

CASE NO. _____

IN THE
Supreme Court of the United States

ABDUL KILGORE, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Abdul Kilgore respectfully submits this petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit. This case presents significant questions regarding the evidentiary standards and procedural safeguards applicable in supervised release revocation proceedings, particularly concerning the use of hearsay evidence and application of the Confrontation Clause under the Sixth Amendment in supervised release revocation hearings to establish alleged new law violations for uncharged conduct.

1. Whether the district court's reliance on hearsay evidence, including a complaining witness's video statement and photographic evidence, in a supervised release revocation proceeding violated the petitioner's rights under the Confrontation Clause of the Sixth Amendment because it was unreliable and there was no good cause found to preclude cross-examination?
2. Whether the district court's imposition of a 60-month sentence for a supervised release violation, that was based on a finding that a sexual assault occurred by a preponderance of the evidence even though no charges were filed, was procedurally and substantively unreasonable?

PARTIES TO THE PROCEEDING

Petitioner is Abdul Kilgore, who was the Defendant-Appellant in the court below.

Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

DIRECTLY RELATED CASES

1. *United States of America v. Abdul Kilgore*, Case No. 23-3987 (U.S. Court of Appeals for the Sixth Circuit), opinion and judgment entered January 10, 2025.
2. *United States of America v. Abdul Kilgore*, Case No. 1:09-cr-00425 (U.S. District Court, N.D. Ohio), judgment and opinion dated December 1, 2023 (Doc. No. 55).

TABLE OF CONTENTS

QUESTIONS PRESENTED	<i>i</i>
DIRECTLY RELATED CASES	<i>iii</i>
TABLE OF CONTENTS	<i>iv</i>
TABLE OF AUTHORITIES	<i>v</i>
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT.....	6
I. The use of unreliable hearsay evidence in a supervised release revocation proceeding raises important constitutional questions.	6
II. The procedural and substantive reasonableness of the sentence imposed on petitioner merits review where it was based upon a finding that a sexual assault occurred for uncharged conduct.	7
CONCLUSION.....	8

APPENDIX CONTENTS

APPENDIX A

<i>United States v. Kilgore</i> , Case No. 1:09-cr-425 (U.S. Northern Dist. 12/1/23).....	APPX-0001
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APPENDIX B

<i>United States v. Kilgore</i> , Case No. 23-3987, (6 th Cir. 1/10/25)	APPX-0002
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TABLE OF AUTHORITIES

Cases

<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972).....	6
<i>State v. Stephenson</i> , 928 F.2d 728, 732.....	6
<i>United States v. Kirby</i> , 418 F.3d 621, 627-28 (6 th Cir. 2005)	6

Constitutional Provisions and Statutes

Fourteenth Amendment.....	2
Sixth Amendment.....	2, 6

PETITION FOR A WRIT OF CERTIORARI

Petitioner Abdul Kilgore (“Petitioner”) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, dated January 10, 2025, in *United States of America v. Abdul Kilgore*, Case No. 23-3987, 2025 U.S.App. LEXIS 614 (6th Cir. 1/10/25)

OPINIONS BELOW

The district court’s judgment and sentence is attached as Appendix A. (App’x 0001) The opinion of the Sixth Circuit Court of Appeals is electronically reported at *United States v. Kilgore*, 2025 U.S.App. LEXIS 614 (6th Cir. Jan. 10, 2025). It is reprinted in Appendix B to this Petition. (App’x 0002)

JURISDICTION

The Sixth Circuit issued its opinion and judgment on January 10, 2025. (Appx. 0002) This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment, which provides in part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury 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.

The Fourteenth Amendment, which provides in part:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. §3742, which states in relevant part:

(a) Appeal by a defendant. A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) [18 USCS § 3563(b)(6) or (b)(11)] than the maximum established in the guideline range; or

(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

(d) Record on review. If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals—

(1) that portion of the record in the case that is designated as pertinent by either of the parties;

(2) the presentence report; and

(3) the information submitted during the sentencing proceeding.

(e) Consideration. Upon review of the record, the court of appeals shall determine whether the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is outside the applicable guideline range, and

(A) the district court failed to provide the written statement of reasons required by section 3553(c) [18 USCS § 3553(c)];

(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2) [18 USCS § 3553(a)(2)]; or

(ii) is not authorized under section 3553(b) [18 USCS § 3553(b)]; or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title [18 USCS § 3553(a)] and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c) [18 USCS § 3553(c)]; or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

STATEMENT OF THE CASE

Petitioner's underlying conviction was for possession with intent to distribute cocaine base for which he received, and served, an 84-month prison sentence. This present petition involves the revocation of petitioner's supervised release based upon a number of alleged violations, including a new law violation that was based on alleged, but uncharged, conduct. In revoking petitioner's supervised release, the district court relied upon video and photographic evidence that was not subject to cross-examination as well as an alleged history of violence against women. The court imposed a maximum sentence of 60 months in prison.

Petitioner was placed on a period of supervised release on November 3, 2022. (R. 51, Violation Report, PageID# 173) The supervising office accused petitioner of violating several conditions of supervised release. (R. 44, Violation Report, PageID# 150, R. 51, Violation Report, PageID# 173-174) Petitioner admitted to using marijuana for medicinal purposes but denied all remaining allegations. (R. 61, SRV hearing transcript, PageID# 204) The district court found by a preponderance of the evidence that petitioner had committed each alleged violation.

The district court relied upon photos, police reports and a testimonial video recording to find that petitioner had committed a sexual assault by a preponderance of the evidence. (R. 65, SRV hearing transcript, PageID# 241) However, the evidence also included an affirmation from the complaining witness that she did not want to file charges. (Id.) Petitioner maintained he had not committed a law violation. (Id. at PageID# 244) The police report contained conflicting information in terms of the

complaining witness's description of the incident. (Id.) She did not seek treatment, did not pursue charges and nor did the state. (Id. at PageID#244-245) The district court said, "based upon the defendant's pattern of violence towards women, his history and characteristics, all the matters I have already reviewed, 60 months is the appropriate sentence." (Id. at PageID# 255)

Petitioner appealed and the Sixth Circuit affirmed the district court by an opinion dated January 10, 2025. The Sixth Circuit affirmed the district court, in part, by finding it was irrelevant that charges on the alleged new law violation were never filed or that the victim did not wish to pursue charges. Further, the Sixth Circuit found "the district court may consider all relevant evidence, including hearsay not subject to cross examination" in supervised release revocation hearings. However, the Sixth Circuit did not acknowledge that the district court may only do so if such hearsay is proven to be reliable. The Sixth Circuit's opinion does not appreciate the fact that the state had elected not to pursue criminal charges, and/or that the victim did not wish to pursue any charges, did arguably undermine the reliability of the hearsay evidence that the district court considered. In turn, the Sixth Circuit did not consider that the acceptance of this unreliable hearsay contributed to the district court's finding of a Grade A violation under U.S.S.G. 7B1.1(a) and the district court's decision to impose a maximum 60-month prison sentence.

REASONS FOR GRANTING THE WRIT

I. The use of unreliable hearsay evidence in a supervised release revocation proceeding raises important constitutional questions.

The district court relied on unreliable hearsay evidence, including the complaining witness's testimonial video statement and photographic evidence, to find petitioner committed sexual assault by a preponderance of the evidence. While the Sixth Circuit has held that the Confrontation Clause does not apply to supervised release revocation hearings, the question has not been squarely resolved by this Court. See, *United States v. Kirby*, 418 F.3d 621, 627-28 (6th Cir. 2005).

In *Morrissey v. Brewer*, 408 U.S. 471 (1972), this Court established that parole revocation hearings are not the equivalent to criminal prosecutions and do not require the full procedural protections of the Sixth Amendment, including the right to confrontation, but they do require certain due process protections, such as the opportunity to confront and cross-examine adverse witnesses *unless good cause is shown for not allowing confrontation*. *Id* at 489, emphasis added. The same rationale should be extended to supervised release revocation proceedings to ensure the protection of minimal due process rights where liberty is at stake.

Additionally, the Sixth Circuit in its decision seemed to expand the authority of the district court's ability to carte blanche consider hearsay evidence without acknowledging the existing precedent that requires proof of its reliability. See, *State v. Stephenson*, 928 F.2d 728, 732, citing *Taylor v. United States Parole Comm'n*, 734 F.2d 1152, 1155, emphasis added (6th Cir. 1984) (6th Cir. 1991) (holding "The judge

may consider hearsay if it is proven to be reliable.”) In *Stephenson*, the Sixth Circuit found that the district court had abused its discretion in revoking supervised release where the district court relied upon the testimony of a probation officer and the accused’s admission that “there was some pushing” to establish an alleged assault. The Sixth Circuit explicitly found such evidence could not be deemed “reliable.” Id. at 732-33.

Petitioner had no opportunity to cross-examine the complaining witness in this matter; yet his liberty was revoked based upon her hearsay statements to police – claims that she later chose to abandon and the state chose not to pursue. The evidence considered by the trial court cannot be deemed reliable where the complaining witness did not wish to pursue charges nor did the State choose to file any. The consideration of this unreliable evidence, in the absence of petitioner’s ability to cross-examine the witness, deprived petitioner of fundamental due process and his confrontation rights without good cause shown for doing so.

II. The procedural and substantive reasonableness of the sentence imposed on petitioner merits review where it was based upon a finding that a sexual assault occurred for uncharged conduct.

The district court imposed the maximum 60-month sentence based on a finding that petitioner committed a sexual assault by a preponderance of the evidence. This sentence was within the statutory maximum but was based on uncharged conduct and unreliable hearsay evidence. The Sixth Circuit affirmed the sentence, finding no procedural or substantive error. However, the reliance on uncharged conduct and the weight given to hearsay evidence, without a finding that it was reliable, in

determining the sentence raises important questions about the reasonableness of the sentence that is ultimately imposed in supervised release revocation proceedings.

This case highlights the need for clear guidance on the evidentiary and procedural standards applicable in supervised release revocation proceedings. The use of hearsay evidence (without a finding of reliability) and the imposition of significant prison sentences based on uncharged conduct (based on evidence that is not subject to cross-examination) all raise important legal and constitutional questions that merit this Court's review and guidance.

CONCLUSION

The petition for a writ of certiorari should be granted to reviews the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully Submitted,

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