NO.

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024

DAVID KITCHEN

PETITIONER,

v.

UNITED STATES OF AMERICA

RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether the Fourth Circuit erred by affirming the District Court's discretion in sentencing Mr. Kitchen to six (6) months of home detention for a supervised release violation, where his record otherwise on supervised release was excellent, and where he accepted responsibility for the supervised release violation.

RULE 14.1(b) STATEMENT

There are no parties in addition to those listed in the caption.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OFFICIAL OPINION BELOW

The Judgment of the United States Court of Appeals for the Fourth Circuit was entered on November 22, 2024. The Fourth Circuit Opinion is attached hereto as Appendix I.

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Fourth Circuit was entered on November 22, 2025. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS

There are no constitutional provisions cited in the Petition for a Writ of Certiorari.

STATEMENT OF THE CASE/STATEMENT OF FACTS

A. THE RECORD BEFORE THE DISTRICT COURT.

On April 21, 2015, Mr. Kitchen was charged in a one count Criminal Information with possession of child pornography, in violation of 18 U.S.C. Sec. 2252(a)(4)(B). Mr. Kitchen entered a guilty plea to the same charge on May 21, 2015. On October 19, 2015, Mr. Kitchen was sentenced to 108 months of incarceration, and other conditions. On January, 2023, Mr. Kitchen was released from custody, and began serving a period of life on supervised release.

Once on Supervised Release, Mr. Kitchen encountered his first violation of the conditions of Supervised Release, which involved failure to notify his Probation Officer of a change of address (Condition 3).

At the June 6, 2023 hearing, Mr. Kitchen agreed that he violated Condition 3 by not informing his Probation Officer of his new address, but denied a violation of Condition 6. The court accepted Mr. Kitchen's stipulation to his violation of Condition 3, the violation of Condition 6 was dismissed, and the disposition of the Condition 3 violation was continued, pending any further violations, to January 1, 2024. If no such violations occurred by that date, the court would dismiss the Condition 3 violation.

On November 30, 2023, the Probation Officer filed a second Supervised Release violation report, claiming that Mr. Kitchen failed to participate in a mental health treatment program that

included psychosexual evaluation and sex offender treatment. The Probation Officer reported that Mr. Kitchen was highly resistant to this treatment, and had received an unsuccessful discharge summary from the Clinical Services Center where he had been sent to by Probation.

On February 6, 2023, and on February 21, 2023, there were hearings on the Supervised Release Violation Report before the Honorable Rebecca Beach Smith of the United States District Court for the Eastern District of Virginia. The court heard both evidence and argument from the Government, Mr. Kitchen through counsel, and heard from the Probation Office.

In the February 21, 2023 Hearing, Mr. Kitchen stipulated to the violations in the latest Supervised Release Report, which also included failure to submit to polygraph testing as part of his sex offended program, as directed by the Probation Office.

On February 23, 2023, the court issued an Order wherein it found that Mr. Kitchen had violated conditions of supervised visitation as set forth in the November 30, 2023 Addendum Petition filed by the Probation Office.

In sentencing Mr. Kitchen, the district court revoked the supervised release previously imposed, and sentenced Mr. Kitchen to six (6) months of home detention, as an alternative to imprisonment. The court ordered Mr. Kitchen to wear a GPS monitoring device during the six month period. There were certain

activities where Mr. Kitchen could leave his residence, on a schedule approved by the Probation Office. He was placed on a renewed period of supervised release of 25 years. *See* 18 U.S.C. Sec. 3583(e)(3).

Mr. Kitchen filed a timely notice of appeal on March 8, 2024. The United States Court of Appeals for the Fourth Circuit affirmed the district court decision on November 22, 2025. (*See* Appendix I.)

SUMMARY OF ARGUMENT

The Fourth Circuit erred in not finding that the District Court abused its discretion by revoking Supervised Release and imposing 6 months of home detention on Mr. Kitchen, given his otherwise excellent adjustment to Supervised Release.

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY REVOKING SUPERVISED RELEASE.

A. The Standard Of Review.

This Court reviews all sentences for "reasonableness" by applying the "deferential abuse-of-discretion standard." *United States v. McCain*, 974 F.3d 506, 515 (4th Cir. 2020). Once this Court ensures that the district court committed no significant procedural errors, *see Gall v. United States*, 552 U.S. 38, 51 (2007), the Court then proceeds to substantive reasonableness by considering "the totality of the circumstances." *Id.*

B. The Totality Of The Circumstances Establish That The District Court Abused Its Discretion By Imposing Six Months Of Home Detention On Mr. Kitchen.

