

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October 2024 Term

RONALD ROBINSON

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari
To the Eighth Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Submitted By:

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QUESTION PRESENTED

This Court established appellate review to of “substantively unreasonable” federal prison sentences in *United States v. Booker*. In *Rita v. United States*, it held that Circuit Courts of Appeals could grant a *rebuttable* presumption of reasonableness to a district court’s choice of a sentence within the advisory Sentencing Guidelines range. Mr. Robinson pled guilty to possessing his girlfriend’s gun for an hour before he returned it. He urged a low-range guideline term of 51 months citing the brief non-violent nature of his acts, his persisting mental and emotional impairment from childhood lead-poisoning, violent abuse by his family and his loss of a murdered brother. The Court imposed a maximum guideline term of 71 months adopting the Government’s rationale that Mr. Robinson should not get to repeatedly seek a reduced sentence based on childhood adversity. No evidence indicated he had ever requested or received leniency for his childhood abuse and lead poisoning in his prior teenage offenses in a state court having no mandate to consider a defendant’s “history and characteristics” or to impose a term “sufficient, but not greater than necessary” to achieve sentencing goals in 18 U.S.C. § 3553(a).

On appeal, Petitioner argued his maximum sentence for minimal conduct was “substantively unreasonable” and contrary to this Court’s precedents in *Booker*, *Rita*, and *Gall*. The Government stressed the “presumption of reasonableness” of any Guidelines sentence and urged the Eighth Circuit to dismiss Mr. Robinson’s claim as a “mere disagreement” on the weight warranted by Section 3553(a)(1)’s sentencing factors. This case raises this issue:

1. Does a presumption of reasonableness of Guidelines sentences under *Rita* preclude a finding of substantive unreasonableness in a maximum guideline sentence for a brief nonviolent offense by a defendant whose life encompasses strong mitigating facts?

Parties to the Proceedings

Petitioner Ronald Robinson was represented in the lower court proceedings by his appointed counsel, Nanci H. McCarthy, Federal Public Defender, and Assistant Federal Public Defender Melissa K. Goymerac, 1010 Market, Suite 200, Saint Louis, Missouri 63101. The United States was represented by United States Attorney Sayler Fleming and Assistant United States Attorney Ashley Walker, Thomas Eagleton Courthouse, 111 South 10th Street, Saint Louis, Missouri 63102.

DIRECTLY RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Robinson*, No. 4:22-CR-00124080-JAR-1, (E.D. Mo) (criminal proceeding), judgment entered July 11, 2023,
- *United States v. Robinson*, No. 23-2709 (8th Cir.) (direct criminal appeal), appellate judgment entered May 30, 2024,
- *United States v. Robinson*, No. 23-2709 (8th Cir.) (direct criminal appeal), order denying petition for rehearing *en banc* and panel rehearing entered July 16, 2024, and
- *Robinson v. United States*, No. 24A345 (Supreme Court) order extending time to file a petition for a writ of certiorari entered on Oct. 11, 2024.

There are no other proceedings related to this case within the meaning of Rule 14.1(b)(iii).

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18 U.S.C. §3553(a) *passim*

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OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is not published. It appears in the Appendix (“Appx.”, at 1-2).

JURISDICTION

The Eighth Circuit Court of Appeals entered its judgment on May 30, 2024. Appx. 1-2. Mr. Robinson filed a timely motion for rehearing and rehearing *en banc*, which was denied July 16, 2024. Appx. 3. Justice Kavanaugh granted Petitioner’s request for additional time to file his petition up through December 13, 2024. Appx. 15. This petition is timely filed within that time. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

FEDERAL STATUTORY PROVISIONS

18 U.S.C. § 922(g) Unlawful acts.

It shall be unlawful for any person—

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 3553

- (a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—
 - (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
 - (2) the need for the sentence imposed—

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g) [18 USCS § 3742(g)], are in effect on the date the defendant is sentenced; or
- (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

- (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

- (B) that, except as provided in section 3742(g) [18 USCS § 3742(g)], is in effect on the date the defendant is sentenced. [;]
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

