

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2017

No.:

Daniel CONTRERAS
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Case Nos. 16-1721; 16-1914; & 16-3375, Consolidated as 17-3375
entered October 20, 2017

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January 16, 2017

QUESTION PRESENTED FOR REVIEW

Whether the District Court violated defendant's Sixth Amendment's rights by applying the two level enhancement for maintaining a premises for the purpose of manufacturing or distributing a controlled substance by finding that the distribution was a primary purpose without the analysis required by U.S.S.G. §2D1.1(b)(12)?

LIST OF PARTIES

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

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IN THE
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, United States v. CONTRERAS is included in the Appendix attached hereto at:
APPENDIX: Opinion: United States v. Daniel CONTRERAS, Seventh Circuit Court of Appeals, pp.1-12.....APPENDIX A

JURISDICTION

The jurisdiction of this Honorable Court is invoked pursuant to Title 28, U.S.C. § 1254(1). The judgment of the Court of Appeals was entered on October 20, 2018. Petitioner did not seek a rehearing.

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment of The Constitution of The United States.

STATEMENT OF THE CASE

On September 29, 2014, a Complaint was filed naming nine defendants including defendant Daniel CONTRERAS. On January 07, 2015, that case was split into three separate, but related Indictments: 14 CR 544, 15 CR 09 and 15 CR 010. Mr. CONTRERAS was named in each of the three Indictments.

The Indictments charged Mr. CONTRERAS as follows: in cases 14 CR 544-1 (violations of 21 U.S.C. §841(a)(1), 21 U.S.C. §843(b), 21 U.S.C. §846,) 15 CR 09-2 (violations of 21 U.S.C. §841(a)(1),) & 15 CR 010-2 (violations of 21 U.S.C. §841(a)(1), 21 U.S.C. §843(b), 21 U.S.C. §846, 8 U.S.C. §1326(a), & 6 U.S.C. §202(4).)

Beginning in or about February 2013 and continuing until in or about April 2013, at Bellwood, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant DANIEL CONTRERAS agreed with Hector Murillo and others to knowingly and intentionally possess with intent to distribute and distribute more than a minimal amount of a mixture and substance containing a detectable amount of cocaine. This was charged in 14 CR 544-1.

As part of that agreement, on or about March 13 through March 15, 2013, Murillo and defendant worked together to offer to distribute one kilogram of cocaine and did distribute one kilogram of cocaine to Rafael Ruiz, a wholesale narcotics customer of Contreras' and Murillo's in Bellwood, Illinois.

On or about April 2013, at Bellwood, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant DANIEL CONTRERAS did

knowingly and intentionally distribute more than a kilogram of a mixture and substance containing a detectable amount of cocaine, specifically 733 grams, a Schedule II Controlled Substance. This was charged in 15 CR 09-2

On or about April 25, 2013, in the Northern District of Illinois, Eastern Division, and elsewhere, a package containing two kilograms of cocaine was delivered by UPS to defendant's residence and defendant DANIEL CONTRERAS knowingly and intentionally possessed with intent to distribute and did distribute approximately 250 grams of a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance to Joseph De La Vega.

Defendant did use a communication device, namely a cellular telephone, on or about May 2, 2013, in committing and causing and facilitating the commission of the above referenced transactions, to wit, communicating with Joseph De La Vega in order to facilitate the charged transactions. This was charged in 15 CR 10-

In total, there were approximately seven drug related transactions at defendant's residence, assuming that the receipt of a quantity of drugs and subsequent distribution of said drugs were separate transactions.

On March 21, 2016 the district court in 15 CR 09-2, sentenced Mr. CONTRERAS. Judgment was docketed on March 23, 2016. Notice of Appeal was filed on April 01, 2016, and was docketed as 16-1721. On April 27, 2016, this case was consolidated with 16-1914. On September 08, 2016, this consolidated case was further consolidated with 16-1914 and 16-3375.

On April 13, 2016 the district court in 15 CR 10-2, sentenced Mr.

CONTRERAS. Judgment was docketed on April 21, 2016. Notice of Appeal was filed on April 25, 2016. and was docketed as 16-1914 on April 27, 2016. On April 27, 2016, this case was consolidated with 16-1721. On September 08, 2016, this consolidated case was further consolidated with 16-3375.

On August 23, 2016 the district court in 14 CR 544-1, sentenced Mr. CONTRERAS. Judgment was docketed on September 08, 2016. Notice of Appeal was filed on September 06, 2016 and was docketed as 16-3375 on September 08, 2016. On September 08, 2016, this case was consolidated with 16-1721 and 16-1914.

On October 03, 2017, oral arguments were heard before the United States Circuit Court of Appeals. On October 20, 2017, the Court affirmed defendant's convictions.

REASON FOR GRANTING THE WRIT

In order to comport with the Sixth Amendment, a District Court is required to follow a two-part procedure at sentencing. *United States v. Boroczka*, 705 F.3d 616 (7th Cir., 2013).

First, it must calculate the defendant's sentencing range under the advisory guidelines. *United States v. Dale*, 498 F.3d 604, 611 (7th Cir.2007).

The District Court in the instant case, incorrectly adopted the Advisory Guideline Range as determined by the Probation Officer.

Second, the District Court must hear the arguments of the parties and

conclude by making an individualized assessment of the appropriate sentence based on the 3553(a) factors. *United States v. Booker*, 612 F.3d 596, 601 (7th Cir.2010) (citing *Gall v. United States*, 552 U.S. 38, 49–50, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007)).

To comply with this requirement, a district court must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing. *Gall*, 552 U.S. at 50, 128 S.Ct. 586.

This is the heart of the issue raised: Did the District Court give *meaningful consideration* to the analysis required in the above cited *Guidelines* provision, U.S.S.G. §2D1.1(b)(12), keeping in mind a sentence is reasonable if the district court gives meaningful consideration to the factors enumerated the advisory sentencing guidelines, and arrives at a sentence that is objectively reasonable in light of the statutory factors and the individual circumstances of the case. *United States v. Shannon*, 518 F.3d 494, 496 (7th Cir.2008).

The Guidelines themselves offers insight in how to approach this analysis. Looking to U.S.S.G. § 2D1.1(b)(12), specifically:

“In making the determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes.”

This analysis was not done.

The sentencing court(s) by not analyzing the use of defendant’s residence in

a meaningful way, in effect, short circuited the required analysis and sentenced defendant CONTRERAS on the basis of one-half of a ratio.

CONCLUSION

WHEREFORE, it is respectfully requested that this Honorable Court grant a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on October 20, 2018.

Dated this 16th day of January, 2018, at Chicago, Illinois.

Respectfully submitted,

s/Steven Robert Shanin

Steven Robert Shanin

Appointed Counsel for Daniel CONTRERAS