NO.

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024

RAEQUAN RUCKER

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 dismissing Mr. Rucker's Appeal before that Court.

RULE 14.1(b) STATEMENT

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

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TABLE OF AUTHORITIES

OFFICIAL OPINION BELOW

The Judgment of the United States Court of Appeals for the Fourth Circuit was entered on December 19, 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 December 19, 2024. 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.

Mr. Rucker was indicted on September 21, 2022, in the United States District Court for the Eastern District of Virginia, Norfolk Division. He was charged with Conspiracy under 18 U.S.C. Sec. 371 (Count I), Carjacking, under 18 U.S.C. Secs. 2119 and 2 (Count II), Use, Carry and Brandish a Firearm During a Crime of Violence, under 18 U.S.C. Sec. 18 U.S.C. Sec. 924(c)(1)(A)(ii) and 2 (Count III), Possession of a Stolen Firearm under 18 U.S.C. Sec. 922(j), 924(a)(2) and 2(Count IV), Felon in Possession of Firearms, under 18 U.S.C. Secs. 922(g)(1) and 924(a)(2), and Criminal Forfeiture.

On July 19, 2023, Mr. Rucker waived his right to enter a guilty plea before a United States District Judge (JA 15), and he entered a plea of guilty before United States Magistrate Judge Douglas E. Miller. Mr. Rucker pled guilty to Count II of the Indictment, Carjacking, under 18 U.S.C. Secs. 2119 and 2, and Count III of the Indictment, Carry and Brandish a Firearm During a Crime of Violence, under 18 U.S.C. Sec. 18 U.S.C. Sec. 924(c)(1)(A)(ii) and 2. Mr. Rucker entered a written Plea Agreement and Statement of Facts at the time of his plea hearing.

The underlying facts agreed to were that, on July 11, 2022, Mr. Rucker and a co-conspirator (a minor), aided and abetted each other in a carjacking episode. Mr. Rucker brandished firearms to carjack two vehicles on Scott Street in Portsmouth, Virginia. Mr.

Rucker brandished a firearm and carjacked a 2020 Chevy Traverse from victim one. The co-conspirator brandished a firearm and carjacked a 2019 Honda Pilot from victim two. Mr. Rucker and the co-conspirator were later apprehended and arrested.

1. The Probation Office's USSG Calculations.

The Probation Office applied a base offense level ("OL") of 20 under United States Sentencing Guideline ("USSG")Sec. 2B3.1. The Probation Office added the additional enhancements to its Guidelines calculation:

* a 6 point OL enhancement for a firearm being used under USSG Sec. 2B3.1(b)(2)(B);

* a 2 point OL enhancement under USSG Sec. 2B3.1(b)(5); and

* a 1 point OL enhancement under USSG Sec. 2B3.1(b)(7)(B).

Probation added a 1 point OL increase under USSG Sec. 3D1.4.

According to Probation, the combined OL was 30 pursuant to USSG Sec. 3D1.4. After Mr. Rucker's Acceptance of Responsibility for a 3 OL reduction, the total OL calculation was 27.

2. The Government's USSG Calculations.

The Government took the position at sentencing that USSG Sec. 2K2.4 barred the application of the 6 OL point enhancement under USSG Sec. 2B3.1(b)(2)(B). The Government argued the OL was 22. Based on a Criminal History Category V (which all involved agreed to), the Government argued that the OL was 22, for a USSG range of 77-96 months. The Government argued for a sentence of 96 months

on Count II, and the statutorily required seven (7) years on Count III, for a total of 180 months, plus 5 years of supervised release.

3. Mr. Rucker's USSG Calculations.

Mr. Rucker agreed with the Government's objection to the 6 OL enhancement under USSG Sec. 2B3.1(b)(2)(B). The defense also objected to the "Count 2A: Carjacking (Victim Two)", under USSG Sec. 2K2.4, Application Note 2.

Accordingly, the defense argued that the correct OL was 20 (USSG range 57-71 months), and if the Court overruled the objection to the 2 point enhancement, then Mr. Rucker agreed to the OL 22 and 77-96 month USSG range proposed by the Government. However, Mr. Rucker argued for a variance sentence of 48-60 months on Count II, based on a series of challenging factors.

4. The Court's Sentence.

The district court (the Honorable Mark S. Davis) sentenced Mr. Rucker on January 4, 2024. The court overruled the defense objection to "psuedo count 2A", involving carjacking victim number 2. The court, citing USSG Sec. 1B1.2(c), comment 3, overruled the defense objection. The court, reading the statement of facts, found that Mr. Rucker and his co-conspirator "[a]ided and abetted each other, brandished firearms to carjack two vehicles." Absent a "compelling argument otherwise", the Court applied the enhancement for the "psuedo count".