Mr. Kitchen's crime was very serious. However, he completed his 108 month prison sentence in January 2023. However, under the totality of circumstances, it is clear that Mr. Kitchen's sentence for the supervised release violations should have been less severe, given his otherwise excellent adjustment to supervised release.

1. The Applicable Legal Standard For Sentencing.

It is essential to consider the proper legal standard for sentencing. Sentencing courts enjoy greater latitude to impose alternative sentences that are also reasonable so long as they are tied to the Sec. 3553(a) factors. *See Gall v. United States*, 552 U.S. 38, 59 (2007) ("the Guidelines are not mandatory, thus the 'range of choice dictated by the facts of the case' is significantly broadened. Moreover, the Guidelines are only one of the factors to consider when imposing a sentence, and Sec. 3553(a)(3) directs the [sentencing] judge to consider sentences *other than imprisonment.*") (Emphasis added.)

Further, pursuant to 18 U.S.C. Sec. 3553(a)(2), the sentencing court must impose a sentence that is minimally sufficient to achieve the goals of sentencing based on all of the Sec. 3553(a) factors present in the case. This "parsimony provision" serves as the "overarching instruction" of the statute. *See Kimbrough v. United States*, 552 U.S. 85, 111 (2007). *See also* Sec. 3553(a)

("[t]he court shall impose a sentence sufficient, *but not greater than necessary*, to comply with the purposes set forth in paragraph (2) of this subsection"). (Emphasis added.)

The "parsimony principle" is the touchstone for "the four identified purposes of sentencing: just punishment, deterrence, protection of the public, and rehabilitation." *Dean v. United States*, 137 S.Ct 1170, 1176, 581 U.S. ____ (2017).

2. Mr. Kitchen's Excellent Record On Supervised Release.

It is not unusual that defendants who are released after incarceration can have supervised release issues. However, the district court must be careful, and exercise judicial restraint, when considering re-sentencing for supervised release violations, after Mr. Kitchen served his full 108 month sentence.

In fact, Mr. Kitchen accomplished laudable goals while on supervised release. First, as a sex offender, Mr. Kitchen had to register with the Virginia State Police. There is no dispute that Mr. Kitchen faithfully registered with the Virginia State Police, every 90 days, after his release. The Probation Officer confirmed that at the February 21, 2024 Hearing.

Second, despite the initial violation from the June 6, 2023 Hearing, Mr. Kitchen had now established a stable home at a hotel. The Probation Officer visited Mr. Kitchen at this residence, and apparently all was in order.

Third, Mr. Kitchen had reported to his Probation Officer as

instructed, and had maintained contact with his Probation Officer.

Fourth, since his release, Mr. Kitchen had not had any contact with law enforcement, no new arrests, and certainly no new convictions.

Fifth, Mr. Kitchen had been able to obtain and finance a vehicle, and had made all payments on the vehicle timely.

Sixth, Mr. Kitchen had developed a strong support network of family and friends in his community, an important achievement.(JA 173.) He maintains daily contact and meetings with his wife.

Seventh, he had submitted his monthly reports to Probation timely, without one missed report. In fact, Mr. Kitchen has to submit two reports, which he has done.

Eighth, Mr. Kitchen had consistently tested negative in drug testing, and had no issues with alcohol.

As the Court can see, the record before the district court contained powerful mitigating factors that weighed heavily against any revocation of supervised release, and any form of incarceration.

Under Paragraph 11(a) of the United States Sentencing Guidelines worksheet, it states "Where the minimum term of imprisonment determined under Section. 7B1.4 (Term of Imprisonment) is at least one month but not more than six months", U.S.S.G. Sec. 7B1.3(c)(1) provides sentencing options other than imprisonment. This further applies to the Grade C violation, involved herein.

