

No. 24-6155

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES EDWARD JOHNSON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHARLES EDWARD JOHNSON # 83808-180

(Your Name)

FCI TEXARKANA, P.O. BOX 7000, Texarkana,

(Address)

Texarkana, Texas 75505-7000

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE DENIAL OF PETITIONER'S MOTION FOR REDUCTION OF SENTENCE COMPLIES WITH THE FIFTH AMENDMENT GUARANTEE OF DUE PROCESS AND ESTABLISHED PRECEDENCE FROM THIS COURT WHERE THE DENIAL WAS ISSUED ON A BOILERPLATE FORM?

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

There are no related cases.

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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☒ is unpublished.

The opinion of the United States district court appears at Appendix B 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 August 29, 2024.

☒ 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: _____, 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. § 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant or the director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) [18 USCS § 3553(a)] to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fifth Amendment to the United States Constitution

STATEMENT OF THE CASE

On January 16, 2024, the Clerk of the United States District Court for the Western District of Texas filed a Motion for Modification of Sentence that was submitted by the Defendant, Charles Johnson, acting pro se in criminal action number 6:07-cr-00097-ADA-1.

in the Motion for Modification, Mr. Johnson noted that, after a series of retroactive amendments to the Sentencing Guidelines, his Total Offense Level has been lowered from 36 to 28 and his Guideline Sentencing Range dropped from 292-365 to 130-162 months incarceration.

Mr. Johnson also noted that, following the most recent Amendment to the Guidelines, promulgated in November 1, 2023, his sentence meets the definition as an "extraordinary and compelling reason" for modification whereas he has served at least 10 years in prison and changes in the law produce a gross disparity between the sentence he is serving and one likely to be imposed at the time his motion was filed, making his sentence "Unusually Long." See, U.S.S.G. § 1B1.13(b)(6).

1. The Appellant realizes that references to the electronic records is preferred in this Court. Because the Appellant is confined in a federal institution and is acting pro se, however, he does not have access to PACER, nor has any document provided to him by the court contained the R7A Citation.

Realizing the factors set forth under 18 U.S.C. § 3553 (a) would have a major impact on the determination whether or not to modify his sentence, Mr. Johnson reviewed the factors pertinent to his request for a modification of sentence and provided a chronology of the time he spent in BOP custody and the work he has put forth to improve himself and reduce the risk he poses to the general public.

Specifically, Mr. Johnson pointed out that he had "participated in more than 1,500 days of programs designed to prepare him for his return to society and reduce the possibility that he will commit another crime in the future." He noted that his current PATTERN score places him at a Low-Risk of recidivism, and informed the Court that he had "attended over 1,000 hours of education classes and participated in two years of vocational training with Unicor Prison Industries at the Texarkana facility." All of these claims were supported by documentation attached to the Motion.

On January 17, 2024, one day after the clerk filed Mr. Johnson's Motion for Modification, the Honorable Judge Alan D. Albright denied the motion in a text-only Order. In so doing, the denial used identical verbiage that had been employed in the previous denials of Mr. Johnson's sentence modification requests based on retroactive amendments to the Guidelines.

This denial, parroting earlier ones verbatim, referred to Mr. Johnson as he appeared in court at the time the original sentence was imposed. No consideration was given to the Appellant's post-conviction rehabilitation, and no justification was given as to the reason why a sentence which was originally imposed within the calculated Guideline Sentencing Range should now exceed the recommended range by 225%.

REASONS FOR GRANTING THE PETITION

The Petitioner respectfully submits that granting a Writ of Certiorari in this instance would be appropriate whereas the United States Court of Appeals for the Fifth Circuit has decided an important federal question in a way that conflicts with previous decisions issued by this Court.

When Mr. Johnson prepared a Motion for Modification of his Sentence, he discussed his post-sentencing conduct and participation in programs designed to reduce his risk of recidivism, he detailed the education courses he completed during his incarceration, and noted the vocational training he received at the institution's Unicolor Factory. Mr. Johnson provided documentation amounting to well over 1,000 hours of programs in support of his claims.

