was greater than necessary to achieve the goals of 18 U.S.C.A. § 3553(a). The circuit court failed in finding Henry's sentence unreasonable.

Mr. Henry argues that the district court failed to properly consider his history and characteristics. Specifically, his age at the time of the offense, childhood trauma, intellectual ability, lack of a male role model, and his role in the offense. When determining a sentence, the Court is required to consider the factors enumerated in 18 U.S.C. § 3553(a):

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for deterrence; (4) the need to

protect the public; (5) the need to provide the defendant with needed educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwanted sentencing disparities; and (10) the need to provide restitution to victims.

18 U.S.C. § 3553(a).

Mr. Henry was born in 1997 and had only recently reached the age of twenty-one at the time of the commission of the offense. A-13. Between 2005-2016, this Court has issued multiple decisions banning extreme adult sentences for youth. While Henry was not technically a minor at the time of this crime, he had just turned twenty-one years old. In Roper v. Simmons, 543 U.S. 551 (2005), the Supreme Court banned the death penalty for children under age 18. In Graham v. Florida, 560 U.S. 48 (2010), the Court banned life without parole sentences for youth convicted of non-homicide crimes; and in Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455 (2012), the Court banned mandatory sentences of life without parole in homicide cases.

While youth may still be sentenced to discretionary life without parole in homicide cases, these sentences should be rare and uncommon and reserved only for individuals who the court has deemed are incapable of rehabilitation. Nothing in the record indicates Herny was incapable of rehabilitation. Miller recognized the pertinence of the sentencer's ability to consider the "mitigating qualities of youth." Id. at 476, 2467 (quoting Johnson v. Texas, 509 U.S. 350, 367, 113 S.Ct. 2658 (1993)). In Mr. Henry's case, the district court failed to properly consider his youth at the time of the offense.

Special education records indicate that Mr. Henry was retained in kindergarten and placed in special education at an early age. At his comprehensive psychoeducational evaluation in 2012, with the exception of oral expression, Mr. Henry scored at the tenth percentile or below in all other testing. It was determined that his current functioning fell below average range of measured intelligence, and his adaptive behavior skills were inadequate. Id. Mr. Henry scored in the first percentile in broad independence and community living skills. Mr. Henry was in ninth grade in 2012, but the testing indicated that his aptitude for spelling was at a third-grade level. For math, Mr. Henry graded at a second-grade level. Notes from his individualized education program indicate that through classroom observation, Mr. Henry attempts to do his work and enjoys guided activities. With the resources provided to him through special education, he was able to graduate with a cumulative GPA of 2.23 and a ranking of 131 out of 158.

When Mr. Henry was only four years old his family's apartment at Lincoln Center in the Camden Housing Authority and caught on fire. The apartment went up in flames, and the fire department was called. The apartment suffered severe smoke damage, and the family lost everything and was displaced. Mr. Henry has never forgotten this incident, and he still suffers emotionally from it. (PSR- Par. 51). Mr. Henry attended counseling beginning at a young age at both the Ouachita Valley Family Clinic and Dayspring Behavioral Health Services.

Mr. Henry was primarily raised by his mother, and the family received benefits

during Mr. Henry's childhood. Mr. Henry had a stepfather that lived with him and his mother. (PSR-Par. 47). That stepfather was addicted to drugs and was involved in criminal activity during Mr. Henry's youth. Id. Mr. Henry did have loving relationships with his mother, grandmother, and aunts. His mother and aunt provided testimony at the sentencing hearing describing Mr. Henry's character and their love for him. His brother's and close friend, Terrion Clark, presented letters to the court for consideration regarding Mr. Herny's character.

Due to the pandemic and the nature of this case, Mr. Henry was housed at the Greene County Detention Center for a much lengthier amount of time than is typical for most pretrial detainees. Due to the pandemic, personal visits were extremely limited. In spite of this, Mr. Henry maintained a positive attitude. Mr. Henry's attitude during his pretrial detention made an impression on the chaplain at the detention center where he served his time. Chaplain Kenny Pugh volunteered to provide a letter of support for the court's consideration. Chaplain Pugh wrote that he formed a friendship with Mr. Henry in 2019, shortly after Mr. Henry's arrival at the facility. Further, Mr. Henry has always maintained a friendly personality and is able to cooperate with others. He also wrote that if the "facility had the ability to teach the adolescent population in our state then Mr. Henry would be the first one on the teacher list," and that he "has great potential for helping others." Mr. Henry's time and attitude in pretrial detention show a youthful offender's capability for maturation and rehabilitation.

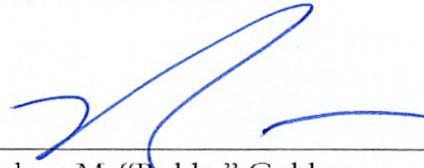
Mr. Henry further contends that the circumstances of the crime warranted a sentence of less than life. As previously argued in Mr. Henry's first reason, his involvement was significantly less than his codefendant. Both the surveillance footage and the physical evidence at the scene of the crime show that Mr. Henry never intended to shoot either victim. Mr. Henry was an accomplice to Mr. Strickland in the attempted robbery of the pawn shop. They arrived together, and Mr. Henry was armed with a firearm. However, the circumstances do not support a finding of premeditation to kill on the part of Mr. Henry.

In light of the large amount of mitigating evidence regarding the characteristics of Mr. Henry and his role in the offense, A life sentence was unreasonable in his particular case. Mr. Henry's petition should be granted, his sentence vacated and the case remanded to the district court for resentencing.

VI. CONCLUSION

For the foregoing reasons, Mr. Henry's petition for writ of certiorari should be granted.

Respectfully Submitted,



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VII. APPENDIX

A. Index of Appendices

1. June 2, 2024 opinion of the United States Court of Appeals for the Eighth Circuit affirming United States District Court, United States v. Henry, 106 F.4th 763 (8th Cir. 2024) A-1
2. August 21, 2024 Order denying Mr. Henry's Petition for Rehearing A-12
3. Henry's Sentencing Memorandum A-13
4. Henry's Motion for Downward Departure A-31