

CASE NO. 17-6684

SUPREME COURT OF THE UNITED STATES
October 2017 Term

LAZARO SOLIZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR REHEARING

Submitted by Petitioner,

Lazaro Soliz #48967-079
FCI-Forrest City
P.O Box 3000
Forrest City, AR 72336

PRO-SE LITIGANT

Comes now Petitioner, Lazaro Soliz, petitioning this Court to rehear his Petition for Writ of Certiorari to the Eighth Circuit Court of Appeals for the following reasons.

GROUND

The Petitioner in this case was sentenced to 235 months of imprisonment for merely possessing a relatively small amount of methamphetamine simply because he was found to be a "career offender" for having been convicted for two minor drug offenses in state court during the 16 months prior to committing the federal offense for which he received his sentence.

Prior to sentencing, Petitioner moved the District Court for a downward variance from the Guidelines arguing, among other things, that the trend of the majority of federal sentencing courts around the country toward granting increasingly greater variances in non-violent drug cases such as Petitioner's over the past 10 years has rendered presumptive application of the 33 year old "career offender" guideline in his case unreasonable, and that application of that "career offender" guideline in his case would create unwarranted sentence disparities between Petitioner and other, more culpable (and particularly violent), defendants sentenced for the same crime in other federal courts, pointing to some of those specific defendants and requesting a downward variance to compensate for the disparities.

The sentencing court rejected that argument, denied Petitioner's Motion, and imposed its sentence; and when Petitioner presented the error to the 8th Circuit Court of Appeals on direct, that court held that since Petitioner "acted alone" in committing his offense, *United States v. Barron*, 557 F.3d 866 (8th Cir. 2009) applies to preclude

Petitioner's "National" sentence disparity argument. See Appendix @ 1, page 3.

This reveals an error in statutory interpretation in that the 8th Circuit Court of Appeals apparently believes that 18 U.S.C. 3553 (a)(6) refers strictly to "Local" sentence disparities between co-conspirators and/or co-defendants sentenced for the same conduct in the same case in the same court, and not to "National" sentence disparities between defendants being sentenced for the same crime in different federal courts around the country.

Application of such an interpretation of that provision in sentencing the Petitioner and reviewing his sentence on appeal clearly resulted in a failure to properly consider "unwarranted sentence disparities" as required by 18 U.S.C. 3553(a)(6), a failure which constitutes both significant procedural error as well as abuse of discretion according to this Court's Opinion in *Gall v. United States*, 552 U.S. 38 (2007); See also *United States v. Clark*, 434 F.3d 684 @ 685-686(4th Cir. 2006)(holding a similar misinterpretation of 18 U.S.C. 3553(a)(6) error for failure to properly consider that factor).

The 8th Circuit's position that 18 U.S.C. 3553(a)(6) applies strictly to "Local" sentence disparities between co-conspirators and/or co-defendants sentenced for the same conduct in the same case in the same court is contrary to this Court's decision in *Kimbrough v. United States*, 552 U.S. 85(2007) where this Court stated "district courts must take account of sentencing practices in other courts."

Moreover, the 8th Circuit's interpretation of 18 U.S.C. 3553(a)(6) is not only inconsistent with this Court's Opinion in *KIMBROUGH*, it is in conflict with the interpretation given that provision by the United

States Court of Appeals for the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 9th, 10th, and 11th Circuits, all of which have defined that provision as referring to "National" sentence disparities. See *United States v. Martin*, 520 F.3d 87 @ 94(1st Cir. 2008), and *United States v. Kandirakis*, 441 F.Supp.2d 282 @ 332-333(Dist.Ct.Mass. 2006)(using data from National Sentencing Statistics Databases to avoid imposing disparate sentences); *United States v. Frias*, 521 F.3d 229 @ 236(2nd Cir. 2008); *United States v. Douglas*, 849 F.3d 40 @ Footnote 10(3rd Cir. 2017); *United States v. Pyles*, 482 F.3d 282 @ 290(4th Cir. 2007); *United States v. Guillermo Balleza*, 613 F.3d 432 @ 435(5th Cir. 2010); *United States v. Mitchell*, 681 F.3d 867 @ 875(6th Cir. 2012); *United States v. Boscarino*, 437 F.3d 634 @ 638(7th Cir. 2006); *United States v. Saeteurn*, 504 F.3d 1175 @ 1181(9th Cir. 2007); *United States v. Martinez*, 610 F.3d 1216 @ 1228(10th Cir. 2010); and *United States v. Chotass*, 968 F.2d 1193 @ 1197-1198(11th Cir. 1992).