The boiler-plate denial issued by the district court, one that repeated earlier denials word for word, took no notice of any factors under 18 U.S.C. § 3553(a) that occurred after the initial sentence was imposed. In overturning a similar ruling, the Eleventh Circuit Appellate Court made the following admonishment:

On remand, the district court must give reasoned consideration to Steven's motion and provide an adequate explanation for its [decision]. The explanation must be enough to satisfy this Court that the district court has considered the parties' arguments and has a reasoned basis for exercising its discretion. In doing so, the district court may consider the § 3553(a) factors, as well as the probation office's submissions, post-sentence rehabilitation, post-imprisonment rehabilitation, or any other relevant facts and circumstances. See generally Pepper v. United States, 562 U.S. 476, 480. 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011)(finding that "[h]ighly relevant-if not essential-to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics,"

including post-sentencing rehabilitation (alterations in original))(quoting Williams v. New York, 337 U.S. 241, 246-47, 69 S. Ct. 1079, 93 L. Ed. 1337 (1949))).

United States v. Stevens, 997 F.3d 1307, 1318 (11th Cir. 2021)

Other circuits to consider similar rulings have reached the same conclusion. See, United States v. Blue, 877 F.3d 513 (4th Cir. 2017)(Defendant's sentence was procedurally unreasonable under 18 U.S.C. § 3553(a) because the District Court did not address a non-frivolous argument); United States v. Smith, 959 F.3d 701, 703 (6th Cir. 2020)(District Court's explanation for denying prisoner's motion under First Step Act and 18 U.S.C. § 3582(c) was inadequate; considerations of scale, harm, and risk for recidivism were accounted for within the guidelines calculation and did not provide sufficient justification for a sentence that was twice the maximum of the guideline range); United States v. Williams, 2024 U.S. App. LEXIS 3864 (7th Cir. 2-20-24)(similar)

Simply put, every court to consider the issue post-Pepper has required that the judge consider the defendant as he is on the date a motion is filed pursuant to section 3582(c) and requires that a denial explain the court's reasoning beyond a restatement of the findings during the initial sentencing proceedings.

There is no question in this instance that the Sentencing Commission has lowered Mr. Johnson's guideline sentencing range on at least two occasions. In fact, between the Appellant's conviction and the date of his sentencing, Mr. Johnson's Total Offense Level was lowered by two levels. The District Court

took notice of this fact and reduced the sentence from Life to 360 months. Although the District Court acknowledged in this instance that a large disparity now exists between the sentence imposed upon Mr. Johnson and his current Guideline sentencing range, there is no explanation in the denial for the difference of more than 200 months imprisonment.

This Court's decision in United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005) which made the Sentencing Guidelines advisory, revised the manner in which sentencing decisions are reviewed. Under the current standard, these decisions are reviewed for reasonableness regardless of whether the sentence imposed is inside or outside the Guidelines range. Following the procedure set forth in Gall v. United States, 552 U.S. 38, 128 S. Ct. 586, 594, 169 L. Ed. 2d 445 (2007), this Court first ensures that the district court committed no significant procedural error, such as failing to calculate the appropriate Guideline range, or failing to properly consider the § 3553(a) factors. If the Court determines the sentencing decision is procedurally sound, this Court then considers the substantive reasonableness of the decision imposed under an abuse-of-discretion standard. "Thus, a district court's interpretation or application of the Sentencing Guidelines is reviewed for clear error. There is no clear error if the district court's finding is plausible in light of the record as a whole." United States v. Cisneros-Gutierrez, 517 F.3d 751, 764 (5th Cir. 2008)(internal quotation marks and citations omitted).

In the denial of Mr. Johnson's Motion for Modification, the District

Court's decision could only have been procedurally correct if the Court recognized the fact that the correct Guideline calculation lowered the Appellant's sentence by more than 200 months. The ruling itself does not specifically note this factor, however, and is therefore procedurally unreasonable at this point without need for further consideration.

Assuming, arguendo, that the District Court did recognize the advisory sentencing range in this instance, the denial referred to Mr. Johnson only as he appeared before the Court nearly twenty years ago, and offered no justification for a sentence that was within the guidelines at the time to now exceed the advisory range by so great a margin. The denial is clearly erroneous, therefore, where the sentence as it currently stands is not plausible in light of the record as a whole. This is especially true after this Court's decision in Concepcion v. United States, -U.S.-, 142 S. Ct. 2389, 2396, 213 L. Ed. 2d 731 (2022) which obligates the District Court to state on the record that is considered all non-frivolous arguments for sentence reduction based on intervening changes in law, the Defendant's post-sentencing rehabilitation, and other factual developments.

Because the denial of Mr. Johnson's Motion for Modification was merely an echo of the factual decisions reached at sentencing nearly twenty years earlier, the denial was substantively unreasonable.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Charles E. Johnson", is written over a horizontal line.

Date: November 19, 2024