No. 24-_____

SUPREME COURT OF THE UNITED STATES

JACOBIE TRAVINSKI JOHNSON,

Petitioner,

vs.

United States,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

Does the three-level adjustment in U.S.S.G. §2J1.3(b)(2) require more than the initial perjury to constitute a "substantial interference with the administration of justice"?

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IV. Petition for Writ of Certiorari

Jacobie Travinski Johnson, a federal inmate currently incarcerated at the Federal Correction Institution in Florance, Colorado, by and through his Criminal Justice Act attorney, Thomas S. Berg, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

V. Opinion Below

The decision by the United States Court of Appeals for the Fifth Circuit affirming Mr. Johnson's sentence, No. 24-40188, *United States v. Johnson* (5th Cir. October 4, 2024) is unreported. That opinion is attached at Appendix (App.") at 1-9.

VI. Jurisdiction

Mr. Johnson's direct appeal to the United States Court of Appeals for the Fifth Circuit was denied on October 4, 2024. Mr. Johnson invokes this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed his petition for a writ of certiorari within 90 days of the judgment of the Fifth Circuit.

VII. Constitutional Provisions Involved

United States Constitution, Amendment V provides that [n]o person shall ... be deprived of life, liberty, or property, without due process of law...

VIII. Statement of the Case

Jacobie Travinski Johnson pleaded not guilty to bankruptcy fraud, waived a jury, and after a two-day bench trial, was found guilty by the district court. He was sentenced to a maximum term of 60 months in custody of the Attorney General and a three-year term of supervised release; he appeals the sentence.

On July 14, 2022, the Grand Jury in the Sherman Division of the Eastern District of Texas charged the Mr. Johnson in a sealed indictment with one count of fraudulently concealing property in connection with a bankruptcy proceeding, 18 U.S.C. § 152(1).

A First Superseding Indictment alleging the same offense but enlarging the dates and number of persons and entities from whom Mr. Johnson concealed property, was returned on February 15, 2023.

On May 4, 2023, after Mr. Johnson elected to waive a jury trial, the district court, the Honorable Amos L. Mazzant III, presiding, heard evidence from the government. The tale is gleaned from the district court's unchallenged Findings of Fact, and summarized as follows:

On September 11, 2020, Mr. Johnson voluntarily filed a Petition for Individual Bankruptcy under Chapter 13 in the Eastern District of Texas, Sherman Division (the "Petition"). At the end of the Petition, Mr. Johnson signed the form, declaring "under

penalty of perjury" that the information he provided was true and correct. Right above his signature, he acknowledged: "I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571."

Soon after filing the Chapter 13 Petition, Johnson filed additional paperwork, which included: Official Form 106, Schedules A–J, Official Form 107, Statement of Financial Affairs, and Form 122C-1 Statement of Your Current Monthly Income and Calculation of Commitment Period (the "Forms"). At the end of the Forms, Johnson signed each one, again representing under penalty of perjury that the information was true and correct.

Mr. Johnson was represented by counsel in the bankruptcy case, Marcus Leinart of the Leinart Law Firm, who assisted him in filling out the Petition and the Forms. As part of the intake process, Mr. Leinart's had Mr. Johnson fill out a "Bankruptcy Worksheet," a questionnaire regarding the client's available assets. The evident purpose was to assist in the completion of the forms for filing on behalf of Mr. Johnson as the petitioner.

The questionnaire specifically asked for pay stubs from the client and the client's spouse, proof of other income, bank statements for the prior two months, and a monthly written report of business income and expenses for the past six months if the

client had his own business. The thirty-one-page questionnaire covered everything that Mr. Leinart would need to assist his client in completing Chapter 13 paperwork.

In neither the Petition nor the Forms did Mr. Johnson represent that he had any business assets, that he was receiving any money from Saundra Bellion (Mr. Johnson's girlfriend), or that he had any open bank accounts with Navy Federal Credit Union. The only bank account that he directly disclosed in the Forms was ownership of a checking account with Capital One.