Furthermore, since the time Petitioner filed his Petition for Writ of Certiorari in this case, the Sentencing Reform and Corrections Act of 2017 was introduced in the House. Title 1., Section 101 of that bill proposes drastic changes to existing federal drug statutes including reductions in mandatory minimums as well as reductions in statutory maximum sentences for non-violent drug offenders and revision of the type of prior drug offenses which trigger the different mandatory minimums(See Appendix @ 2, page 1). Introduction of that bill reflects the growing public demand for justice and equality in sentencing drug offenders in this country, a demand which this Court consider in this case.

Therefore, Petitioner humbly prays that this Court will rehear and reconsider this matter in light of the foregoing and grant his Petition for Writ of Certiorari and resolve this important National question in his favor and in favor of the many thousands of other persons for whom such a decision would most graciously provide much needed relief, and/or grant such other relief as this Court, the brightly shining beacon of hope of this Nation, deems right and just under the circumstances.

Respectfully Submitted,

12-20-17
DATE

Lazaro Soliz
LAZARO SOLIZ

CERTIFICATE OF COMPLIANCE WITH RULE 44.2

I, LAZARO SOLIZ, hereby certify under penalty of perjury under the laws of the United States that the contents of this Petition for Rehearing are restricted to intervening circumstances of a substantial or controlling effect and/or other substantial grounds not previously presented and that it is presented in good faith and not for delay.

12-20-17
DATE

Lazaro Soliz
LAZARO SOLIZ

CERTIFICATE OF FILING

I, LAZARO SOLIZ, hereby certify under penalty of perjury under the laws of the United States that this Petition for Rehearing and the Appendix thereto are being placed in the institutional mail system, first-class postage prepaid, this 20th day of December, 2017.

12-20-17
DATE

Lazaro Soliz
LAZARO SOLIZ

CASE NO. 17-6684

SUPREME COURT OF THE UNITED STATES
October 2017 Term

LAZARO SOLIZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX TO PETITION FOR REHEARING

Submitted by Petitioner,

Lazaro Soliz #48967-079
FCI-Forrest City
P.O Box 3000
Forrest City, AR 72336

PRO-SE LITIGANT

TABLE OF CONTENTS

1. Opinion issued in United States v. Soliz, 857 F.3d 781(8th Cir. 2017).....1
2. Summary of Contents of "THE SENTENCING REFORM AND CORRECTIONS ACT OF 2017, TITLE 1.....4

United States Court of Appeals
For the Eighth Circuit

No. 16-2161

United States of America

Plaintiff - Appellee

v.

Lazaro Soliz

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota - St. Paul

Submitted: April 3, 2017

Filed: May 25, 2017

Before COLLOTON, BEAM, and BENTON, Circuit Judges.

BENTON, Circuit Judge.

Lazaro Soliz pled guilty to possession with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). He moved for a downward variance. The district court¹ sentenced him to 235 months'

¹The Honorable David S. Doty, United States District Judge for the District of Minnesota.

imprisonment, the guidelines minimum. Having jurisdiction under 18 U.S.C. § 1291, this court affirms.

Soliz has been heavily involved with drugs since his difficult childhood. In July 2015, police learned he was selling meth. With help of confidential informants, they arranged a traffic stop. Soliz gave permission to search the car. Police found 453 grams of meth. Soliz admitted he intended to resell it. The district court granted a downward departure, lowering the criminal history by one category. Soliz claims the district court abused its discretion by not considering his history and characteristics, just punishment for his specific offense, and the need to avoid unwarranted sentencing disparities.

This court reviews sentences for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 49 (2007). This court reviews first, for significant procedural error and second, for substantive reasonableness. *United States v. O'Connor*, 567 F.3d 395, 397 (8th Cir. 2009). Because Soliz did not object about any procedural errors, they are reviewed for plain error. *United States v. Cottrell*, 853 F.3d 459, 462 (8th Cir. 2017).

Soliz argues that the district court failed to consider his history and characteristics and the need for just punishment. See 18 U.S.C. § 3553(a). A district court commits procedural error if it fails to consider the § 3553(a) factors. *United States v. Barron*, 557 F.3d 866, 868 (8th Cir. 2009). The district court here specifically addressed the § 3553(a) factors raised by Soliz. It committed no procedural error. See *United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc).

As for the substantive reasonableness, this court gives due deference to the district court's sentence. *Gall*, 522 U.S. at 51. A district court abuses its discretion if it 1) fails to consider a significant factor it should have, 2) gives significant weight

to an improper or irrelevant factor, or 3) considers the appropriate factors but commits a clear error of judgment in weighing them. *Feemster*, 572 F.3d at 461. The sentence here is within the guideline range, supported by the record, and is presumptively reasonable on appeal. *Cottrell*, 853 F.3d at 463.

Citing sentences by other judges, Soliz argues that his sentence creates sentencing disparities. He emphasizes the Supreme Court's requirement that district courts "must take account of sentencing practices in other courts." See *Kimbrough v. United States*, 552 U.S. 85, 108 (2007). Soliz ignores that the Court immediately adds that reaching an appropriate sentence requires weighing any unwarranted disparities against the other § 3553(a) factors. *Id.*

Soliz also relies on *United States v. Lazenby*, 439 F.3d 928, 934 (8th Cir. 2006). It addressed the unusual circumstances of extreme disparities between the sentences of co-conspirators, reviewed in a consolidated appeal. See *United States v. Fry*, 792 F.3d 884, 892-93 (8th Cir. 2015); *United States v. McDowell*, 676 F.3d 730, 733 (8th Cir. 2012). Soliz acted alone.

The sentencing practices of one district court are not a reference point for other courts. *Barron*, 557 F.3d at 869. An argument that non-conspirator defendants received shorter sentences for comparable offenses is at base a disagreement with the weighing of the § 3553(a) factors. *United States v. Merrell*, 842 F.3d 577, 585 (8th Cir. 2016). This disagreement does not demonstrate an abuse of discretion. *Id.* The district court did not abuse its discretion in sentencing Soliz.

The judgment is affirmed.

THE SENTENCING REFORM AND CORRECTIONS ACT of 2017

TITLE 1: SENTENCING REFORM

Section 101. Reforms and Targets Enhanced Mandatory Minimum Sentences for Prior Drug Felons. The enhanced mandatory minimums for prior drug felons are reduced: the three-strike penalty is reduced from life imprisonment to 25 years, and the 20-year minimum is reduced to 15 years. The offenses that trigger these enhanced minimum sentences are also reformed. Currently, those offenses could be any prior drug felony. This bill would both limit them to serious drug felonies and expand them to include serious violent felonies. The managers amendment excludes from the definition of "serious drug felony" non-violent drug felonies for which the sentence was completed more than 15 years prior to the commission of the current offense. This provision may be applied retroactively to reduce a defendant's sentence, but only after a court considers sentencing factors, including any danger and prison misconduct, as well as a review of prior criminal conduct and other relevant information from governmental authorities. Retroactive relief cannot be given to an offender who has ever been convicted of a serious violent felony.

Section 102. Broadens the Existing Safety Valve. The existing safety valve is expanded to include offenders with up to four criminal history points, excluding 1-point offenses, such as minor misdemeanors. However, offenders with prior "3 point" felony convictions or prior "2 point" violent offenses will not be eligible for the safety valve. Formerly, defendants under the bill would not have been eligible for the existing safety valve if they had been convicted of a 2 point drug trafficking offense as well. The safety valve will also adopt an existing mechanism under the Sentencing Guidelines to permit a court to waive those disqualifying prior convictions if the court specifies in writing that those prior convictions substantially over-represent the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes. This provision is subject to appellate review, like other sentencing determinations, and offenders with prior serious drug or violent convictions are ineligible for relief. Section 102 also provides for applicability of the safety valve in maritime drug cases to the same extent as others. Section 102 is not retroactive.

Section 103. Creates a Second Safety Valve that Preserves but Targets the 10-Year Mandatory Minimum to Certain Drug Offenders. A second safety valve is created that preserves but targets the existing 10-year mandatory minimum to offenders who did not serve as an importer, exporter, high-level distributor or supplier, wholesaler, or manufacturer, unless they were minor or minimal participants in the conspiracy. Prior language excluding defendants who played an enhanced role from eligibility for this second safety valve has been deleted. Consistent with the existing safety valve, the offender must not have used violence or a firearm or been a member of a continuing criminal enterprise, and the offense must not have resulted in death or serious bodily injury. The defendant must also truthfully "proffer" with the government and provide any and all information and evidence the defendant has about the offense. The amended bill restricts use of information the defendant provides during the proffer from being used against him unless the information concerns a violent crime. This provision also excludes offenders with prior serious drug or serious violent convictions or offenders who distributed drugs to or with a person under the age of 18. This provision is not retroactive.

Section 104. Clarifies and Reduces the Enhanced Mandatory Minimum Sentence for Certain Firearm Offenses. In response to a Supreme Court decision, the bill clarifies that the enhanced mandatory minimum sentence for using a firearm during a crime of violence or drug crime is limited to offenders who have previously been convicted and served a sentence for such an offense. The amended bill no longer reduces that enhanced mandatory minimum from 25 years to 15 years. The amended bill no longer expands the applicable predicate offenses to include similar prior state-level convictions in which the offender carried, brandished, or used a firearm. This provision may be applied retroactively, but only after a court considers sentencing factors, including any danger, prison misconduct, prior misconduct, and information provided by government, and, as amended, may not be applied retroactively to any offender who has been convicted of any serious violent felony, or to any drug trafficker who brandished or used a gun in the commission of that offense.

Section 105. Retroactive Application of Fair Sentencing Act. The Fair Sentencing Act of 2010 reduced the disparity in sentencing between crack and powder cocaine. This provision ensures the retroactive application to offenders sentenced under those provisions before they were modified.

Section 106. New Mandatory Minimum for Interstate Domestic Violence. Those who commit the existing federal crime of

interstate domestic violence, 18 U.S.C. § 2261, would be subject to a 10 year mandatory minimum sentence if death results. The statutory maximum would be increased from 20 to 25 years where permanent disfigurement or life-threatening injury occurs, and from 10 to 15 years if serious bodily injury results or if the offender uses a dangerous weapon during the offense.

Section 107. New Mandatory Minimum for Certain Export Control Offenses. The bill imposes a mandatory minimum sentence of 5 years for willfully providing controlled goods or services to terrorists or proliferators of weapons of mass destruction, or providing various controlled goods, services, or defense articles without a license in violation of 50 U.S.C. § 1705.

Section 108. Report and Inventory of All Federal Criminal Offenses. As amended, this section directs that the report address the data by federal district where possible and cases referred by investigative agencies of the Department of Justice.

Section 109. Fentanyl Sentencing Enhancement. The bill provides that a judge must enhance by up to 5 years the sentence of someone whose drug offense involved fentanyl, a substance that when combined with heroin often produces death.

CASE NO. 17-6684

SUPREME COURT OF THE UNITED STATES
October 2017 Term

LAZARO SOLIZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PROOF OF SERVICE

I, LAZARO SOLIZ, hereby declare under penalty of perjury under the laws of the United States that on this 20th day of December, 2017, I served the enclosed PETITION FOR REHEARING and APPENDIX TO PETITION FOR REHEARING on the Respondent in this case by mailing a copy of the same by United States Postal Service, first-class postage prepaid as required by Supreme Court Rule 29 to the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave. N.W., Washington, DC 20530-0001.

12-20-17

DATE

Lazaro Soliz
LAZARO SOLIZ

CASE NO. 17-6684

SUPREME COURT OF THE UNITED STATES
October 2017 Term

LAZARO SOLIZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR REHEARING

Submitted by Petitioner,

Lazaro Soliz #48967-079
FCI-Forrest City
P.O Box 3000
Forrest City, AR 72336

PRO-SE LITIGANT

Comes now Petitioner, Lazaro Soliz, petitioning this Court to rehear his Petition for Writ of Certiorari to the Eighth Circuit Court of Appeals for the following reasons.

GROUND

The Petitioner in this case was sentenced to 235 months of imprisonment for merely possessing a relatively small amount of methamphetamine simply because he was found to be a "career offender" for having been convicted for two minor drug offenses in state court during the 16 months prior to committing the federal offense for which he received his sentence.

Prior to sentencing, Petitioner moved the District Court for a downward variance from the Guidelines arguing, among other things, that the trend of the majority of federal sentencing courts around the country toward granting increasingly greater variances in non-violent drug cases such as Petitioner's over the past 10 years has rendered presumptive application of the 33 year old "career offender" guideline in his case unreasonable, and that application of that "career offender" guideline in his case would create unwarranted sentence disparities between Petitioner and other, more culpable (and particularly violent), defendants sentenced for the same crime in other federal courts, pointing to some of those specific defendants and requesting a downward variance to compensate for the disparities.

The sentencing court rejected that argument, denied Petitioner's Motion, and imposed its sentence; and when Petitioner presented the error to the 8th Circuit Court of Appeals on direct, that court held that since Petitioner "acted alone" in committing his offense, *United States v. Barron*, 557 F.3d 866 (8th Cir. 2009) applies to preclude

Petitioner's "National" sentence disparity argument. See Appendix @ 1, page 3.

This reveals an error in statutory interpretation in that the 8th Circuit Court of Appeals apparently believes that 18 U.S.C. 3553 (a)(6) refers strictly to "Local" sentence disparities between co-conspirators and/or co-defendants sentenced for the same conduct in the same case in the same court, and not to "National" sentence disparities between defendants being sentenced for the same crime in different federal courts around the country.

Application of such an interpretation of that provision in sentencing the Petitioner and reviewing his sentence on appeal clearly resulted in a failure to properly consider "unwarranted sentence disparities" as required by 18 U.S.C. 3553(a)(6), a failure which constitutes both significant procedural error as well as abuse of discretion according to this Court's Opinion in *Gall v. United States*, 552 U.S. 38 (2007); See also *United States v. Clark*, 434 F.3d 684 @ 685-686(4th Cir. 2006)(holding a similar misinterpretation of 18 U.S.C. 3553(a)(6) error for failure to properly consider that factor).

The 8th Circuit's position that 18 U.S.C. 3553(a)(6) applies strictly to "Local" sentence disparities between co-conspirators and/or co-defendants sentenced for the same conduct in the same case in the same court is contrary to this Court's decision in *Kimrough v. United States*, 552 U.S. 85(2007) where this Court stated "district courts must take account of sentencing practices in other courts."

Moreover, the 8th Circuit's interpretation of 18 U.S.C. 3553(a)(6) is not only inconsistent with this Court's Opinion in *KIMBROUGH*, it is in conflict with the interpretation given that provision by the United

States Court of Appeals for the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 9th, 10th, and 11th Circuits, all of which have defined that provision as referring to "National" sentence disparities. See *United States v. Martin*, 520 F.3d 87 @ 94(1st Cir. 2008), and *United States v. Kandirakis*, 441 F.Supp.2d 282 @ 332-333(Dist.Ct.Mass. 2006)(using data from National Sentencing Statistics Databases to avoid imposing disparate sentences); *United States v. Frias*, 521 F.3d 229 @ 236(2nd Cir. 2008); *United States v. Douglas*, 849 F.3d 40 @ Footnote 10(3rd Cir. 2017); *United States v. Pyles*, 482 F.3d 282 @ 290(4th Cir. 2007); *United States v. Guillermo Balleza*, 613 F.3d 432 @ 435(5th Cir. 2010); *United States v. Mitchell*, 681 F.3d 867 @ 875(6th Cir. 2012); *United States v. Boscarino*, 437 F.3d 634 @ 638(7th Cir. 2006); *United States v. Saeteurn*, 504 F.3d 1175 @ 1181(9th Cir. 2007); *United States v. Martinez*, 610 F.3d 1216 @ 1228(10th Cir. 2010); and *United States v. Chotatas*, 968 F.2d 1193 @ 1197-1198(11th Cir. 1992).

Furthermore, since the time Petitioner filed his Petition for Writ of Certiorari in this case, the Sentencing Reform and Corrections Act of 2017 was introduced in the House. Title 1., Section 101 of that bill proposes drastic changes to existing federal drug statutes including reductions in mandatory minimums as well as reductions in statutory maximum sentences for non-violent drug offenders and revision of the type of prior drug offenses which trigger the different mandatory minimums(See Appendix @ 2, page 1). Introduction of that bill reflects the growing public demand for justice and equality in sentencing drug offenders in this country, a demand which this Court consider in this case.

Therefore, Petitioner humbly prays that this Court will rehear and reconsider this matter in light of the foregoing and grant his Petition for Writ of Certiorari and resolve this important National question in his favor and, in favor of the many thousands of other persons for whom such a decision would most graciously provide much needed relief, and/or grant such other relief as this Court, the brightly shining beacon of hope of this Nation, deems right and just under the circumstances.

Respectfully Submitted,

12-20-17

DATE

Lazaro Soliz
LAZARO SOLIZ

CERTIFICATE OF COMPLIANCE WITH RULE 44.2

I, LAZARO SOLIZ, hereby certify under penalty of perjury under the laws of the United States that the contents of this Petition for Rehearing are restricted to intervening circumstances of a substantial or controlling effect and/or other substantial grounds not previously presented and that it is presented in good faith and not for delay.

10-20-17
DATE

Lazaro Soliz
LAZARO SOLIZ