Regarding the joint objections to a 6 point OL enhancement for

a firearm being used under USSG Sec. 2B3.1(b)(2)(B), the district court acknowledged that if a firearm is used during the commission of a robbery, a six-level enhancement is applied. "But when a defendant is convicted under 18 U.S.C. 924(c), the firearm charge, no weapons enhancement is applied to the offense upon which the 924(c) conviction is based."

However, the district court found that the application note further provides that if a defendant is "convicted" of two armed robberies but is convicted under 924(c)in connection with only one of the robberies, a weapon enhancement would apply to the second robbery, which was not the basis of the 924(c)conviction.

The court later observed that, under USSG Sec. 1B1.2(c), when a defendant stipulates to additional offenses in their plea agreement, the Court should treat those offenses as a "conviction", this allowing for the enhancement under Sec. 2B3.1(b)(2)(B).

The court, citing USSG Sec. 2KS.4, comment 4, overruled the 6 OL point enhancement objections.

The district court found that, for Count II, the OL was 27, and a criminal history of 5, for a USSG range of 120 to 150 months. There was no dispute that the 924(c) conviction on Count III carried a mandatory minimum 7 year conviction, to run consecutive to the sentence for Count II.

Ultimately, the district court imposed a variance sentence, consistent with the Government's recommended sentence, of 180

months (96 months on Count II; 84 months on Count III), and five years of supervised release.

Mr. Rucker filed a timely Notice of Appeal on January 18, 2024. Mr. Rucker later filed an Opening Brief with the United States Court of Appeals of the Fourth Circuit, raising issues regarding his sentencing. The Government filed a Motion to Dismiss the Appeal, based upon Mr. Rucker's waiver of appeal in his written plea agreement and at his plea hearing.

On December 19, 2024, the Fourth Circuit granted the Government's Motion to Dismiss Mr. Rucker's appeal. (Appendix I.)

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY APPLYING THE SEC. 2B3.1(b)(2)(B) ENHANCEMENT.

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.*

The Sentencing Reform Act of 1984 requires that challenges to sentences be made on direct appeal. *See* 18 U.S.C. Sec. 3742 (2006). The Government or a defendant may appeal a sentence that either

party believes is unreasonable. *See United States v. Booker*, 543 U.S. 220, 261 (2005) (appellate courts should review sentences for unreasonableness).

A sentence may be appealed on the grounds that it resulted from an incorrect application of the Sentencing Guidelines. *See United States v. Jones*, 716 F.3d 851, 858 (4th Cir. 2013) (sentence appealable because defendant asserted incorrectly failed to group multiple convictions under Guidelines).

B. The District Court Improperly Applied Sec. 2B3.1(b)(2)(B).

The District Court erred when it applied the 6 OL enhancement under Sec. 2B3.1(b)(2)(B). The District court was correct when it stated "if a firearm was otherwise used during commission of a robbery, a six-level enhancement is applied .. [b]ut when a defendant is convicted under 18 U.S.C. 924(c) [as here], the firearm charge [Count III], no weapons enhancement is applied to the offense upon which the 924(c) conviction is based."

The District Court continued that "[t]he guideline commentary also specifies that no weapon enhancement is applied if, for example, the co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 924(c)."

This is where *the Government tried to explain to the court the underlying facts consistent with jointly undertaken criminal activity.* "The enhancement should not be applied because the

carjacking that is the subject of the additional count was a jointly undertaken criminal activity for which the defendant was already convicted of the 924(c) offense ... The carjacking that is subject of Count 2 of the indictment was undertaken simultaneously to the carjacking that is the subject of the additional count. Furthermore, the defendant and his co-conspirator conspired to commit these carjackings together. Therefore, both carjackings were part of a jointly undertaken criminal conspiracy and the 6-point enhancement should not apply."

See also USSG Sec. 2K2.4 ("Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which he defendant was convicted under 18 U.S.C. Sec. 924(c)....")

The defense agreed with the Government's assessment of Sec. 2B3.1(b)(2)(B). The language in Mr. Rucker's Agreed Statement of Facts supports the Government and defense positions above about "jointly undertaken criminal activity". "Simultaneously, RUCKER brandished a firearm and carjacked a 2020 Chevy Traverse from Victim One, while the co-conspirator brandished a firearm and carjacked a 2019 Honda Pilot from Victim Two."

Instead of accepting the Government's and the defense's joint objection to the 6 point enhancement, the district court went on a dubious tangent, citing the application note and USSG Sec.

1B1.2(c).

At best, there is a conflict between sections of the USSG. The District Court erred in its choice to apply Sec. 2B3.1(b)(2)(B). The decision of the District Court should be reversed for re-sentencing.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY APPLYING THE HIGH END OF THE RECOMMENDED USSG RANGE.

