No.

IN THE SUPREME COURT OF THE UNITED STATES

DAQUAN CAREY,

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 A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district court's sentencing authority is constrained by the parties' sentencing requests under Article III, Section 2, of the United States Constitution?

PARTIES TO THE PROCEEDING

Parties to the proceeding include Daquan Carey (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), Gregory W. Kehoe (Assistant United States Attorney), and D. John Sauer (Solicitor General of the United States of America).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Amendments

Statues

PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The decision of the Eleventh Circuit Court of Appeals can be found at *United States v. Carey,* No. 24-14172, 2025 WL 1721557 (11th Cir. June 20, 2025), and is attached as Appendix A.

JURISDICTION

The Judgment of the Eleventh Circuit Court of Appeals, which had jurisdiction under Title 28 U.S.C. § 1291, was entered on June 20, 2025. However, a timely Petition for Rehearing was filed on June 24, 2025, which was not denied until July 9, 2025. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"**Section 2.** The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." U.S. Const. art. III.

STATEMENT OF FACTS

On March 20, 2024, a federal grand jury in the Middle District of Florida, Tampa Division, returned a two-count Indictment naming Mr. Carey as the defendant. Count One charged that on or about July 23, 2021, Mr. Carey committed the offense of Felon in Possession of Ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Count Two charged that on or about December 6, 2023, Mr. Carey committed the offense of Felon in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). On September 10, 2024, Mr. Carey pled guilty to both Counts. On September 20, 2024, his plea was accepted. On December 17, 2024, a sentencing hearing was held during which Mr. Carey's guideline imprisonment rage was determined to be 51-63 months imprisonment. The government requested the court vary upward and impose a sentence of 87 months imprisonment, while the defense requested the court depart downward and impose a sentence of less than 51 months imprisonment. The district court imposed a sentence of 120 months imprisonment, stating simply that the government's requested sanction was too low.

On appeal to the 11th Circuit, Mr. Carey argued that his sentence was substantively unreasonable because the question of whether a sentence beyond 87 months imprisonment was appropriate simply was not presented by the parties, and thus it was improper for the court to consider, much less impose, such a sanction. The 11th Circuit affirmed, concluding that the district court was not bound by the parties' sentencing recommendations.

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT A DISTRICT COURT'S SENTENCING AUTHORITY IS CONSTRAINED BY THE PARTIES' SENTENCING REQUESTS.

At issue in this Petition is whether Article III, Section 2, of the United States Constitution prohibits a sentencing court from deciding a question not before it and imposing a sanction which was not requested by any party to the proceeding. Mr. Carey submits that his Court should grant review to establish that Article III, Section 2 prohibits a sentencing court from doing so.

In *United States v. Sineneng-Smith*, 590 U.S. 371, 140 S. Ct. 1575, 206 L. Ed. 2d 866 (2020), the Court explained:

> In our adversarial system of adjudication, we follow the principle of party presentation. As this Court stated in *Greenlaw v. United States*, 554 U.S. 237, 128 S.Ct. 2559, 171 L.Ed.2d 399 (2008), "in both civil and criminal cases, in the first instance and on appeal ..., we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Id.*, at 243, 128 S.Ct. 2559. In criminal cases, departures from the party presentation principle have usually occurred "to protect a *pro se* litigant's rights." *Id.*, at 244, 128 S.Ct. 2559; see, *e.g.*, *Castro v. United States*, 540 U.S. 375, 381–383, 124 S.Ct. 786, 157 L.Ed.2d 778 (2003) (affirming courts' authority to recast *pro se* litigants' motions to "avoid an unnecessary dismissal" or "inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis" (citation omitted)). But as a general rule, our system "is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Id.*, at 386, 124 S.Ct. 786 (Scalia, J., concurring in part and concurring in judgment).

> In short: "[C]ourts are essentially passive instruments of government." *United States v. Samuels*, 808 F.2d 1298, 1301 (CA8 1987) (Arnold, J., concurring in denial of reh'g en banc). They "do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties." *Ibid.*
>
> The party presentation principle is supple, not ironclad. There are no doubt circumstances in which a modest initiating role for a court is appropriate. See, *e.g.*, *Day v. McDonough*, 547 U.S. 198, 202, 126 S.Ct. 1675, 164 L.Ed.2d 376 (2006) (federal court had "authority, on its own initiative," to correct a party's "evident miscalculation of the elapsed time under a statute [of limitations]" absent "intelligent waiver").

Sineneng-Smith, 590 U.S. at 375–76, 140 S. Ct. at 1579, 206 L. Ed. 2d 866 (footnotes omitted). Additionally, "Article III empowers federal courts to exercise 'judicial Power' only over 'Cases' and 'Controversies.'" *Moody v. NetChoice, LLC*, 603 U.S. 707, 753, 144 S. Ct. 2383, 2414, 219 L. Ed. 2d 1075 (2024).

Here, the issue presented by the parties was whether a departure sentence below the 51 month guideline sentence should be entered or whether the court should vary upward and impose a sentence of 87 months imprisonment. As the question of whether a sentence beyond 87 months imprisonment should be imposed was simply not presented by the parties, it was improper for the court to consider such a sanction. *See*, *Sineneng-Smith*, 590 U.S. at 375–76, 140 S. Ct. at 1579, 206 L. Ed. 2d 866; *see also*, *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th Cir. 2001) ("The doctrine of justiciability prevents courts from encroaching on the powers of the elected branches of government and guarantees that courts consider only matters presented in an actual adversarial context.")(citations omitted). This is particularly so here, as "the

Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case," *United States v. Nixon*, 418 U.S. 683, 693, 94 S. Ct. 3090, 3100, 41 L. Ed. 2d 1039 (1974)(citations omitted), and chose not to prosecute the case for a sanction beyond 87 months imprisonment. The district court imposing a sentence beyond that requested by the parties in these circumstances not only exceeds the powers granted it under Article III, but also encroaches on the powers reserved exclusively to the Executive Branch of government. *See*, *Id*. To prevent that encroachment and ensure that the limits on judicial authority contained within Article III are strictly adhered to, this Court should grant the instant Petition and establish that Article III, Section 2 of the United States Constitution prohibits a sentencing court from deciding a question not before it and imposing a sanction which was not requested by any party to the proceeding, reverse the judgment of the 11th Circuit and Mr. Carey's sentence as substantively unreasonable, and remand Mr. Carey's case for a new sentencing hearing where a new sentence is imposed upon him consistent with the limitations imposed on the district court under Article III. *See*, *United States v. Lucero*, 747 F.3d 1242, 1250–51 (10th Cir. 2014) ("A sentence is substantively unreasonable if, in light of the § 3553(a) factors, it 'exceeds the bounds of permissible choice, given the facts and the applicable law.")(quoting, *United States v. Chavez*, 723 F.3d 1226, 1233 (10th Cir. 2013) (quotations omitted)).

CONCLUSION

The petition for a writ of certiorari should be granted, the decision below should be reversed, and Mr. Carey's case should be remanded for a new sentencing hearing.

Respectfully Submitted,

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INDEX TO APPENDIX

APPENDIX A

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-14172

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAQUAN CAREY,
a.k.a. Trapboy Quan,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:24-cr-00115-TPB-NHA-1

Before WILLIAM PRYOR, Chief Judge, and LAGOA and WILSON, Circuit Judges.

PER CURIAM:

Daquan Carey appeals his prison sentence of 120 months for possessing ammunition and a firearm as a felon. 18 U.S.C. § 922(g)(1). He argues that his sentence is substantively unreasonable. We affirm.

Carey pleaded guilty to possession of ammunition and a firearm by a felon on separate dates. *Id.* A probation officer prepared a presentence investigation report describing his offenses. In 2021, officers stopped Carey, and a search of his car revealed ammunition, two guns, and drugs. In 2023, after a witness identified Carey as the shooter in a drive-by shooting, law enforcement stopped him again. When the officers told him he was under arrest, he attempted to flee and hit a detective. Another detective tased Carey. The initial detective fell to the ground with Carey and was hospitalized. As officers placed Carey in handcuffs, he reached into his waistband. The officers restrained him and found a loaded gun and drugs on him. He had been released on bond for state felon-in-possession charges at the time of the offenses.

The report recounted Carey's criminal history, including juvenile adjudications for burglary, grand theft, drug possession, resisting an officer without violence, battery, and trespass, with repeated probation violations. As an adult, he was convicted of a

computer threat offense involving guns, possession of drugs and drug paraphernalia, unlawful possession of a firearm, violation of a protective order, and resisting arrest without violence. In 2022, while Carey was released on bond for state charges related to the instant 2021 offense, he was charged with fleeing, felon in possession of a firearm, possession of drugs and drug paraphernalia, and resisting an officer without violence. He was also charged with shooting a missile into a car, attempted first degree murder, and felon in possession of a firearm and ammunition for the 2023 shooting, but those charges were dropped. The report also documented that his father was in prison and his half-brother died when Carey was a child. Carey had been diagnosed with conduct disorder and schizophrenia and had been injured in a car accident.

The report grouped Carey's convictions together and calculated a base offense level of 20 because he possessed a semi-automatic firearm capable of accepting a large-capacity magazine, United States Sentencing Guidelines Manual § 2K2.1(a)(4)(B) (Nov. 2024), applied a 2-level increase because he possessed at least three guns, *id.* § 2K2.1(b)(1)(A), applied a 2-level increase because the offense involved a stolen firearm, *id.* § 2K2.1(b)(4)(A), applied a 4-level increase because he possessed a firearm in connection with other felony offenses, *id.* § 2K2.1(b)(6)(B), and applied a 3-level decrease for acceptance of responsibility, *id.* § 3E1.1(a)-(b), for a total offense level of 25. The report calculated a criminal-history category of VI. It provided a guideline imprisonment range of 110 to 137 months and statutory maximum terms of imprisonment of 10 years for one count and 15 years for his other count of conviction.

At the sentencing hearing, the district court recalculated a guideline range of 51 to 63 months of imprisonment based on a change in his base offense level and enhancements. The government recommended 87 months of imprisonment because of Carey's history of unlawfully possessing firearms and violently fleeing law enforcement and because he committed the instant offenses while released on bond. Carey argued for a sentence below the guideline range based on his age, traumatic childhood, and mental health concerns. When Carey allocuted, he stated that the officers did more harm to the community than he did and did not tell the truth about the incident.

The district court stated that it considered the statutory sentencing factors. 18 U.S.C. § 3553(a). It found that Carey was uncooperative with law enforcement to the point that he had to be tased and an officer went to the hospital. It found that Carey "showed zero remorse" and blamed the officers. It also found that he was out on bond for a state gun offense at the time of the instant offense. It considered Carey's age, personal tragedies, and mental health issues, but found that he was a danger to the community, and the government's request was "too low." The district court sentenced Carey to concurrent terms of 120 months of imprisonment for each count, followed by 3 years of supervised release.

We review the substantive reasonableness of a sentence for abuse of discretion. *United States v. Steiger*, 107 F.4th 1315, 1319–20 (11th Cir. 2024). The district court imposes a substantively unreasonable sentence when it fails to consider relevant factors that were

due significant weight, gives significant weight to an improper or irrelevant factor, or commits a clear error of judgment in considering the proper factors. *United States v. Taylor*, 997 F.3d 1348, 1355 (11th Cir. 2021). We will disturb a sentence "only if we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by imposing a sentence that falls outside the range of reasonableness as dictated by the facts of the case." *Id.* (citation and internal quotation marks omitted). The district court may "attach great weight to one factor over others," and this discretion is "particularly pronounced when it comes to weighing criminal history." *United States v. Riley*, 995 F.3d 1272, 1279 (11th Cir. 2021) (citation and internal quotation marks omitted). "We do not presume that a sentence outside the guideline range is unreasonable and must give due deference to the district court's decision that the § 3553(a) factors, as a whole, justify the extent of the variance." *United States v. Goldman*, 953 F.3d 1213, 1222 (11th Cir. 2020). "Although there is no proportionality principle in sentencing, a major variance does require a more significant justification than a minor one—the requirement is that the justification be sufficiently compelling to support the degree of the variance." *United States v. Irey*, 612 F.3d 1160, 1196 (11th Cir. 2010) (en banc) (citation and internal quotation marks omitted).

The district court did not abuse its discretion because it provided sufficient justification for its substantial upward variance. It found that Carey was a danger to the community. It considered that the nature and circumstances of the offense were serious because they involved resisting law enforcement with violence such

that an officer went to the hospital. *See* 18 U.S.C. § 3553(a)(1), (a)(2)(A). It found that Carey "showed zero remorse" for his conduct and blamed the officers. And it considered Carey's criminal history and likelihood of recidivism when finding that he committed the instant offenses while released on bond for similar state felon-in-possession offenses. His sentence needed to afford adequate deterrence and protect the public from further gun crimes, as these offenses were part of a series of gun offenses, which continued while he was on bond for state charges related to the 2021 offense. *See id.* § 3553(a)(2)(B)-(C). The district court was allowed to weigh the seriousness of the offenses, his lack of remorse, and his criminal history more heavily than any mitigating circumstances regarding his age, traumatic childhood, and mental health issues. *See Riley*, 995 F.3d at 1279. It did not commit a clear error of judgment in imposing a substantial upward variance. *See Taylor*, 997 F.3d at 1355.

Carey contends that the district court should not have imposed a sentence above the government's request. But the district court is not bound by the parties' recommendations. It must consider the statutory sentencing factors and impose a sentence based on those factors. *See* 18 U.S.C. § 3553(a) ("The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in . . . this subsection . . . ."). The district court considered those factors and justified its upward variance.

We **AFFIRM** Carey's convictions and sentence.

APPENDIX B

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-14172

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAQUAN CAREY,
a.k.a. Trapboy Quan,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:24-cr-00115-TPB-NHA-1

Before WILLIAM PRYOR, CHIEF JUDGE, and LAGOA and WILSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant is DENIED.