
No. _____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,
RESPONDANT,

V.

DANA JONES,
PETITIONER.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

United States v. Dana Jones, ____ F. 3d ____ (6th Cir. 2024)
(opinion affirming district court judgment)

United States v. Dana Jones, No. 6:21-cr-00172 (E.D. Kentucky August 28, 2023)

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QUESTIONS PRESENTED

A. THE DISTRICT COURT ERRED WHEN IT SENTENCED MR. JONES

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I. OPINIONS BELOW

The reported opinion of the Court of Appeals for the Sixth Circuit and the judgment of conviction in the United States District Court for the Eastern District of Kentucky are attached to this petition as the Appendix.

II. JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on November 1st, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), the petitioner having asserted below and asserting in this petition the deprivation of rights secured by the United States Constitution.

III. STATUTORY PROVISIONS INVOLVED

This matter involves violations of the United States Code, specifically, 18 U.S.C. § 2251(a).

IV. STATEMENT OF THE CASE

A. Procedural Background

The matter was briefed for the Sixth Circuit Court of Appeals and, after considering the matter on the briefs and oral argument, the Court issued an Opinion, with a concurring Opinion from Judge White, dated November 1st, 2024, denying all relief, which has been appended to this Petition below. Mr. Jones now makes this timely application.

B. Statement of Facts

In his plea agreement, Mr. Jones admitted that in December of 2020, he recorded and transmitted a video in which the two victims¹, aged fourteen and twelve respectively, performed sexual acts with one another encompassing the offensive conduct that served as the basis for his convictions in Counts One and Two of the indictment. (R. 81, Plea Agreement, PageID# 203)

At the sentencing hearing for Mr. Jones, the Government elected to call no witnesses. In his allocution, Mr. Jones explained that he had reflected on the offensive conduct, that it was the “worst possible choice ever” and there was no one to blame but himself. (R. 114, Sentencing Hearing Transcript, PageID# 390) Mr. Jones further stated that he has to “pay for the choices that [he] made” and find a way to make positive corrections to his life going forward. (R. 114, Sentencing Hearing Transcript, PageID# 391) Lastly, Mr. Jones expressed remorse for the victims of his offense. (R. 114, Sentencing Hearing Transcript, PageID# 392)

In addition to his allocution, the District Court considered Mr. Jones’ cooperation with the Government, and the State of Kentucky, in the investigation and prosecution of at least three individuals as a basis to depart downward in sentencing him pursuant to U.S.S.G. §5K1.1. (R. 115, Sentencing Hearing Sealed Transcript, PageID#420-424)

¹ They have been identified by their initials in the presentence report as R.P. and S.H. (R. 104, Presentence Report, PageID# 285)

V. STANDARD OF REVIEW

This Honorable Court “reviews for clear error a district court’s findings of fact with respect to its application of the Sentencing Guidelines; conclusions of law, however, are reviewed *de novo*.” *United States v. Ward*, 506 F.3d 468, 472 (6th Cir. 2007). A district court’s sentencing decisions are reviewed for abuse of discretion. See *Gall v. United States*, 552 U.S. 38, 49 (2007).

Sentences imposed by the District Court are reviewed for reasonableness, and only a procedurally erroneous or substantively unreasonable sentence will be set aside. See *Gall*, 552 U.S. at 46; *Rita v. United States*, 551 U.S. 338, 351 (2007). A sentence is procedurally unreasonable if the district court “failed to calculate the Guidelines range properly; treated the Guidelines as mandatory; failed to consider the factors prescribed at 18 U.S.C. § 3553(a); based the sentence on clearly erroneous facts; or failed to adequately explain the sentence.” *United States v. Coppenger*, 775 F.3d 799, 803 (6th Cir. 2015). The substantive reasonableness of a sentence is reviewed under an abuse-of-discretion standard. *United States v. Curry*, 536 F.3d 571, 573 (6th Cir. 2008). A sentence may be substantively unreasonable if the sentencing court “imposed a sentence arbitrarily, based on impermissible factors, or unreasonably weighed a pertinent factor.” *Coppenger*, 775 F.3d at 803. “Sentences within a defendant’s Guidelines range are presumptively substantively reasonable.” *United States v. Piroso*, 787 F.3d 358, 374 (6th Cir. 2015). Once the district court determines the proper sentence for an individual defendant, the district

court must sufficiently explain the sentence to permit meaningful appellate review. *United States v. Carty*, 520 F.3d 984, 992(9th Cir. 2008) (en banc).

VI. SUMMARY OF ARGUMENT

The District Court erred when it sentenced Mr. Jones as it failed to appropriately address the §3553 factors and the evidence presented at Mr. Jones' sentencing hearing that should have mitigated the sentence that was ultimately imposed by the District Court and affirmed by the Circuit Court.

VII. ARGUMENT

A. THE DISTRICT COURT ERRED IN SENTENCING MR. JONES

This Court should accept Mr. Jones' application so it can review and clarify the proof required for a downward departure below the guideline recommended sentence, particularly the degree of the departure warranted by the proof.