However, as the district court found, as of July 23, 2020, Johnson was a managing member of Renee's Roofing Company, LLC. Ms. Bellion was its registered agent. Renee's Roofing Company, LLC, was not mentioned in the Petition or the Forms. Johnson also received money from two bank accounts that belonged personally to Ms. Bellion and two accounts belonging to Renee's Roofing Company, LLC. Mr. Johnson was an authorized signer for the accounts that belonged to Renee's Roofing Company, LLC,. Finally, Mr. Johnson owned a savings and checking account with the Navy Federal Credit Union (the Navy Account). In the Navy Account, there were sufficient funds during the time of the bankruptcy proceedings for the district court to conclude that it should have been included in the Petition and the Forms.

The evidence showed that money circulated between Ms. Bellion's accounts, Renee's Roofing Company LLC's accounts, and the Navy Account as the government traced withdrawals and deposits from all the accounts from July 2020 to March 2022. Additionally, other money found its way into the Navy Account while Mr. Johnson

was subject to bankruptcy proceedings. None of these transactions were disclosed in the Petition or Forms either as originally filed or later amended.

Looking specifically to the Navy Account, in the month preceding Mr. Johnson's voluntary filing of the Chapter 13 Petition, he deposited $34,373.14 in his accounts and withdrew $37,073. There was activity in the Navy Account each month. In total, from July 2020 to March 2022, Johnson deposited $212,713.58 to and withdrew $212,728.69 from the Navy Account.

Mr. Johnson had other opportunities to disclose this information. Pursuant to 11 U.S.C. § 341, Johnson participated in a telephone hearing where he was given another opportunity to disclose the assets that he had previously left off the Petition and Forms (the "341 Hearing"). During this 341 Hearing, Johnson was again under oath and explicitly asked questions from a hearing officer and a creditor regarding any other business interests or any other accounts that were not previously disclosed, *i.e.*, they might have been left off the Forms. Mr. Johnson answered both of those questions negatively. Additionally, Mr. Johnson did answer questions such as how much money he was making at his new job and how long his mother had been supporting him. In fact, Mr. Johnson mentioned that he might be receiving some money soon and he was informed that he needed to tell his attorney when that happened.

After the 341 Hearing, Johnson filed amended forms with the bankruptcy court. Specifically, Johnson filed an Amended Schedule I and Schedule J, which covered his

income and expenses. Mr. Johnson again failed to disclose whether he was receiving funds from Ms. Bellion or Renee's Roofing, or the activity in the Navy account.

The district court concluded that despite the numerous opportunities provided for Mr. Johnson to disclose the entirety of his financial situation to the bankruptcy court, he never disclosed all the relevant information. Consequently, those assets were concealed from the United States Trustee and the creditors who were a party to Johnson's case.

The Government incidentally found out about Mr. Johnson's nondisclosures because of an unrelated investigation into a fraudulent scheme regarding Paycheck Protection Program loans. Both Mr. Johnson's and Ms. Bellion's names came up in connection with the investigation. Probation, the government, and the district court surmised without further proof that the circulating banking activity involved some of these Paycheck Protection Programs funds. Interestingly, the government ascertained that Mr. Johnson openly used the "undisclosed" Navy Account in the course of maintaining payments to the secured creditor on his motor vehicle. Because of the vagaries of electronic banking and funds collection, however, the identity of the source of the funds was not revealed in the bankruptcy proceedings while the fact that Mr. Johnson continued to make car payments was.

After the government rested and Mr. Johnson elected on the record to put on no evidence, the court recessed and took the case under advisement. On May 12, 2023,

the court entered findings of fact and conclusions of law and found Mr. Johnson guilty beyond a reasonable doubt as charged.

The presentence report prepared in this case adjusted the base guideline offense level of 14 upward by three levels, concluding that Mr. Johnson's "efforts" at concealment "resulted in substantial interference with the administration of justice." The only rationale provided in support of this conclusion was:

> Despite numerous attempts for the defendant to disclose the entirety of his financial situation to his attorney or to the Court handling his bankruptcy case, the defendant failed to do so. As a result, those assets were concealed from the United States Trustee and the creditors who were a party to the defendant's case, because they were never informed about the existence of those assets. The Government only received notice about the defendant's actions because of an investigation into a fraudulent scheme regarding Paycheck Protection loans where the defendant and Saundra Bellion's names appeared in connection with the investigation."