STATEMENT OF THE CASE

Mr. Robinson presents an unusually practical case to explore the application and misuse of a “presumption of reasonableness” to affirm maximum Sentencing Guidelines sentences for nonviolent, short-lived offenses by defendant’s whose own ”history and characteristics” reflect “inherently mitigating circumstances.” The Eighth Circuit’s adoption of the Government’s claim to uphold a maximum Sentencing Guidelines term for brief non-violent possession of a gun and its request to dismiss Petitioner’s salient challenge as a “mere disagreement” on how to weigh sentencing factors essentially applies an irrebuttable presumption of reasonableness, contrary to *Rita v. United States*, 551 U.S. 338 (2007). The objectively incongruous example in this case of a maximum Guidelines term applied to a brief non-violent possessory crime by a man whose “history and characteristics” exemplify hardships this Court deems inherently mitigating makes this a strong opportunity to clarify the meaning of “substantive unreasonableness” review created in *United States v. Booker*, 543 U.S. 220 (2005), and *Gall v. United States*, 552 U.S. 38 (2007).

Factual Background.

Ronald Robinson took a gun out of his girlfriend’s apartment after they quarreled and was arrested as he returned it to her backyard an hour later. He had a small amount of fentanyl and methamphetamine on his person. He was prohibited from possessing a gun as one previously convicted of a felony. 18 U.S.C. § 922(g)(1). He pled guilty to unlawful gun possession. The District Court ruled that the facts did not support a finding that the gun he possessed was stolen, but it did apply a Guidelines enhancement for carrying the gun in relation to his drugs for an advisory Sentencing Guidelines range of 57-71 month in prison.

At sentencing, defense counsel detailed the role violence, poverty, and childhood exposure to lead played in his life and his prior convictions. Grade school educators recognized

Mr. Robinson struggled to learn and behave virtually from the start. *United States v. Robinson*, No. 4:22-CR-00124, Sentencing Memorandum, Doc. 52 at 1-2. Evaluations for Special Education Services diagnosed him as learning disabled, language impaired and behavior disordered. One of ten children supported by their single mother, Mr. Robinson was treated for elevated lead levels in his blood, exposure to which harms the regions of a child's developing brain responsible for cognition, decision making, impulse control, social behavior, emotional regulation, and risk assessment. *Id.* at 2. A diagnosis of Attention Deficit Hyperactivity Disorder followed. His first evaluation for an Individualized Education Plan (IEP) occurred the year he turned six. *Id.* A social and emotional health assessment reflected trauma from the murder of one of his older brothers. *Id.*

Mr. Robinson was moved to a more restrictive and specialized environment for behaviorally disordered children, partly due to the acute degree below grade level at which he performed. *Id.* at 3. He required 60 minutes of speech therapy a week and at least 30 minutes of individual counseling with a social worker. *Id.* By the end of 1995 he received mental health care, yet a new IEP in 1996 showed a lack of progress due to his struggles with interpersonal relationships, impulsivity plus disruptions in class, a short attention span and a proneness to distraction. *Id.* Ritalin was prescribed, but his mother secured monthly refills only sporadically. *Id.* The IEP recommended Mr. Robinson be moved again as he continued to show signs of more serious mental illness, culminating with a threat to kill himself by jumping out a second story window. *Id.* at 4. State law changed in late 1996 to discontinue his school counseling. *Id.* As his behavior deteriorated, he was moved to Scruggs School, further impairing his ability to develop a positive peer group. *Id.* Mr. Robinson's conduct continued to worsen as he started referring to abuse at home, claims the school discounted. *Id.* He threatened to kill himself and asked to go

back to a St. Joseph's Boys' Home, but the principal instead advised his transfer to a different School. *Id.* In early 1998, Mr. Robinson was moved to another middle school, where a nurse administered his medications to ensure he got them. *Id.* at 5. He made progress following directions, reading, writing and math, but did not progress in socialization skills. *Id.* On September 20, 1998, he ran from his home to a hospital after being brutally beaten with an electrical cord. *Id.* At 83 pounds, the 12-year-old's body was covered with "obvious cord marks to his trunk, back and upper extremities," some manifesting fresh wounds while others seemed older, corroborating his claims of prior abuse. *Id.* at 5-6. Doctors notified police and he was sent to a St. Louis hospital for a child abuse examination. *Id.* Mr. Robinson stated that his 20-year-old brother had attacked him in the most recent instance, as had another of his siblings. *Id.* at 6. The Division of Family Services approved his return to his mother's home, although the discharge order from the hospital admonished, "[k]eep him away from his abusive brother." *Id.*

Within a couple of months, Mr. Robinson's condition deteriorated at school. *Id.* As the school year began in 1999, it was again recommended that he transfer to another school "due to the intensity, complexity and duration of the services needed," and that he needed "a more restrictive setting" than Saint Louis Public Schools could provide. *Id.* at 6. He was transferred from regular school to a Youth Treatment Center while in the custody of the Division of Youth Services. *Id.* From ages 13-16 he was arrested riding in cars that did not belong to him and leaving the scene of an accident at age 15. *Id.* at 6-7. At 17, he was arrested for having a concealed firearm. A month later he took part in the robbery and attempted robbery of a couple in their garage, for which he was sentenced to concurrent terms of 18 and 15 years. *Id.* at 7. During his state imprisonment, Mr. Robinson was found in possession of 3.55 grams marijuana at age 22, for which he was prosecuted and ended up having to serve all of his 18-year term for

the teenage robbery. *Id.* The Presentence Report prepared for Mr. Robinson’s sentencing listed numerous undetailed conduct violations incurred at unspecified times during his 18 years in state prison, the bulk of them consisting of failure to follow orders. Appendix at 2.

Defense Counsel cited studies of incarcerated youths indicating that portions and pathways of the brain that do not remain active during adolescence “die off.” Sentencing Memorandum at 7. Counsel also cited this Court’s growing recognition that a teenager’s brain has not fully developed impulse control and appreciation of consequences, rendering youths vulnerable to bad influences and adverse peer pressure. *Id.* at 7-8. Through counsel, Mr. Robinson posited that the severe adversity defining his infancy and adolescence was effectively compounded by the severe prison term produced by his juvenile first degree robbery, a serious crime albeit one in which no one was physically injured. *Id.* at 8. In contrast to his parole from Missouri state prison, counsel noted, the United States Probation Office would help him find job training, second chance funds, and employment, plus treatment should any drug use recur. Mr. Robinson hoped to find training in plumbing, electrical and construction work to prepare for his future reentry into society. *Id.* at 9.

At the sentencing hearing, the Government did not dispute that Mr. Robinson “had a rough life growing up, okay,” but declined to engage the role of childhood exposure to lead in the behavioral and cognitive challenges defining his childhood. *United States v. Robinson*, No. 4:22-Cr-00124-JAR, Sentencing Transcript 31. The Government argued instead that “the Defendant has to take responsib[ility] for his crimes. And in this situation, the Defendant has on multiple occasions had access to firearms.” *Id.* The Government asked the District Court to impose the maximum Guidelines sentence of 71 months to show “the seriousness of the offense,” arguing that “just because of things that may have affected him in his past, does not

automatically mean that every time he gets in trouble, he is able to use that to make it so that his sentence is significantly lower.” *Id.* at 30. Defense Counsel opposed the Government’s request noting that 18 U.S.C. § 3553(a) compelled consideration of Mr. Robinson’s background and characteristics, issues for which Missouri state criminal sentencing did not do. *Id.* at 31.

The Court imposed sentence as follows:

THE COURT: Okay. All right, Mr. Robinson, as [defense counsel] has pointed out, the presentence report also points out, you have had some challenges growing up in a difficult situation. You have dealt with a number of things, including a learning disability. It is clear to me that you need some help with some of those things. It gives insight into how you got into the criminal justice system, but the fact of the matter is, looking at your background and history, your criminal history goes back to when you were a juvenile, and you started getting into serious trouble. You were in the juvenile system.

Eventually, you got into the adult system, continued to have offenses, including a gun offense. And then at a young age, you committed a very, very serious offense. It was an armed robbery of a couple, and you were sentenced to a lengthy term of imprisonment. You know, obviously, that’s unfortunate that you wound up getting a lengthy sentence, but the fact of the matter is your crime was very serious. You were armed with a gun. You robbed two people. People could have been seriously hurt or worse.

The sentence -- I mean, I understand why [] you were sentenced to 18 years in the Department of Corrections. It is very concerning to me. The presentence report points out that while you were in the Department of Corrections on five different occasions, you had violations for threats being made. Creating a disturbance six times, disobeying orders 13 times, 54 times failing to comply with orders, 30 times conduct interference with operations. There is a whole litany of violations that occurred while you were in the Department of Corrections, and then you were convicted of bringing and having controlled substance in the Department of Corrections.

I don’t know whether or not that will be subject to expungement or not, because it appears to be marijuana, but I think it is very, very concerning. It is dangerous having controlled substances in the Department of Corrections. It is an indication that while you were in the Department of Corrections, you didn’t change your behavior. You were continuing to do things that are just not acceptable, and within months of your release from the Department of Corrections, you committed this offense.

It just indicates a continuing pattern of serious criminal activity that is just unacceptable. I mean, we can blame any number of different things, but the bottom line is, it is just a serious pattern of criminal activity. So when I give consideration to all of the 3553(a) factors, all of the sentencing considerations, the Court does believe that a

sentence of 71 months is the appropriate sentence in the case. It will meet all of the statutory sentencing objectives and be sufficient but not greater than necessary to meet the statutory sentencing objectives.

Id. at 34-36.

Mr. Robinson argued in the Eighth Circuit Court of Appeals that the district court's choice of a maximum Guidelines sentence for fleeting non-violent possession of a firearm was substantively unreasonable. *United States v. Robinson*, No. 23-2709, Appellant's Brief at 10, 12-19 (8th Cir.). He argued the Court's adoption of the Government's choice to dismiss his profound and documented mental and emotional impairment from childhood lead poisoning violated Section 3553(a)'s mandate to consider just such circumstances. *Id.* Counsel also noted that the unusually tragic and abusive circumstances of Mr. Robinson's childhood and the sentence for his prior offense had never been cited or relied upon to impose a lesser sentence. *Id.* Even if these circumstances had been raised in prior sentencing, Section 3553(a) compels such consideration in every federal sentencing. *Id.* at 14-15. Mr. Robinson's brief explicitly recognized the right of district courts to weigh factors differently than the parties urged. *Id.* at 19. His claim challenged the illogical misapplication of maximum punishment for minimal offense conduct and the Court's adoption of the Government's non-statutory complaint that a profoundly mitigating personal background cannot be repeatedly cited to justify mitigated sentences because Section 3553(a) requires consideration thereof in every federal sentencing and no court had previously mitigated his punishment based on that background. *Id.* at 16, 19.

The Eighth Circuit's Ruling.

A three-judge panel of the Eighth Circuit denied his appeal without directly engaging Mr. Robinson's claim that the district court illogically imposed a maximum guidelines term for indisputably minimal offense conduct that it justified based on undetailed reports of misconduct

citations in state prison serving a sentence the District Court itself agreed was unusually harsh. Appx. 2. It dismissed Petitioner’s claims as “amount[ing] to nothing more than a disagreement with how the district court chose to weigh the § 3553(a) factors in fashioning his sentence.” *Id.* Mr. Robinson sought a rehearing, arguing that the panel’s terse affirmance conflicted with this Court’s decisions in *Booker*, *Rita*, and *Gall* and effectively applied an irrebuttable presumption of reasonableness for an incongruous maximum sentence applied to a minimal crime by a defendant whose background was “inherently mitigating.” *United States v. Robinson*, No. 23-2709, Motion for Rehearing, at 5-7 (8th Cir.). The Eighth Circuit denied the motion for rehearing on July 16, 2024. Appx. at 3.

GROUNDΣ FOR GRANTING THE WRIT

I. This Court should grant certiorari to elucidate the meaning of “substantively unreasonable sentences” and whether this encompasses the logical mismatch of a maximum guidelines sentence for minimal non-violent offense conduct.

Mr. Robinson presents an unusually clear case of a substantively unreasonable Guidelines sentence that the Court of Appeals wrongly dismissed as a mere “disagreement” by a defendant on how to weigh relevant factors under 18 U.S.C. § 3553(a). The Eighth Circuit’s terse dismissal of his claim in effect applies an *irrebuttable* presumption of reasonableness in a Guidelines sentence contrary to *Rita v. United States*, 551 U.S. 338 (2007). The record illustrates a clear abuse of discretion applying a maximum Guidelines sentence for minimal nonviolent offense conduct by a person whose background of intellectual impairment due to childhood lead poisoning and abuse constitutes “inherently mitigating” circumstances by this Court’s own account, *see Tennard v. Dretke*, 542 U.S. 274, 287 (2005) (“Impaired intellectual functioning is inherently mitigating.”).

Compelling grounds to grant certiorari exists when a United States Court of Appeals decides an important federal question in a way that conflicts with relevant decisions of this Court. S. Ct. Rule 10(c). *See United States v. Marcus*, 560 U.S. 258, 260 (2010) (certiorari was granted to determine if the Second Circuit’s approach to “plain error” under Fed. Rule Crim. Proc. 52(b) conflicted with this Court’s prior interpretations). The Eighth Circuit’s resistance to this Court’s Twentieth Century federal sentencing decisions has also provided grounds for summary disposition, *see Spears v. United States*, 555 U.S. 261, 267-68 (2009).

Maximum Guideline prison terms do not rationally fit brief nonviolent crimes.

Congress established the U.S. Sentencing Commission in the Sentencing Reform Act of 1984 to draft Sentencing Guidelines with a “basic goal . . . to move the [federal] sentencing

system in the direction of increased uniformity,” measured not merely by similar sentences for those convicted of violating the same statute, but “similar relationships between sentences and real conduct[.]” *United States v. Booker*, 543 U.S. 220, 253 (2005) (Breyer, J.). The diminishment of sentencing disparity depended upon “judicial efforts to determine, and to base punishment upon, the *real conduct* that underlies the crime of conviction.” *Id.* at 250 (emphasis in original). The *Booker* “merits” decision authored by Justice Stevens invalidated the original “mandatory” sentencing Guidelines by which a district court increased the punishment applied to a defendant based on aggravating facts the judge found by a preponderance of evidence, rather than a jury finding beyond a reasonable doubt. *Id.* at 226 (Stevens, J.).

The “*Booker* remedy” established an “advisory Guidelines” system by striking down statutory provisions mandating the application of the Guidelines range. *Id.* at 245 (Breyer, J.). Thus modified, the “effectively advisory” Guidelines “require[] a sentencing court to Consider Guidelines ranges but permits the court to tailor the sentence in light of other statutory concerns as well” listed in Section 3553(a). *Id.* at 245-46 (internal citations omitted). The statutory provisions left intact maintained the right to a federal appellate court’s determination of whether the sentence imposed “‘is unreasonable’ with regard to § 3553(a),” which “remains in effect, and sets forth numerous factors that guide sentencing.” *Id.* at 261. “Those factors in turn will guide appellate courts, as they have in the past, in determining whether a sentence is reasonable.” *Id.* In response to concerns Justice Scalia’s expressed that the advisory system would “produce a discordant symphony” of excessive sentencing disparities, this Court stressed that an advisory Guidelines system with appellate review for reasonableness would serve Congress’s original intent to reduce federal sentencing disparities:

“The Sentencing Commission will continue to collect and study appellate court decision making, it will continue to modify its Guidelines in light of what it learns, thereby

encouraging what it finds to be better sentencing practices. It will thereby promote uniformity in the sentencing process.”

Id. at 263.

In every federal prosecution, Congress instructed district courts to impose sentences that are “sufficient *but not greater than necessary*, to comply with” specified “basic objectives, including the need for “just punishment, deterrence, protection of the public, and rehabilitation.” *Holguin-Hernandez v. United States*, 589 U.S. 169, 173 (2020) (emphasis added), quoting 18 U.S.C. § 3553(a)(2). The “parsimony provision” constitutes the “overarching provision” guiding federal sentencing under Section 3553(a). *Kimbrough v. United States*, 552 U.S. 85, 101 (2007). The statute maintains the uniform and constant “federal judicial tradition for the sentencing judge to consider every case as a unique study in the human failings that sometimes mitigate, sometimes magnify the crime and the punishment to ensue.” *Pepper v. United States*, 562 U.S. 476, 487 (2011), quoting *Koon v. United States*, 518 U.S. 81, 113 (1996).

In 18 U.S.C. §3553(a), Congress made the first sentencing factor district courts must consider “the nature and circumstances of the offense and the history and characteristics of the defendant.” Section 3553(a)(1). These logically intertwined factors form the core by which to measure and apply the other sentencing factors. In petitioner’s case, however, the Government protested that the District Court should not permit Mr. Robinson to “repeatedly” be granted a lenient sentence based on the profound hardships defining his impoverished and abused childhood. The District Court followed suit and summarily dismissed the profound hardships Mr. Robinson endured as a child and teenager and imposed a maximum guideline even though “the nature and circumstances” of his hour-long non-violent possession of his girlfriend’s firearm and peaceful return thereof logically reflected minimal and short-lived offense conduct. The Eighth

Circuit did not explain why a brief non-violent offense possession of a firearm he returned to its rightful owner reasonably justified the harshest Guidelines range sentence.

Brief, non-violent possession of a gun by a man whose teenage felony conviction prohibited it does not rationally compel a maximum guidelines term. In fact, even under the mandatory Guidelines regimen, such circumstances supported a rare basis to departure from even the mandatory Guidelines regimen. *See, e.g., United States v. Mason*, 90 F. Supp. 2d 1, 1-3 (D.D.C. 1999) (an atypical scenario whereby Mason's came upon a gun near a school that he seized to dispose warranted a two-level departure); *United States v. Hancock*, 95 F. Supp.2d 280, 285 (E.D.PA. 2000) (defendant's unexpected discovery of a weapon he seized for the purpose of disposing of it was atypical of the ordinary violation of §922(g)(1)). Although more than momentary, Mr. Robinson's conduct of taking away a firearm that belonged to his girlfriend after a quarrel and returning it an hour later logically warrants less approbation than possessing a firearm for the specific purpose of actively firing the weapon or using it in some distinct crime of violence. Mr. Robinson admitted his simultaneous possession of the small quantity of drugs methamphetamine and fentanyl qualified for a two-level enhancement under U.S.S.G. § 2K2.1(b)(6), but his prompt return of the weapon greatly diminished the duration and severity of any role it served to further his possession of drugs over the course of an hour. Non-violent possession for an hour before returning it logically weighs in favor of a lower, or even below-guideline sentence. *See Hancock*, 95 F. Supp.2d at 285. Compare also *United States v. Palos-Luna*, 306 Fed. Appx. 149, 150-151 (5thCir. 2009) (unpub.) (48 months imposed for illegal reentry despite a 57-to-71-month guideline range 71 months, in light of the nonviolent nature of his illegal reentry, apprehension shortly thereafter, and the youthfulness of his priors). A

maximum Guidelines sentence applies more logically to palpably a firearm to commit or threatened violent criminal acts.

The Eighth Circuit ruling essentially uses an irrebuttable presumption.

Petitioner's case plainly exposes misuse of the rebuttable presumption of Guidelines reasonableness that this Court did not authorize in *Rita*. The Government built its argument on appeal almost entirely on the fact that maximum 71-month term the Court imposed was within the "presumptively reasonable" Sentencing Guidelines range. *United States v. Robinson*, No. 23-2709, Appellee's Brief at 14-18. In *Rita*, however, this Court merely declared that a Court of Appeals could—but need not—apply a presumption of reasonableness. 551 U.S. at 347. It simultaneously noted that it does *not* "reflect strong judicial deference of the kind that leads appeals courts to grant greater factfinding leeway to an expert agency than to a district judge." *Id.* This Court explained that a Court of Appeals decision to employ a "reasonableness" presumption, rather than having independent legal effect, simply recognizes the real-world circumstance that when the judge's discretionary decision accords with the Commission's view of the appropriate application of §3553(a) in the mine run of cases, it is probable that the sentence is reasonable." *Id.* at 350-51.

The Court in *Rita* did not suggest that a conspicuous mismatch of a maximum Guidelines sentence to punish a minimal non-violation statutory violation must be upheld to afford the District Court's autonomy to "weigh the sentencing factors" differently than a defendant prefers. The Eighth Circuit's dismissal of Mr. Robinson's arguments as "mere disagreement" on the weight relevant sentencing factors deserve effectively negates his right to an appellate court's review of the substantive reasonableness of a sentence the severity of which does not match the measure of culpability manifested by the offense conduct. Mr. Robinson fully acknowledged on

appeal that the District Court had no obligation to weigh the factors exactly as he preferred and agreed the District Court could impose a sentence higher than the one he advocated for. The problem remains that the District Court adopted the maximum guidelines term the Government based on a false and non-statutory claim that Mr. Robinson could not repeatedly receive “lesser sentences” just because he suffered egregious mental and emotional impairment from lead poisoning and criminal childhood violence. Mr. Robinson’s tragic life story presents evidence this Court deems “inherently mitigating” of one’s criminal culpability. *Tennard v. Dretke*, 542 U.S. 274, 287 (2004). Childhood exposure to lead became recognized as a cause of behavioral and intellectual impairments of the kind the Saint Louis schools often could not manage. Sentencing Memorandum at 1-3. Even under the pre-*Booker* mandatory-Guidelines regimen, Courts had long deemed childhood abuse and neglect as circumstances negating culpability. *See, e.g.*, *United States v. Brown*, 985 F.2d 478 (9th Cir. 1993) (defendant’s childhood abuse and neglect could support a downward departure); *United States v. Hunt*, No. 2:06cr113, 2007 WL 517494, *1-*2 (E.D. VA. Feb. 9, 2007) (unpub.) (24 months was imposed for identity theft committed by a 30-year-old defendant in light of victimhood and violence suffered as a child and teenager and in light of 10-years spent in prison for a crime committed before she was 20 years old); *United States v. Walter*, 256 F.3d 891 (9th Cir. 2001) (brutal beatings by defendant’s father, introduction of drugs and alcohol by his mother and sexual abuse by a cousin all at a young age constituted the type of extraordinary circumstances justifying consideration of psychological effects from childhood abuse and diminished mental capacity under U.S.S.G. §5K2.13).

The profoundly mitigating power of Mr. Robinson’s childhood hardships plus the indisputably minimal non-violent nature of his offense conduct make this an excellent vehicle for this Court to provide meaning to what constitutes a “substantively unreasonable” sentence in the

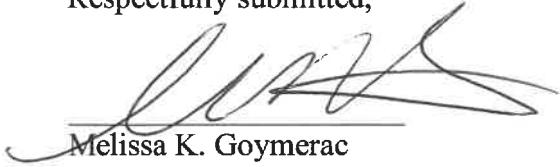
context of the appellate review this Court established twenty years ago in *Booker*. Since *Gall* was decided, the Eighth Circuit has not articulated any precise standards. In *United States v. Martinez*, 821 F.3d 984, 989-90 (8th Cir. 2016), the Circuit found that a procedural sentencing error in the misapplication of a Guidelines enhancement resulted in a substantively unreasonable sentence because the error resulted in imposition of an additional nine years that was not otherwise justified. Other circuits recite a definition of substantive reasonableness as a sentence that is “arbitrary, whimsical, or manifestly unjust.” See *United States v. Kaspereit*, 994 F.3d 1202, 1207 (10th Cir. 2021). See also *United States v. Stewart*, 597 F.3d 514, 526 (1st Cir. 2010); *United States v. Friedman*, 658 F.3d 342, 360 (3rd Cir. 2011) (a procedurally sound sentence is deemed substantively reasonable “unless no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided”); *United States v. Vidacak*, 553 F.3d 344, 348 (4th Cir. 2009) (the Circuit must determine whether the district court’s exercise of discretion, considering the law and the facts, was arbitrary or capricious”); *United States v. Hall*, 632 F. 3d 331, 335 (6th Cir. 2011) (a sentence is substantively unreasonable if the district court “selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor.”)

Mr. Robinson’s case presents an excellent vehicle for this Court to provide guidance on what constitutes a “substantively unreasonable” sentence. The entirely non-violent nature of Mr. Robinson’s offense, and the profoundly mitigating nature of his “background and characteristics” provide a stark contrast to the maximum Guidelines term the Government based on a non-statutory claim and unfounded claim that a district court must not mitigate a sentence on grounds this Court deems “inherently mitigating.”

CONCLUSION

WHEREFORE, Petitioner Robinson asks that this Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,



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CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October 2024 Term

RONALD ROBINSON

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari
To the Eighth Circuit Court of Appeals

**APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI**

1. <i>U.S. v. Robinson</i> , No. 23-2709, Judgement (8th Cir., May 30, 2024).....	1
2. <i>U.S. v. Robinson</i> , No. 23-2709, Order Denying Rehearing (8th Cir. July 16, 2024).....	3
3. <i>Robinson v. U.S.</i> , No. 24A345, Order Extending Time to File Petition for a Writ of Certiorari (July 16, 2023).....	4

Melissa K. Goymerac
Assistant Federal Public Defender

United States Court of Appeals
For the Eighth Circuit

No. 23-2709

United States of America

Plaintiff - Appellee

v.

Ronald Robinson

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: April 8, 2024

Filed: May 30, 2024

[Unpublished]

Before LOKEN, SHEPHERD, and KOBES, Circuit Judges.

PER CURIAM.

After an argument with his girlfriend, Ronald Robinson ran off with her gun. When he returned about an hour later, police arrested him. Robinson pleaded guilty to possessing a gun as a convicted felon, 18 U.S.C. § 922(g)(1), and the district

court¹ sentenced him to 71 months in prison—the top of his Guidelines range. Robinson appeals, arguing that his sentence is substantively unreasonable.

We review the substantive reasonableness of a sentence for abuse of discretion. United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). A district court abuses its discretion if it ignores “a relevant factor that should have received significant weight,” “gives significant weight to an improper or irrelevant factor,” or commits a clear error of judgment in weighing the appropriate factors. United States v. Washington, 893 F.3d 1076, 1080 (8th Cir. 2018). Because Robinson’s sentence is within the Guidelines range, we presume it is reasonable. Id.

Robinson does not rebut this presumption. The district court carefully considered the 18 U.S.C. § 3553(a) factors, and it reasonably concluded that 71 months in prison was appropriate based on Robinson’s criminal history and long list of prison conduct violations. See § 3553(a)(1). Robinson argues that the court gave too much weight to these factors and too little to a plethora of mitigating facts: he gave the gun back soon after taking it; he experienced significant childhood trauma like the murder of his brother, family violence, and exposure to lead; he spent 18 years in prison starting when he was a teenager; and he struggles with mental illness. But this argument “amounts to nothing more than a disagreement with how the district court chose to weigh the § 3553(a) factors in fashioning his sentence.” United States v. Brown, 992 F.3d 665, 673 (8th Cir. 2021). That is not enough to show that it is substantively unreasonable. Id.; see also Washington, 893 F.3d at 1080–81 (courts have “wide latitude to weigh the § 3553(a) factors in each case and assign some factors greater weight than others in determining an appropriate sentence” (citation omitted)).

We affirm Robinson’s sentence.

¹The Honorable John A. Ross, United States District Judge for the Eastern District of Missouri.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-2709

United States of America

Appellee

v.

Ronald Robinson

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:22-cr-00124-JAR-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 16, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik



Search documents in this case:

No. 24A345

Title: **Ronald Robinson, Applicant**
v.
United States

Docketed: **October 11, 2024**

Lower Ct: **United States Court of Appeals for the Eighth Circuit**

Case Numbers: **(23-2709)**

DATE	PROCEEDINGS AND ORDERS	
	Main Document	Proof of Service
Sep 30 2024	Application (24A345) to extend the time to file a petition for a writ of certiorari from October 14, 2024 to December 13, 2024, submitted to Justice Kavanaugh.	
Oct 11 2024	Application (24A345) granted by Justice Kavanaugh extending the time to file until December 13, 2024.	

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