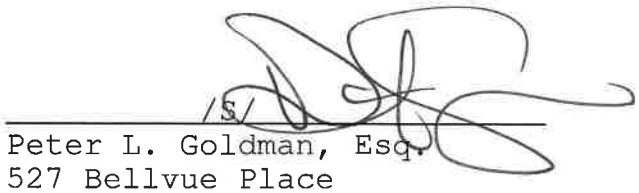
Under the totality of circumstances, a reprimand by the court would have been more than sufficient to address the only serious condition violation, the failure to complete the mental heath program. This is particularly applicable given the parsimony provision. This "parsimony provision" serves as the "overarching instruction" of the statute. *See Kimbrough v. United States*, 552 U.S. 85, 111 (2007). *See also* Sec. 3553(a) ("[t]he court shall impose a sentence sufficient, *but not greater than necessary*, to comply with the purposes set forth in paragraph (2) of this subsection"). (Emphasis added.)

Accordingly, while electronic monitoring may have had some use in this case, home detention was unreasonable, unwarranted, and unnecessary given the substantial mitigating factors not disputed in the record.

II. CONCLUSION

WHEREFORE, Mr. Kitchen respectfully requests that the Court grant Certiorari, reverse and vacate the decision of the Fourth Circuit and the sentencing decision of the District Court, and remand this case for resentencing to the District Court, consistent with Mr. Kitchen's request for a reprimand only.

Respectfully submitted,



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APPENDIX I

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4143

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID R. KITCHEN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Senior District Judge. (2:15-cr-00047-RBS-LRL-1)

Submitted: November 19, 2024 Decided: November 22, 2024

Before QUATTLEBAUM, RUSHING, and BENJAMIN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Peter L. Goldman, Alexandria, Virginia, for Appellant. Jessica D. Aber, United States Attorney, Richmond, Virginia, Kristin G. Bird, Assistant United States Attorney, Norfolk, Virginia, Vetan Kapoor, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David R. Kitchen appeals the six-month term of home confinement imposed following the revocation of his supervised release. On appeal, Kitchen asserts that the district court abused its discretion when it imposed the term of home confinement because he had otherwise adjusted to the terms of his supervised release. We affirm.

"A district court has broad discretion when imposing a sentence upon revocation of supervised release. This [c]ourt will affirm a revocation sentence if it is within the statutory maximum and is not plainly unreasonable." *United States v. Patterson*, 957 F.3d 426, 436 (4th Cir. 2020). Before deciding "whether a revocation sentence is plainly unreasonable, [we] must first determine whether the sentence is procedurally or substantively unreasonable," *id.*, applying "the same procedural and substantive considerations that guide our review of original sentences" but taking "a more deferential appellate posture than we do when reviewing original sentences," *United States v. Padgett*, 788 F.3d 370, 373 (4th Cir. 2015) (cleaned up). "[I]f a sentence is either procedurally or substantively unreasonable," we then address "whether the sentence is plainly unreasonable—that is, whether the unreasonableness is clear or obvious." *Patterson*, 957 F.3d at 437 (internal quotation marks omitted).

"A revocation sentence is procedurally reasonable if the district court adequately explains the chosen sentence after considering the Sentencing Guidelines' nonbinding Chapter Seven policy statements and the applicable 18 U.S.C. § 3553(a) factors." *United States v. Coston*, 964 F.3d 289, 297 (4th Cir. 2020) (internal quotation marks omitted); *see* 18 U.S.C. § 3583(e) (listing applicable factors). "[A]lthough the court need not be as

detailed or specific when imposing a revocation sentence as it must be when imposing a post-conviction sentence, it still must provide a statement of reasons for the sentence imposed." *United States v. Slappy*, 872 F.3d 202, 208 (4th Cir. 2017) (cleaned up). The district court must, at a minimum, explain the sentence sufficiently to permit meaningful appellate review, "with the assurance that the court considered any potentially meritorious arguments raised by [the defendant] with regard to his sentencing." *United States v. Gibbs*, 897 F.3d 199, 205 (4th Cir. 2018) (cleaned up). "A revocation sentence is substantively reasonable if, in light of the totality of the circumstances, the court states an appropriate basis for concluding that the defendant should receive the sentence imposed." *Coston*, 964 F.3d at 297 (internal quotation marks omitted).

We have reviewed the record in conjunction with the parties' arguments and conclude that the imposed revocation sentence is reasonable and, thus, not plainly unreasonable. Notably, the record confirms that the district court explained its reasons for the sentence in detail and, moreover, that the court was measured in its reasoning, seeking to balance the escalation in Kitchen's defiance with his nearly 11 months of positive behavior. We conclude that the district court sufficiently stated a proper basis for its conclusion that Kitchen should receive the sentence imposed. *See Slappy*, 872 F.3d at 207-08.

Accordingly, we affirm the revocation order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED