

24-7041
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

APR 15 2025

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IN THE
SUPREME COURT OF THE UNITED STATES

JAVIER RODRIGUEZ - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted,



Javier Rodriguez

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QUESTIONS PRESENTED

1. May the district court determine the extent of the appropriate variance without first correctly calculating the initial Guidelines range?
2. May the district court impose a reasonable sentence that was not based on an appropriate and judicious consideration of sentencing factors and was greater than necessary to achieve the purposes of sentencing?

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LIST OF PARTIES

The caption set out above contains the names of all the parties

LIST OF CASES DIRECTLY RELATED TO THIS CASE

1. United States Court of Appeals for the Third Circuit
2. Case No. 24-1161
3. United States of America v. Javier Rodriguez
4. Date of Judgment: November 7, 2024

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The original conviction of Petitioner was appealed to the United States Court of Appeals for the Third Circuit, which affirmed the conviction in all respects in an opinion reported at 2024 U.S. Dist. LEXIS 28282, Case No. 24-1161, November 7, 2024

JURISDICTION STATEMENT

The judgment of the United States Court of Appeals for the Third Circuit was entered on November 7, 2024. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

I. Factual History

In February 2022, Mr. Rodriguez approached a colleague about hiring the colleague to murder Mr. Rodriguez's ex-wife. Mr. Rodriguez provided the colleague, who became a confidential source for the Federal Bureau of Investigation, a \$5,000 down payment. Law enforcement arrested Mr. Rodriguez the next week, after executing a ruse designed to make Mr. Rodriguez believe his ex-wife had been killed and interviewing Mr. Rodriguez.

II. Procedural History

The government charged Mr. Rodriguez by criminal complaint with one count of interstate murder-for-hire, in violation of 18 U.S.C. §1958. Mr. Rodriguez did not contest detention and waived his right to a preliminary hearing. Two months later, the government filed a felony information and Mr. Rodriguez requested a plea hearing. Mr. Rodriguez subsequently waived indictment and pled guilty.

Prior to sentencing, Mr. Rodriguez obtained a psychological evaluation which revealed a myriad of abusive experiences throughout childhood and into early adulthood.

Following Mr. Rodriguez's guilty plea, a presentence report was created. The Probation Department determined that the total offense level was 34 with a Criminal History Category of I. Defense counsel objected to the PSR, arguing that the offense level should be reduced by two (2) points under the newly created U.S.S.G. §4C1.1. Applying §4C1.1 would result in a total offense level of 32 and a Guidelines range of 121-151 months, before being capped by the statutory maximum of 120 months. The government opposed §4C1.1's application, and probation did not apply it.

Prior to sentencing, Defense counsel filed a sentencing memorandum that provided the sentencing court with data pertaining to avoiding unwarranted sentencing disparities. The data included 87 cases in which defendants convicted under 18 U.S.C. §1958 received sentences less than or equal to 96 months.

At sentencing, the district court heard defense counsel's variance argument, without first resolving defense counsel's PSR objection and calculating the Guidelines range. After hearing the parties arguments regarding the variance, the district court applied U.S.S.G. §4C1.1. and determined the Guidelines range was 121-151 months, and subsequently stated that the statutory maximum caps the range to 120 months.

When announcing the sentence, the sentencing court stated that it did not "put a lot of stock in" the data addressing a downward variance, nor did the court give much weight to the mitigating factors of the case. The sentencing court twice erroneously explained that the statutory maximum was less than the Guidelines range.

The Petitioner timely appealed his sentence. On appeal, the Third Circuit determined that Petitioner's procedural reasonableness challenge was not waived and was reviewable for plain error. However, the Third Circuit determined that the district court did not commit plain procedural error when it ruled on the Petitioner's §4C1.1 adjustment motion after the district court had conducted the variance analysis. While the Third Circuit found that Petitioner was correct in his claim that the district court did not follow the proper 3-step process defined under Third Circuit precedent, the Circuit Court held that since the application of the §4C1.1 guideline would not reduce the Guidelines range below the statutory maximum, that there was no error.

The Appellate court also determined that the 118-month sentence imposed was not substantively unreasonable and that the district court did not abuse its discretion in imposing the sentence.

REASONS FOR GRANTING THE WRIT

I. The Appellate Court Erred in Holding that the District Court Did Not Commit Procedural Error

The Appellate Court erred when it determined that the district court did not need to follow the mandatory sentencing proceedings that the Third Circuit held in United States v. Gunter, 462 F.3d 237 (3d Cir. 2006). In that case, the Third Circuit held that sentencing proceedings must follow a standardized pattern. The district court must: 1) calculate the initial Guidelines range; 2) rule on any motions to depart and re-state the final Guidelines calculation; and 3) exercise its discretion to select a sentence within or outside that range in light of the parties' arguments and the §3553(a) factors. These three sequential steps have become known as the "Gunter framework."

The Supreme Court has concurred with the Third Circuit's reasoning in Gunter. In Gall v. United States, 552 U.S. 38, 49-50, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007) the Supreme Court held that "a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range." Id. at 49. This is because "[a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Id.

The Supreme Court has also held that the "post-Booker federal sentencing scheme aims to achieve uniformity by ensuring that sentencing decisions are anchored by the Guidelines." Peugh v. United States, 569 U.S. 530, 544 (2013). The Supreme Court has further held that a sentencing court "must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process." Id. at 541 (quoting Gall, 552 U.S. at 50 n.6)(emphasis in original).

It is axiomatic that "[f]ailing to calculate the correct Guidelines range constitutes procedural error." Id.

And, while the Third Circuit held that "[d]eparture and variance motions logically cannot be determined until the district court knows what the Guidelines calculation is" and that "The §3553(a) factors cannot be consulted until after departure and variance motions are completed," United States v. Friedman, 658 F.3d 342, 361 (3rd Cir. 2011), the Third Circuit held that the district court did not err when it failed to follow these mandatory sequential steps.

At sentencing, the district court failed to follow the mandatory sentencing steps determined in Gunter and subsequently reinforced in United States v. Raia, 993 F.3d 185, 196 (3rd Cir. 2021). Instead, at sentencing the district court concluded that two (2) different Guideline ranges existed, the first with the §4C1.1 adjustment was 121-151 months while the second, without the adjustment, was 151-188 months. The district court skipped the mandatory step one of the process by failing to calculate the Guideline range (120 months) or §4C1.1's applicability.

Notably, the Third Circuit had previously reversed sentences that were imposed contrary to the mandatory Gunter framework. See, United States v. Friedman, 658 F.3d 342, 361 (3rd Cir. 2011); United States v. Lofink, 564 F.3d 232, 239-40 (3rd Cir. 2009). However, the Third Circuit failed to remand the case to have the district court follow the correct sequential sentencing process.

The district court's error prevented it from meaningfully considering the §3553(a) factors and the Petitioner's variance arguments.

Additionally, the district court repeatedly described the statutory maximum as lower than the Guideline range, ignoring and failing to appreciate that the statutory maximum was the Guidelines range despite defense counsel's clarifications.

The Petitioner was prejudiced by the district court's sentencing error because the district court's inverted Gunter sentencing procedure ignored that "variance motions logically cannot be determined until the district court knows what the Guidelines calculation is." Friedman, 658 F.3d at 361. Had the district court calculated the Guidelines range before ruling on the Petitioner's variance request, then it would have considered all of the §3553(a) factors, including the sentencing range, as required under §3553(a)(4), and the correct range would have "anchor[ed] the district court's discretion." Molina-Martinez v. United States, 578 U.S. 189, 198-99 (2016)

The district court's comment that Petitioner was "getting below a guideline range now by three months" underscores these points. The district court did not consider only the correct range (120 months), otherwise it would have correctly described the variance as under the Guidelines range by two months. Here, the district court evaluated the Petitioner's variance request against the inapplicable 121-151 months Guidelines range, which presented a real risk that it gauged the variance request against the high-end of that inapplicable range.

II. The Appellate Court Erred in Holding That the Petitioner's Sentence Was Substantively Reasonable Under the Circumstances

The district court weighed Petitioner's mitigation, the erroneously calculated Guidelines range, and the 18 U.S.C. §3553(a) factors in a manner that yields a substantively unreasonable sentence, giving too little weight to the need to avoid unwarranted sentencing disparities and to Petitioner's acceptance of responsibility.

The Appellate Court correctly held that a challenge to the substantive reasonableness of a sentence are review for an abuse of discretio. The Appellate

Court noted that to satisfy that standard, a defendant must show that "no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided." United States v. Tomko, 562 F.3d 558, 568 (3rd Cir. 2009)(en banc). However, the Appellate Court erred in holding that Petitioner could not meet that standard.

The Appellate Court acknowledged that, in supporting his sentencing disparity argument, that Petitioner had "identified eighty-seven cases from the prior ten years in which persons convicted pursuant to 18 U.S.C. §1958 with a total offense level of thirty-four or greater received a sentence of 96 months or fewer." Appellate Court Order, ECF No. 40, page 3, ¶12. The Appellate Court further noted that the District Court was unable to determine whether whose cases were compatible, and therefore the district court declined to decrease the sentence on disparity grounds. The Appellate Court should have found that the sentencing hearing should have been postponed to allow the court to review the cases presented by Petitioner to ensure that there was no sentencing disparity issues.

The Sentencing Commission has stated that one of the Section 3553(a) factors is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." United States v. Daniels, 2022 U.S. Dist. LEXIS 1743 at 8 (E.D. La. Jan. 5, 2022). The Appellate Court erred by holding that "[t]he District Court thoroughly considered Rodriguez's arguments for variance." Appellate Court Order, ECF No. 40, page 6, ¶13.

The Appellate Court further erred when it held that the district court "reasonably rejected Rodriguez's disparate-sentence argument on the basis that Rodriguez's sentencing data did not provide information about the particular facts of the offenses." Appellate Court Order, ECF No. 40, page 6, ¶13.

The Petitioner provided sufficient detail of the offense details by demonstrating that of the 87 cases cited, 54 of those cases had a higher offense level than Petitioner, which demonstrated that the offense conduct in those cases was far more egregious than that of Petitioner's conduct. The Petitioner also provided that 33 of those 87 cited cases actually had a higher criminal history category than that of Petitioner. Despite the higher offense level and higher criminal history categories, those 87 defendants received sentences at least 22-months below the sentence that Petitioner received. Courts have have that a sentence disparity of 22-months is significant. See, United States v. Shaw, No. 13-cr-00025, 2021 U.S. Dist. LEXIS 131461, 2021 WL 3007266, at 5 (W.D. Va. July 15, 2021)(finding a sentencing disparity of 22-months an extraordinary and compelling reason to reduce a sentence).

While the precise details of the underlying cases might have been unknown to the district court, it did know that many of the 87 defendants who received 96-month sentences or less had higher offense levels and higher criminal history categories than Petitioner.

Additionally, the Appellate Court erred in holding that the district court did not give too little weight to the mitigation evidence. The government did not dispute the fact that Petitioner swiftly took responsibility for his actions, as demonstrated by his waiving of his preliminary hearing, waiving his detention hearing, waiving indictment, and pleading guilty to an amended felony information within three months of being charged. Further, Petitioner was open and honest about his abusive childhood that resulting in numerous psychological disorders which contributed to the offense conduct. Petitioner also showed remorse for his actions.

Despite these facts, the district court sentenced Petitioner to nearly the statutory maximum, which punished Petitioner similarly to those who display no remorse and no acceptance of responsibility.

The district court clearly erred by focusing on Petitioner's serious offense conduct, while ignoring and minimizing the shorter sentences received by individuals with similarly serious offense conduct, as evidenced by their higher offense levels and higher criminal history categories. Clearly, differentiating Petitioner, who waived his preliminary hearing, waived his detention hearing, waived indictment, and pleaded guilty to an amended felony information within three months of being charged from a defendant who took no responsibility and lost at trial, by two months is not substantively reasonable.

The Appellant Court erred by not remanding the case because the district court admitted at sentencing that it did not "put a lot of stock in" the disparity data presented by the Petitioner. The Appellate Court erred in not finding that the district court improperly weighed the §3553(a) factors and gave too much weight to the severity of the offense.

The need to avoid unwarranted sentencing disparities and Petitioner's acceptance of responsibility and remorse were important factors to an appropriate and judicious assessment of his mitigation, the Guidelines range, and the §3553(a) factors. The Appellate Court should have found that the district court assigned them too little weight, leading to a substantively unreasonable sentence.

CONCLUSION

This Court has held that "[a] district court should begin by correctly calculating the applicable Guidelines range." Gall v. United States, 552 U.S. 38, 128 S.Ct. 586, 169 L.Ed.2d 445, 450 (2009). "A district judge must consider the extent of any departure from the Guidelines and must explain the appropriateness of an unusually lenient or harsh sentence with sufficient justifications." Id. "An appellate court may take the degree of variance into account and consider the extent of a deviation from the Guidelines, but it may not require 'extraordinary' circumstances or employ a rigid mathematical formula using a departure's percentage as the standard for determining the strength of the justification required for a specific sentence." Id. "Such approaches come too close to creating an impermissible unreasonableness presumption for sentences outside the Guidelines range." Id. "The mathematical approach also suffers from infirmities of application." Id. "And both approaches reflect a practice of applying a heightened standard of review to sentences outside the Guidelines range, which is inconsistent with the rule that the abuse-of-discetion standard applies to appellate review of all sentencing decisions - whether inside or outside that range." Id. Importantly to the instant case, "[i]n reviewing the sentence, the appellate court must first ensure that the district court made no significant procedural errors and then consider the sentence's substantive reasonableness under an abuse-of-discretion standard." Id.

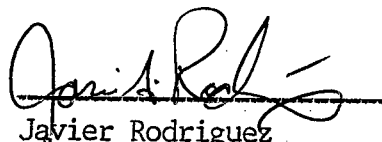
This Court has also held that "[t]he sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors." Nelson v. United States, 555 U.S. 350, 351, 129 S.Ct. 890, 172 L.Ed.2d 719 (2000). That did not happen here and "[m]istakes of this kind increase the risk of sentencing

disparity" that was demonstrated in this case. Setser v. United States, 182 L.Ed.2d 455, 470, 132 S.Ct. 1463, 566 U.S. 231 (2012).

For the reasons stated herein, this Petition for a writ of certiorari should, therefore, be granted.

Dated: 3/26/25

Respectfully Submitted,



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