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.*

The Sentencing Reform Act of 1984 requires that challenges to sentences be made on direct appeal. *See* 18 U.S.C. Sec. 3742 (2006). The Government or a defendant may appeal a sentence that either party believes is unreasonable. *See United States v. Booker*, 543 U.S. 220, 261 (2005) (appellate courts should review sentences for unreasonableness).

A sentence may be appealed on the grounds that it resulted from an incorrect application of the Sentencing Guidelines. *See United States v. Jones*, 716 F.3d 851, 858 (4th Cir. 2013) (sentence

appealable because defendant asserted incorrectly failed to group multiple convictions under Guidelines).

B. The Totality Of The Circumstances Establish That The District Court Abused Its Discretion By Not Granting Mr. Rucker A Lower Sentence.

Mr. Rucker's crimes were very serious. The defense conceded that point at sentencing. However, under the totality of circumstances, it is clear that the period of incarceration for Mr. Rucker's sentence was unreasonably high, and should have been lower, as recommended by the defense.

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. Rucker Is Young, And Faced Challenging Circumstances.

At the time of sentencing, Mr. Rucker was just 23 years old. (He is now 24 years old.) His father was not a significant influence in his life. He had no male role model. He grew up in a terrible environment in Portsmouth - the crime infested Lincoln Park. Mr. Rucker experimented with marijuana, while still a teen. (JA 85.)

Mr. Rucker has three children. He misses them, and they miss him. He will not be part of their lives for the next 15 years, based on the district court's sentence.

Mr. Rucker regrets his conduct. He wants to find gainful employment to support his children.

3. The District Court Flouted The "Parsimony Provision."

In other words, the District Court imposed an 18 year sentence on Mr. Rucker. The sentence flouts the "parsimony provision" in

Sec. 3553(a) and applicable Supreme Court authority. Further, it discounts the close scrutiny Mr. Rucker will be under in the *5 year period of supervised release*.

Further, this over-the-top, exaggerated sentence bears no connection to Sec. 3553's purposes: "just punishment, deterrence, protection of the public, and rehabilitation." The sentence is egregiously long and harsh in terms just punishment, deterrence and protection of the public. Moreover, the concept of rehabilitation was ignored by the District Court when it imposed its *de facto* life sentence.

The Defense recommended a sentence of 184 months, or 12 years, at sentencing. Such a sentence would have more than achieved the Sec. 3553(a) goals. Instead, the district court sentenced this young, misguided man to 15 years. He will not be released from incarceration until his mid to late 30s.

Mr. Rucker accepted responsibility for his conduct, expressed remorse, and asked for the Court's help. The district court didn't hear him, and instead, imposed am unjustifiably harsh and unjustified sentence.

The district court cited the need for deterrence, and protecting the public from Mr. Rucker. Yet, deterrence is a problematic issue. The National Institute of Justice issued a study on deterrence, and found the following:

> Studies show that most individuals convicted of a crime, short to moderate prison sentences may be a deterrent

> but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs.

United States Department of Justice, National Institute of Justice, *Five Things About Deterrence*, p. 2 (May 2016).

With this study in mind, the district court sentenced Mr. Rucker, a 22 year old young man, to 15 years of incarceration.

Mr. Rucker does not dispute that his crimes were serious, and deserve significant punishment. However, this Court should reverse this 15 year sentence on a 22 year old man.

III. CONCLUSION

WHEREFORE, Mr. Rucker respectfully requests that the Court grant certiorari, reverse the decision of the Fourth Circuit, with instructions to deny the Government's Motion to Dismiss the Appeal, and order that the Government file a Response Brief to Mr. Rucker's Opening Brief.

Respectfully submitted,

/S/

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APPENDIX I

FILED: December 19, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4049
(2:22-cr-00124-MSD-DEM-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAEQUAN RUCKER,

Defendant - Appellant.

ORDER

Raequan Rucker seeks to appeal his sentence of 180 months' imprisonment imposed following his guilty plea to carjacking, in violation of 18 U.S.C. §§ 2, 2119, and using, carrying, and brandishing a firearm during a crime of violence, in violation of 18 U.S.C. §§ 2, 924(c)(1)(A)(ii). The Government has moved to dismiss the appeal as barred by Rucker's waiver of the right to appeal included in the plea agreement. Upon review of the record, we conclude that Rucker knowingly and

voluntarily waived his right to appeal and that the issues Rucker seeks to raise on appeal fall squarely within the scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

Entered at the direction of the panel: Judge King, Judge Berner, and Senior Judge Traxler.

For the Court

/s/ Nwamaka Anowi, Clerk

FILED: December 19, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4049
(2:22-cr-00124-MSD-DEM-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RAEQUAN RUCKER

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK