

No.

IN THE
Supreme Court of the United States

OCTOBER TERM, 2017

VERNON RASHAAD JIGGETTS,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Eleventh Circuit**

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE ISSUE(S)

**WHETHER THE SENTENCE IMPOSED WAS UNREASONABLE
UNDER THE TOTALITY OF THE CIRCUMSTANCES.**

LIST OF PARTIES

All parties appear in the caption of the case on the title page.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, **VERNON RASHAAD JIGGETTS** respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit, entered in the above entitled proceeding on October 4, 2017.

OPINION BELOW

The opinion of the Court of Appeals for the Eleventh Circuit (App., *infra*, 1a-8a) is unpublished.

JURISDICTION

The Petitioner, **VERNON RASHAAD JIGGETTS**, was prosecuted by an Indictment alleging violations of federal criminal laws in the United States District Court for the Middle District of Florida, convicted and sentenced to 130 months consisting of 70 months as to Court One and 60 months consecutive as to Court Two. He appealed his sentence to the Eleventh Circuit Court of Appeals invoking the court's jurisdiction under 28 U.S.C. § 1291. (Doc. 219) His sentence was affirmed by an order entered October 4, 2017 . (Doc. 239)

The jurisdiction of this Court to review the judgment of the Eleventh Circuit Court of Appeals is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No person shall be held to answer for a capital, or infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Fifth Amendment to the United States Constitution.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. Sixth Amendment to the United States Constitution.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Eighth Amendment to the United States Constitution.

STATEMENT OF THE CASE AND FACTS

THE ORIGINAL OFFENSE

Charge(s) and Conviction(s)

On November 6, 2014, a Federal Grand Jury in the Middle District of Florida, Jacksonville Division, returned a Two-Count Indictment naming **Vernon Rashaad Jiggetts, a/k/a “Ra Ra”**, as the Defendant. (Doc. 1)

Count One charged that between November, 2012 and September, 2013, in Duval County, in the Middle District of Florida, the defendant did knowingly and intentionally conspire to distribute 500 grams or more of cocaine, 28 grams or more of Cocaine Base, Methylone (‘Molly’), and Marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(B), 841 (b)(1)(C) and 846. (Doc. 1)

Count Two charged that between November, 2012 and September, 2013, in Duval County, in the Middle District of Florida, the defendant used and carried a firearm during and in relation to a drug trafficking crime, and, possessed a firearm in furtherance of a drug trafficking crime, and, aided and abetted the same in violation of 18 U.S.C. §§ 924(c)(1)(A) and 2. (Doc. 1)

The indictment also contained a forfeiture provision pursuant to 21 U.S.C. § 853, 18 U.S.C. § 924 (d), and 28 U. S. C. 2461(c), and specifically seeks the forfeiture of any firearms and ammunition involved in the commission of the

offense. (Doc. 1)

On September 10, 2015, the defendant appeared before United States Magistrate Judge Joel B. Toomey and pled guilty to both counts of the Indictment without a written plea agreement. (Doc. 129)

On September 29, 2015, United States District Judge Marcia Morales Howard accepted the defendant's guilty plea and adjudicated him guilty of the offenses. (Doc. 136)

The Offense Conduct¹

In November, 2012, the Jacksonville Sheriff's Office (J.S.O.) began using a confidential informant (CI) to purchase crack cocaine from Todd Hoffman in various locations in the Jacksonville, Florida area, including an apartment on India Avenue. In March 2013, the CI purchased drugs from an individual at the India Avenue apartment. Thereafter, authorities executed a search warrant for the apartment during which they encountered Christopher Daniel King, the lone lessee of the apartment.

A search of the apartment revealed multiple items evidencing drug trafficking, including glass beakers that bore King and Hoffman's fingerprints. King began cooperating with authorities and identified Hoffman as his source for drugs.

In June 2013, Hoffman's bond in an unrelated State case was revoked, and, he

¹The facts as recounted in the PSI except where objected to by defendant. (See, generally, Doc. 199, ¶¶ 7-14, 18-19).

was detained at the Duval County Jail. While in custody, Hoffman used the telephone to continue his drug trafficking activities. Specifically, Hoffman gave his wife (Tammy Howard) instructions on how to engage in drug trafficking on his behalf. Vernon Rashaad Jiggetts along with Steven Oneal George, Brandon Javon Bradham, Marlon Joseph Crawford, and, Breanna Jean Epting, his co-defendants in the instant case, were among those with whom Howard dealt. Between July and September 2013, law enforcement conducted six controlled purchases, totaling 3.3 gram of crack cocaine from Howard at 301 Caravan Circle, apartment # 1416. As a result, authorities executed a search warrant at Howard's residence at 301 Caravan Circle #1416, Jacksonville, Florida.

The aforementioned search revealed two loaded firearms, a safe, 10.6 grams of powder cocaine, 58 grams of MDMA (ecstasy), 55.2 grams of marijuana, 8.36 grams of cocaine base, and, an unknown substance, a digital scale, and plastic bags.

During the search, Howard, Epting and George, as well as four minor children, were present. Both of the firearms and some of the crack cocaine, molly, powder cocaine, and, marijuana were located in the room from which Epting, George, and her children were ordered out.

Authorities continued investigative efforts revealed that between at least November 2012, and, September 2013, Hoffman , King, and, the defendants in the

instant case conspired to distribute methyldone (a/k/a “molly”), marijuana, powder cocaine, and, crack cocaine in the Jacksonville, Florida area. Witness testimony revealed that even though the conspirators worked together to accomplish a common goal, they also worked independently and with other unindicted conspirators. In addition to distributing narcotics, several of the conspirators manufactured crack cocaine and even maintained a residence for that express purpose.

Information pertaining to the defendants’ specific drug trafficking activities was derived from a combination of witness statements and other investigative mechanisms, including recorded jail calls and cellular telephone records that linked Hoffman, Howard, and the defendants named in the instant indictment. That information concludes that each defendant (with the exception of Epting) is attributable with at least 196 grams of crack cocaine. Examples of witness testimony includes Christopher Daniel King’s testimony to Law enforcement and before a Grand Jury that indicates that when he lived at the Willow Lakes apartment complex, Hoffman and George cooked multiple grams of crack cocaine at least once per day for approximately five months. Further, multiple witnesses described purchasing \$20-\$300 dollars worth of crack cocaine from members of the conspiracy daily, from 2012 until 2013.

Further, investigation revealed that several of the members of the drug

trafficking organization carried firearms during and in relation to their drug trafficking activities, and, that they provided protection to those members who were not armed.

Jiggett's conspired to distribute molly, marijuana, at least 500 grams of powder cocaine, and, at least 196 grams of crack cocaine. While the members of the conspiracy bought and sold drugs to each other and others, Jiggetts served as the main provider of molly to his co-defendants. He distributed the drugs from various places around Jacksonville, including a residence located at 3904 Stuart Street, and the Willow Lakes apartment complex. Jiggetts and others contributed money to pay the rent on an apartment at Willow Lakes, and, in addition to distributing powder cocaine, molly, and, marijuana room inside the apartment, they also used the apartment to manufacture and package cocaine base. Jiggetts contributed \$60 dollars per month toward the rent on the apartment, as did others, including Bradham.

Jiggetts carried a firearm, which he displayed when selling narcotics, and, he also provided protection to his drug trafficking conspirators when they were selling drugs. Jiggetts usually had a firearm in his waistband and displayed it to potential drug purchasers.

The PSR stated (in relevant portions);

Victim Impact

There are no identifiable victims in this offense.

Adjustment for Obstruction of Justice

The Probation Officer has no information indicating the defendant impeded or obstructed justice.

Adjustment for Acceptance of Responsibility

The Probation Officer interviewed the defendant, who provided a statement wherein the defendant admitted involvement in the offense.

Offense Level Computation

The 2015 Guidelines Manual, incorporating all guideline amendments through August 1, 2016, was used to determine the defendant's offense level. U.S.S.G. §1B1.11.

Count Two is a violation of 18 U.S.C. §924(c) and is covered by U.S.S.G. §2K2.4. This section directs that the guideline term of imprisonment is that required by Statute. Count Two carries a mandatory minimum sentence of five years (60 months), which cannot run concurrently to any other sentence. The guideline calculations set forth

as follows are for the remaining count of conviction, Count One.

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Count 1: Conspiracy to Distribute 500 grams or More of Cocaine, 28 Grams or More of Cocaine Base, Methyldone, and Marijuana

Base Offense Level: The guideline for 21 U.S.C. § 841 (a)(1) offenses is found in U.S.S.G. §2D1.1 of the guidelines. Pursuant to U.S.S.G. §2D1.1(a)(5), offenses involving drug trafficking are assigned a base offense level in accordance with the Drug Quantity Table found at U.S.S.G. §2D1.1(c). The defendant is accountable for at least 28 grams of cocaine base and at least 500 grams of powder cocaine, which provides a marijuana equivalency of 199.99 kilograms of marijuana. Offenses involving at least 100 kilograms, but less than 400 kilograms of marijuana have a base offense level of 24. U.S.S.G. §§2D1.1 (a)(5) and (c)(8).

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Specific Offense Characteristics: U.S.S.G. §2D1.1 (b)(12) provides that if the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by 2 levels. Because Jiggetts together with conspirators Hoffman and

Bradham, maintained an apartment at Willow Lakes Apartments for the express purpose of manufacturing, packaging, and, distributing crack cocaine, two levels are added to his offense level. +2

Victim Related Adjustment: None. 0

Adjustment for Role In the Offense: None 0

Adjustment for Obstruction of Justice: None 0

Adjusted Offense Level (Subtotal): 26

Chapter Four Enhancement: None

Acceptance of Responsibility: The defendant has clearly demonstrated acceptance of responsibility for the offense. Accordingly, the offense level is decreased by two levels. U.S.S.G. §3E1.1(a). -2

Acceptance of Responsibility: The defendant has assisted authorities in the instigation or prosecution of the defendant's own misconduct, by timely notifying authorities of the intention to enter a plea of guilty. Accordingly, the offense level is decreased by one additional level. U.S.S.G. §3E1.1(b)

-1

Total Offense Level 23

PSR, (Doc. 199, ¶¶ 28-42) (emphasis added)

Disposition

On September 6, 2016, the District Court sentenced Defendant to, inter alia, 130 months imprisonment consisting of 70 months as to Count One, and, 60 months consecutive as to Count Two with five years supervised release as to each Count One and Count Two to run concurrently. (Doc. 204) The defendant is currently incarcerated within the United States Bureau of Prisons system. (Doc.205)

REASON(S) FOR GRANTING THE PETITION

A. THE DISTRICT COURT ERRED WHEN IT APPLIED THE 2-LEVEL SENTENCE ENHANCEMENT FOR MAINTAINING A PREMISES FOR PURPOSE OF MANUFACTURING OR DISTRIBUTING A CONTROLLED SUBSTANCE (U.S.S.G. § 2D1.1(b)(12), WHERE THE EVIDENCE IS SPARSE AS TO MR. JIGGETTS' USE OR CONTROL OF THE PREMISES.

When determining a defendant's sentence, a district court must first accurately determine the applicable sentencing guidelines range. Peugh v. United States, 133 S. Ct. 2072, 2080 (2013); Gall v. United States, 552 U. S. 38, 49, 128 S. Ct. 586, 596 (2007). In Peugh, the Court reaffirmed the vital role the sentencing guidelines play at sentencing. The Court stated that the guidelines remain "the lodestone of sentencing," and it emphasized the need for sentencing decisions to be "anchored by the Guidelines." Peugh, 133 S. Ct. at 2083-84. The Court also stated that "district courts **must** begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process." Id. at 2083 (quoting Gall, 552 U. S. at 50 n.6, 128 S. Ct. at 596 n.6). "Failing to calculate the correct Guidelines range constitutes procedural error." Id.; see also United States v. Pugh, 515 F.3d 1179, 1189-90 (11th Cir. 2008) (the failure to correctly calculate the guidelines range constitutes reversible error). The district court inaccurately

calculated Mr. Jiggetts' guidelines range for Count 1, because it erred when it enhanced his offense level for allegedly maintaining a premises for the purpose of manufacturing or distributing a controlled substance. The premises in question was not Mr. Jiggetts' home. PSR ¶ 18. The court's prejudicial procedural error renders Mr. Jiggetts' sentence unreasonable.

United States Sentencing Guidelines Section 2D1.1 (b)(12) states: "If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by **2** levels." Commentary to the guideline specifies that the drug activity "must be one of the defendant's primary or principal uses for the premises, rather than one of the defendant's incidental or collateral uses for the premises." U.S.S.G. § 2D1.1, comment . (n.17). [emphasis supplied]

The Presentence Investigation Report (PSI) assessed Mr. Jiggetts the 2-level premises enhancement. PSR, ¶ 34. The application of the enhancement was based on allegations that Mr. Jiggetts and others maintained an apartment for the "express (sic.) purpose of manufacturing, packaging and distributing crack cocaine". PSR ¶ 34.²

The district court had a duty to ensure that the government carried its burden of proving by a preponderance of the evidence that Mr. Jiggetts used the specific

²The PSR made mention of several other apartments separate and apart from the apartment in question (See e.g. ¶¶ 7-9) PSR, Doc. 199.

apartment in question primarily or principally for manufacturing or distributing drugs. See United States v. Bernardine, 73 F.3d 1078, 1080-81 (11th Cir. 1996) (the government bears the burden of proving facts necessary to support a sentence enhancement); United States v. Lawrence, 47 F.3d 1559, 1566-67 (11th Cir. 1995) (same). The government failed to carry this burden.³

The information provided to the district court about the use of Mr. Jiggetts or the apartment as a drug house was sparse. The factual basis to the Notice of Maximum Penalties (“Notice”) referred to the apartment as a “drug” house and stated Mr. Jiggetts, and others, distributed drugs from the apartment, but, this description did not reveal any dates, times, or, quantities. (Doc 123). These facts therefore did not demonstrate that the apartment was used for drug distribution purposes on an ongoing basis or that drug distribution was a primary use of the apartment. The factual basis did not, and, could not, state that law enforcement officers found any crack, digital scales, nor, drug tools of the trade in the apartment. Id. There was no credible evidence of an ongoing, primary, or, principal use of the apartment for the drug distribution purposes.

³Defendant recognizes that in two unpublished opinions, this Court has affirmed the application of the 2-level premises enhancement where the defendant resided in the premises used for manufacturing or distributing controlled substances. United States v. Cintora-Gonzalez, 569 Fed. Appx. 849, 854-55 (11th Cir. 2014) (non-precedential) United States v. Vega, 500 Fed. Appx. 889, 891 (11th Cir. 2012) (non precedential). In Cintora-Gonzalez, there was evidence that the defendant continuously used his home for drug trafficking purposes. The defendant’s girlfriend observed drugs in the apartment every time she visited, and, the defendant directed other persons to weigh and distribute drugs in his absence. 569 Fed. Appx. at 855.

The PSR also offers scant support for the premises enhancement. It states, ““they also used the apartment to manufacture, package, and, distribute cocaine base,” without more. PSR ¶ 34. (e.s.). Any information about dates, times, and, quantities, is again missing from theses allegations.

It is important to note that, while the PSI reported Mr. Jiggetts was responsible for at least 28 grams of cocaine base and at least 500 grams of powder cocaine, there was no suggestion that quantities of that magnitude were stored or sold from the Willow Lakes apartment. (e.s.)⁴ Instead, both the Factual Basis and the PSI states that Mr. Jiggetts distributed the drugs from various places around Jacksonville. PSR ¶ 18. Thus, the PSR provides no basis for discerning the quantity of drugs allegedly stashed at, or, distributed from the Willow Lakes apartment. In short, the record establishes that Mr. Jiggetts co-defendants rented the apartment, in late 2012 to September, 2013, for the primary and principal purpose of residing there, and, that at some unspecified time between November, 2012, and, November, 2013, they sold an unknown quantity of drugs from the apartment and may have allowed unknown quantities of drugs to be present in the apartment. The record establishes nothing more than incidental or collateral use of the apartment for drug distribution purposes.

⁴ Again, there is no attempt, much less one 10th of evidence, to distinguish this apartment from the other apartments and structures mentioned in the PSR.

The district court's erroneous application of the 2-level sentence enhancement for maintaining a premises for the purpose of manufacturing a controlled substance substantially prejudiced Mr. Jiggetts. A 2-level reduction of Mr. Jiggetts total offense level (from 26 to 24), along with his criminal history category of V, and, the full acceptance of responsibility would have resulted in a sentencing guidelines range of 70-87 months imprisonment for Count 1, rather than the 84-105 month range that resulted from the district court's calculations. (Doc. 227, 32) Where the district court used this range as the starting point in crafting Mr. Jiggetts' sentence, the prejudice occasioned by using a harsher guidelines range is obvious. Additionally, the Court did not uncategorically state that the defendant would receive the same prison sentence as to Count 1 with or without the enhancement.

Because the district court erred in determining Mr. Jiggetts' sentencing guidelines range, and, because that error prejudiced Mr. Jiggetts, he is entitled to be resentenced on Count 1.

B. THE SENTENCE IMPOSED IS UNREASONABLE

UNDER THE TOTALITY OF THE CIRCUMSTANCES

In determining whether a sentence is "substantively reasonable," this Court must take into account all of the § 3553(a) factors and "the totality of the circumstances." Gall, 552 U.S. at 51, 128 S. Ct. at 597. The totality of the

circumstances in Mr. Jiggetts' case establishes that Mr. Jiggetts sentence was substantively unreasonable. It was, in light of the §3553(a) factors, greater than necessary to comply with the purposes set forth in paragraph (2) of that subsection. His sentence should be vacated and his case remanded for resentencing.

Nonetheless, in imposing sentence, the District Court did not make any unequivocal statement indicating it would have given the same sentence without the Defendant's requested downward variance or departure largely ignored here, so this Court should reverse and remand for re-sentencing. United States v. Fuente-Kolhenschlag, 878 F.2d 1377 (11th Cir. 1989). At the most, the District Court simply thought the sentence "seemed right". See Doc. (227, 74-75). The District Court's explanation was nothing more than a "truism" that provides an insufficient basis for Appellate review. See United States v. Veteto, 920 F.2d 823 (11th Cir. 1991). In Veteto, the District Court made no reference to the § 3553(a) factors; did not discuss the specifics of the Defendant's history, crimes, or situation, and offered no explanation for the 120-month sentence it imposed except to say that it "seemed right." Id. at 826-27. This case is essentially a bare bone unlawful possession of drugs and firearm(s) matter. In line with Veteto, the District Court in this case did not expressly recognize its obligation to consider the § 3553(a) factors nor explicitly discussed characteristics of the Defendant. See also, U.S. v. Temprano, No. 14-10704, 14-10705, 2014 U. S. App. Lexis 18363 (11th Cir., September 25, 2014)

[District Court gave no reason for rejecting Defendant's request for a below-Guidelines Sentence]. Just like Temprano, the Court herein failed to address the Defendant's request for a below guidelines or 60 months sentence as to Count 1, and, the judgment is in error.

C. THE COURT ERRED IN WEIGHING THE §3553(A)FACTORS

This Court has recognized that “[i]n the context of sentencing, the proper factors are set out in 18 U.S.C. §3553(a), and a District Court commits a clear error in judgment when it weighs those factors unreasonably, arriving at a sentence that does not achieve the purposes of sentencing as stated in §3553(a).” United States v. Irely, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc). The Court below weighed the §3553(a) factors unreasonably. It gave almost exclusive weight to Mr. Jiggetts criminal history, almost all of which dated several years earlier. See (Doc. 227_) (record references to Mr. Jiggetts’ “history”). (Doc. 227, 69) (criminal history is considered significant”).

This Court has written that “all of the §3553(a) factors are to be weighed against each other in order to determine the proper sentence. “Irely, 612 F.3d at 1197, n.23. It has also recognized, however, “the importance of §3553(a)(20)(A) factor, which requires consideration of the need for the sentence imposed “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” *Id.* At 1222 (emphasis added); see also United

States v. Pugh, 515 F.3d 1179, 1195 (11th Cir. 2008) (“The sentence should be of a type and length that adequately reflect... the harm done or threatened by the offense”) (quoting S. Rep. No. 98-225, at 75-76, 1984 U.S.C.C.A.N. 3258-59). In any event, where the District Court committed its clearest error in judgment was in giving no real weight to the “kinds of sentence and the sentencing range established for... the applicable category of the offense committed by the applicable category of Defendant as set forth in the guidelines...[and] any pertinent policy statement issued by the Sentencing Commission...” 18 U.S.C. §3553(a)(4)-(5). “The Supreme Court stated in June (2013)... that the Guidelines are still “lodestone of sentencing,” and that “District Courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.” Spencer v. United States, ___ F. 3d ___, 2013 WL4106367, *6 (11th Cir. August 15, 2013) (quoting Peugh v. United States, 133 S. Ct. 2072, 2084 (2013)) “There would be no reason to require that exercise if they had no impact.” *Id.* at *6. The Court below began its analysis with the Guidelines but immediately lost sight of them. After the initial calculation of the guideline range, it did not specifically and unequivocally mention the Guidelines again, other than to imply that they were “wholly inadequate.” (Doc 227,69-70) Moreover, as explained above, it failed to carry out one of the essential steps in calculating the Guidelines, namely, consideration of the Guideline policy statements regarding departures. Consequently,

it gives the Guidelines so little consideration that it amounts to “not giv[ing] any real weight to the Guidelines range in imposing the sentence.” Irey, 612 F.3d at 1217 (quoting Pugh, 515 F.3d at 1200).

Consideration of the Advisory guideline range is also important in achiev[ing] Congress’s mandate to consider ‘the need to avoid unwarranted sentence disparities among similarly situated Defendants,’ which is required by 18 U.S.C. §3553(a)(6).” Irey, 612 F.3d at 1217. The extreme sentence with no regard to below guidelines propriety in this case was unwarranted.

First, although the total offense level is enhanced to 26, the drug quantity attributed to the defendant is at the lowest end of the range for the pre-enhanced designation of Level 24 under the Drug Quantity Table. According to the PSR, the range of quantities for Level 24 involve at least 28 grams of cocaine base and at least 500 grams of powder cocaine. There was no credible weight showing a higher amount or even closer to the range’s high values (in this case 400 kilograms of equivalent marijuana). It is the mid range category for measuring drug amounts under the drug quantity table in question. In this case, the defendant is attributed with at least 28 grams of crack cocaine and at least 500 grams of powder cocaine, for which he received unknown aggregate money proceeds. Mr. Jiggetts is essentially a street peddler, not a drug king pin, nor, high number dealer. Applied to Mr. Jiggetts conduct in the instant offense, theses circumstances equates him to the status of a

low-level street dealer. This quantity is less than 50 percent of the threshold quantity for inclusion in Level 24, and accordingly, in the absence of the steep premises enhancement, this distinction would have been relevant to a gradient determination of the seriousness of the offense. Hence, such a quantity does not appear to represent the ideal quantity for a trafficking offense as contemplated by the Sentencing Commission. Accordingly, although Mr. Jiggetts technically qualifies as a career offender, his inclusion into this higher prison category, due to the enhancement, may constitute a circumstance that the trial court should have considered in consideration of a variance under an analysis of 18 U.S.C. § 3553(a).

Second, at the time of the offense, Mr. Jiggetts was suffering from the effects of long term drug addiction, which began in childhood- - a circumstance that has likely contributed to his poor decision-making, and, the accrual of a significant history of criminal conduct. The development of his criminal history is largely a function of his response to this condition. The defendant has had only one substance abuse treatment class, while incarcerated in the Florida Department of Corrections, and, is in need of future intervention in this area. Consequently, though drug or alcohol dependence or abuse ordinarily is not a reason for a downward departure, it is not prohibited under the guidelines. U.S.S.G. § 5H1.4. Although drug or alcohol dependence in Mr. Jiggetts case may not rise to the level of departure considerations,

they may represent a circumstance that the trial court should have considered in consideration of a variance under an analysis of 18 U.S.C. § 3553(a).

History and Characteristics of the Defendant

There are several aspects of Mr. Jiggetts childhood that reflect circumstances beyond his control that have had negative implications for his overall development, and, his adult decision-making capabilities. Consequently, those factors may represent a circumstance that the trial court should have considered in consideration of a variance under an analysis of 18 U.S.C. § 3553(a)⁵. Mr. Jiggetts comes from a fragmented family structure that foreshadowed his current history of drug and alcohol addiction. With his parents having divorced at an early age in his life, and, his relationship with his father limited, Mr. Jiggetts, like many others in those circumstances, grew up with a substantially compromised financial situation, and an unstable family history. These circumstances precipitated his initial use of cocaine at age 15, and preceded a serious felony conviction at age 18, for which he served two years in prison. (PSR, Doc. 199, ¶45). Just prior to his release defendant was again charged and convicted. This conviction kept Mr. Jiggetts from completing high school, and effectively destroyed a chance for him to get a good start in life. This circumstance began Mr. Jiggetts formal free fall from the societal norms because he

⁵Notably, the district court quickly dismissed the related arguments and basically prodded defense counsel to forego that analysis. (See Doc. 227, 52)

had nothing to fall back on. Mr. Jiggetts history of drug abuse was overlaid by his equally destructive early age history of alcohol dependency. This problem was further augmented by Mr. Jiggetts subsequent dependence on marijuana.

United States Sentencing Commission Policy Statements

In recent months, the United States Sentencing Commission has responded to a number of public policy initiatives reflecting a trend toward lower sentences for drug offenders who do not pose the greatest threat to public safety. In April 2014, in Amendment 782, the Commission amended the guideline for U.S.S.C. § 2D1.1 offenses by instituting a two-level reduction in the drug quantity table. In response to a proposal to apply this amendment retroactively, the United States Department of Justice urged the Commission to adopt the retroactivity of the amendment. This modification was consistent with the Commission's earlier reform in drug sentencing when it adopted the Fair Sentencing Act of 2010, which corrected the 100-to-1 disparity between the need for the sentence to be imposed, in contrast to the actual threat to public safety.

Accordingly, sentencing for drug offenders has continued to be refined by the courts, leading to the practice of striking a balance between the need for the sentence to be imposed, in contrast to the actual threat to public safety.

The latest development in the trend of sentencing reform in drug cases has

resulted in the Sentencing Reform Act of 2015 (H.R. 3713).⁶ This bill, perceived to be both nonpartisan and favorable, seeks to create a legislative remedy for the oversentencing of drug offenders, with particular attention given to the draconian effects of mandatory minimum sentences and prison overcrowding. Although not applicable to reforming the premises enhancement and the consecutive sentence provisions, which govern Mr. Jiggetts case, there is an element of the initiative to allow a greater number of non-violent, low-level drug offenders to be sentenced below the mandatory minimum penalties. Mr. Jiggetts status as a seeming recidivist is, to a certain extent, analogous to the purpose of the Congressional initiative, in that Mr. Jiggetts is facing what is effectively a mandatory minimum sentence of 10 years (120 months) if sentenced at even the low end of the advisory guideline range of both counts consecutively. Consequently, the trial court would be better positioned to adopt a position consistent with the spirit of H.R. 3713, and, impose a sentence more in line with the individual circumstances of the case. To do so would be consistent with the Commission's policy toward the reform of sentencing in drug cases.

In this case, as stated earlier, although Mr. Jiggetts qualifies for a combined minimum mandatory sentence of 120 months on both counts consecutively, there

⁶ “ H. R. 3713's core policy goals are consistent with the longstanding recommendations by the Commission to Congress, particularly around mandatory minimum sentencing ...,” from <http://www.ussc.gov/news/press-releases-and-news-advisories/november-18-2015>.

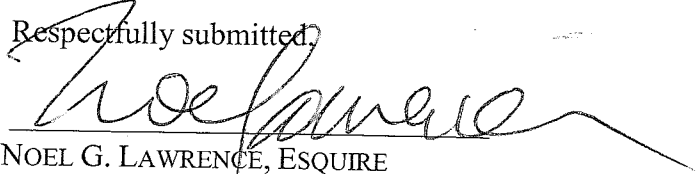
are aspects of his case that suggest that he may not be the archetypal case anticipated by both Congress and the Commission to receive a sentence “at or near the maximum term authorized.” First, Mr. Jiggetts prior two burglary convictions are essentially related (Doc. 199, 45-46), and, each involve a documented low-level risk of burglary to “unoccupied” dwellings (e. s.). The 2014 conviction was a transaction of a suit of clothes with petty theft value. The other 2014 conviction of drugs involved a transaction of one plastic bag of MDMA, resulting in a felony conviction. (PSR, Doc. 199, 55). Mr. Jiggetts sentence of two years for the first felony represents the longest custody sentence received by Mr. Jiggetts to date. Mr. Jiggetts was 26 years of age, at the time of sentencing. The advisory guideline range in this case was 144 months (12 years, 0 months - 13 years, 9 months). According to the Sentencing Commission, the recent trend in sentences for career offenders much less low level street drug sellers, has decreased over the past five years, with the average sentence falling from 170- to 140 months. Since the low end of Mr. Jiggetts advisory guideline is less than this downwardly trending average, the trial court should have contemplated the possibility of an unwarranted sentencing disparity, and, the inadvertent imposition of a sentence that is greater than necessary according to the provisions of 18 U.S.C. §3553(a)(6)⁷.

⁷ “[T]he court shall consider the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar misconduct.”

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Noel Lawrence", written over a horizontal line.

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