The reasonableness of a District Court's sentence "has both substantive and procedural components." *United States v. Jones*, 489 F.3d 243, 250 (6th Cir. 2007). This Court's inquiry into the reasonableness of the sentence requires a review "into both 'the length of the sentence' and 'the factors evaluated and the procedures employed by the district court in reaching its sentencing determination.'" *United States v. Liou*, 491 F.3d 334, 338 (6th Cir. 2007) (quoting *United States v. Webb*, 403 F.3d 373, 383 (6th Cir. 2005)). When the Court conducts this review, it should "first ensure that the district court committed no significant procedural error' and 'then consider the substantive reasonableness of the sentence imposed under an abuse-of-

discretion standard.” *United States v. Smith*, 516 F.3d 473, 476 (6th Cir. 2008) (quoting *Gall*, 128 S.Ct. at 597). Prior panels of this Court have concluded, when reviewing the sentencing decisions of the district court, “[a] district judge act[s] unreasonably by, for example, selecting the sentence arbitrarily, basing the sentence on impermissible factors, failing to consider pertinent §3553(a) factors, or giving an unreasonable amount of weight to any pertinent factor.” *Webb*, 403 F.3d at 385.

United States Code 18 § 3553 provides the District court with guidance when sentencing a defendant. §3553 outlines numerous considerations that the District court must take into account when formulating a sentence. §3553(a) instructs the District court that, when crafting a sentence, it “shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection”. The Code goes further in §3553 to promulgate the following factors for determining a just sentence, stating:

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.

The District Court should use the appropriate range of the offense and the appropriate category of defendant as defined by the sentencing guidelines, but the District Court may depart from the specified guidelines if and when:

[T]he court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission

Once the District Court has arrived at a sentence for a particular defendant, the court must “at the time of sentencing..... state in open court the reasons for its imposition of the particular sentence” so the parties will know the court’s reasoning behind the decision reached.

i. THE SENTENCE WAS PROCEDURALLY UNREASONABLE

In reviewing the individual sentence imposed, this Court should begin its analysis “with a robust review of the factors evaluated and the procedures employed by the district court in reaching its sentencing determination.” *Bolds*, 511 F.3d at 578. This review should encompass an examination of whether the District court: “(1) properly calculated the applicable advisory Guidelines range; (2) considered the other § 3553(a) factors as well as the parties’ arguments for a sentence outside the Guidelines range; and (3) adequately articulated its reasoning for imposing the particular sentence chosen, including any rejection of the parties’ arguments for an outside-Guidelines sentence and any decision to deviate from the advisory Guidelines range”.. *Id.* at 581. The district court is required to provide an “articulation of the reasons [why it] reached the sentence ultimately imposed.” *United States v. Jackson*, 408 F.3d 301, 305 (6th Cir. 2005). “[F]or a sentence to be procedurally reasonable, when a defendant raises a particular, non-frivolous argument in seeking a lower sentence, the record must reflect both that the district judge considered the

defendant's argument and that the judge explained the basis for rejecting it." *United States v Gapinski*, 561 F.3d 467, 474 (6th Cir. 2009) (quotations and alterations omitted).

In the instant case, the District Court correctly noted that the statutory maximum sentence allowable for violations of 18 U.S. § 2251(a) is three hundred sixty months for each count regardless of the guideline calculation.² Consequently, Mr. Jones could not be sentenced to more than three hundred sixty months on either of the two counts of conviction. The District Court then went on to state that, since Mr. Jones' guideline calculation was in excess of the statutory maximum sentence for the conviction offenses, U.S.S.G. § 5G1.1(a) applied and that guideline mandated that his guideline recommended sentence was three hundred sixty months as it was the statutory maximum sentence. (R. 114, Sentencing Hearing Transcript, PageID# 364) However, the District Court then erroneously determined, based on U.S.S.G § 5G1.1(a)³, it was required to "stack" both of those terms to create a guideline recommended sentence of seven hundred twenty months. (R. 114, Sentencing Hearing Transcript, PageID# 364:18-24)

U.S.S.G § 5G1.1(a) provides "[w]here the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence." The commentary is silent as to any basis for the conclusion reached by the District Court relating to any

² The District Court calculated Mr. Jones' guideline range to be level 43 which recommends a Life sentence despite his criminal history category of I.

³ U.S.S.G § 5G1.1(a) is entitled "Sentencing on a Single Count of Conviction" when Mr. Jones, clearly, had multiple counts of conviction.

requirement that the sentences must “stack”. The District Court merely asserted that this is the case and cites no authority for this other than U.S.S.G § 5G1.1(a).

Applying U.S.S.G § 5G1.1(a) to Mr. Jones is a procedurally unreasonable application of the guidelines as the provision does not apply to him and, even if the section had applied to Mr. Jones, it was misapplied by the District Court. Clearly, Mr. Jones was being sentenced on multiple counts and U.S.S.G § 5G1.1(a) is only used to create the guideline recommended sentence if the District Court is sentencing for a single count of conviction. Further, the section is silent as to any requirement that guideline recommended sentences for multiple counts determined under this section be made consecutive to one another to create the recommended sentence.

While this represents clear procedural error that merits reversal and resentencing, Mr. Jones elects to address the contingency that this Court determines the District Court was referring to §5G1.2(d) when it pronounced its guideline range. Mr. Jones believes that, even under §5G1.2(d), the District Court erred in its conclusions as to Mr. Jones’ ultimate sentence because the District Court did not appear to be aware that the imposition of consecutive sentences was within its discretion.

The default position of a District Court when imposing multiple sentences at the same time is one of concurrent sentences. See 18 U.S.C. § 3584(a) Only upon a further finding by the District Court is consecutive sentencing warranted. 18 U.S.C. § 3584(b) discusses the considerations of the District Court when determining if consecutive sentencing is appropriate stating the District Court “shall consider, as to

each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a)” as the basis for justifying consecutive sentencing.

When the District Court, *en arguendo*, applied §5G1.2(d) to Mr. Jones and created a guideline range of seven hundred twenty months, it erred in two distinct ways. First, the District Court, through its pronouncements during sentencing, appeared to believe that it was required to impose a sentence making Mr. Jones’ two three hundred twenty month sentences consecutive to one another. Secondly, the District Court, when imposing a partial consecutive sentence, provided no justification on the record based on §3553(a) factors, as §3584(b) requires, to justify the consecutive sentence but, conversely, gave Mr. Jones a downward departure from what it believed to be his appropriate guideline range. This decision clearly indicated that the District Court believed, rather than justifying a consecutive sentence, the §3553(a) factors favored a downward departure for Mr. Jones.

After calculating Mr. Jones’ guideline range to be seven hundred twenty months, while considering the ultimate sentence to impose, the District Court stated “I can only vary if I have got a reason” while adding that “[a]nd I can’t – I don’t have – I have discretion. I don’t have discretion to ignore what the guidelines say.” (R. 114, Sentencing Hearing Transcript, PageID# 400:21&401:2-3) The District Court reiterated that it believed it was required to impose some form of consecutive sentencing stating “[t]he guidelines drive the number because there are properly two counts.” (R. 114, Sentencing Hearing Transcript, PageID# 405:12-13) However, as §3584(b) instructs, when the District Court is imposing multiple sentences at the

same time, it must provide a basis for making these sentences consecutive that comports with §3553(a). Contrary to providing a basis for consecutive sentencing, when the District Court did consider Mr. Jones pursuant to the §3553(a) factors, it elected to give Mr. Jones a downward departure. This downward departure was based on Mr. Jones' election to plead guilty and the subsequent lack of necessity for a difficult and traumatizing trial for the victims. (R. 114, Sentencing Hearing Transcript, PageID# 406-407)

It is accurate that the district Court must consider the guideline calculated sentence when determining the ultimate sentence for an individual defendant. See *Booker*, 543 U.S. at 245-246; *Gall*, 552 U.S. 38. However, the guidelines are merely "one factor among several" that the District Court must weigh when crafting an appropriate sentence under § 3553(a) for an individualized defendant. *Nelson*, 555 U.S. at 352. Contrary to the District Court's assertions, it does have "discretion to ignore" the guidelines if it believes that departure from the guidelines is appropriate for a particular defendant for an articulable reason or reasons stated on the record.

Mr. Jones' counsel argued for a lower sentence based on numerous factors and requested concurrent three hundred sixty-month sentences for each count which would not have required the District Court to sentence Mr. Jones consecutively. (R. 114, Sentencing Hearing Transcript, PageID# 385-387) The District Court committed procedural error when applied an incorrect legal standard when it believed consecutive sentencing was required. The District Court abused its discretion in making the sentences consecutive without explaining its reasoning,

without explaining why it rejected Mr. Jones' request for a concurrent sentence and without explaining why a consecutive sentence was warranted when the District Court determined that a downward variance was appropriate for Mr. Jones. *Jackson*, 408 F.3d at 305; *Gapinski*, 561 F.3d at 474.

CONCLUSION

For the aforementioned reasons, Mr. Jones prays that this Honorable Court will grant his request for a writ of certiorari in order to review the question presented relating to erroneous sentencing by the District Court, affirmed by the Circuit Court, that created reversible error. This issue is one that presents an important question that this Court grant review to clarify the standard of proof required to set appropriate restitution in cases of this nature.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing petition motion to proceed *in forma pauperis* has been served via first-class mail upon counsel for the Respondent Mr. John Patrick Grant, United States Attorney's Office for the Eastern District of Kentucky at Lexington, 260 W. Vine Street, Suite 300, Lexington, KY 40507, and Ms. Elizabeth Prelogar, Acting Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, this 13th day of January, 2025.

/s/ Manuel B. Russ
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