This also happened to be the very non-disclosure offense conduct for which Mr. Johnson was found guilty, with no additional labor expended by the bankruptcy court to ferret out his crime. As the PSR noted, the government stumbled across this in the course of the unrelated investigation.

This three-level upward adjustment from U.S.S.G. §2J1.3(b)(2), yielded a total offense level of 17, which, together with Mr. Johnson's criminal history category of IV, produced a Sentencing Table advisory guideline range of 37 months to 46 months for count one, and a term of supervised release of up to three years. Probation recommended the top of the guideline, 46 months. but found no basis to further vary or

depart. Mr. Johnson specifically objected to the three-level adjustment and did not relinquish this position, thus preserving the error for review.

On March 19, 2024, the district court conducted a sentencing hearing in advance of imposition of punishment. The district court overruled Mr. Johnson's objection, responding to the appellant's counsel's claim of double counting, "And so it's my view it's no different than a gun in a drug case, that that enhancement is applicable there."

The government fared better, arguing for an upward variance from the recommended, enhanced sentence of 46 months to a 60-month sentence, the statutory maximum sentence under 18 U.S.C. § 152(1). The district court agreed and imposed a sentence of 60 months, a three-year term of supervised release, and a $100.00 cost assessment. The court remarked that even if it had erred regarding the three-level enhancement, it would have imposed the same sentence.

Were Mr. Johnson's non-disclosure efforts at concealment, the basis for his count of conviction, further aggravated by his non-disclosure efforts at concealment, the self-same conduct for which he was found guilty? This was the crux of his preserved claim of error. There were no further efforts at concealment beyond the non-disclosures which constituted the offense.

The court of appeals did not even address Mr. Johnson's claim of error, accepting the government's argument that the district court would have imposed the

same, upward-variance sentence anyway "for the same reasons it provided at resentencing." There was in fact no resentencing so the court of appeal's reference is either carelessly misplaced or needlessly unclear.

Reasons for Granting the Writ

We acknowledge that this Court eliminated the mandatory nature of the Sentencing Guidelines in *Booker* v. *United States,* 543 U.S. 220 (2005).

> So modified, the federal sentencing statute, *see* Sentencing Reform Act of 1984 (Sentencing Act), as amended, 18 U.S.C. § 3551 *et seq*., 28 U.S.C. § 991 *et seq*., makes the Guidelines effectively advisory.

543 U.S. at 245. But it did not eliminate the duty of the district court to correctly calculate the guidelines as a prelude to exercising its more traditional sentencing discretion. *Id*. *See* 18 U.S.C.A. § 3553(a)(4). Indeed, a correct determination of the guideline is "the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2017) ("As we explained in *Rita*[1], a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. *See* 551 U.S., at 347 – 348. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.").

As a corollary, due process demands that a court exercising appellate review over a properly preserved guideline appeal fairly address preserved issues and provide a reasoned judgment. Again, this record lacks sufficient evidence in the district court, much less a specific finding (as opposed to a conclusion) that substantial interference with the administration of justice took place beyond Mr. Johnson's initial perjury. We submit that application of the three-level enhancement by the district court was clearly erroneous.

[1] *Rita v. United States*, 551 U.S. 338 (2007).

Here, the Fifth Circuit in its economic haste to be done with the appeal, elected not to address whether at the outset the district court correctly calculated the applicable range, despite the asserted error being properly preserved for review. It was simpler to accept the district court (and the government's) unreasoned conclusion that even if it had erred regarding the three-level enhancement, it would have imposed the same sentence. The lack of a principled explanation in the district court was compounded by the appellate court's failure to conduct a meaningful appellate review.[2]

[2] The court of appeals, in addition to referencing a non-existent "resentencing," also referenced a guideline section "2J1.3(d)(2)" instead of "2J1.3(b)(2). How does CJA counsel explain to his indigent defendant that the appellate court does not even care to proofread its opinion?

Conclusion

For the foregoing reasons, Mr. Johnson respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

DATED this the 13th day of December 2024.

Respectfully submitted,

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- APPENDIX