

**CASE NO. \_\_\_\_\_**

---

**IN THE  
SUPREME COURT OF THE UNITED STATES**

---

**ERIC ANTHONY GARNER**  
**Petitioner,**

**v.**

**UNITED STATES OF AMERICA**  
**Respondent.**

---

**On Petition for a Writ of Certiorari  
To the United States Court of Appeals  
for the Fourth Circuit**

---

**PETITION FOR WRIT OF CERTIORARI**

---

Derrick W. Lefler  
1607 Honaker Ave.  
Princeton, WV 24740  
304-425-4484  
Leflerlaw@Frontier.com  
WVSB #5785

## **QUESTIONS PRESENTED**

The petitioner, Eric Garner was sentenced in the United States District Court for the Northern District of West Virginia to a sentence of 300 months upon his guilty plea to the offense of Conspiracy to distribute 400 grams or more of a fentanyl mixture in violation of 21 USC §846. Mr. Garner was 58 years old at the time of his sentencing. In serving the sentence imposed by the district court Mr. Garner would be over 81 years old at the time he completed his sentence. At sentencing counsel moved the court for a variance sentence of 168 to 210 months, arguing that Mr. Garner's age, in relation to the length of his sentence was significant factor in imposing a sentence that was no longer than necessary to serve the goals of sentencing. In imposing its sentence the district court did not give any material consideration to Mr. Garner's age in relation to the length of his sentence and the extent to which it impacted sentencing factors.

The issue before the Court is whether the sentence imposed was reasonable in light of the district court's failure to appropriately consider Mr. Garner's age and its impact on sentencing factors, and the Court of Appeals affirmation of the district court's sentencing analysis.

## **LIST OF THE PARTIES & RELATED CASES**

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

Proceedings directly related to this matter are as follows:

United States v. Brown, No. 3: 24-CR-3-2, U.S. District Court for the Northern District of West Virginia. Judgment entered June 5, 2025.

United States v. Garner, No. 25-4335, United States Court of Appeals for the Fourth Circuit. Judgment entered December 2, 2025.

## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....	4
OPINIONS BELOW .....	5
JURISDICTION OPINIONS BELOW .....	6
STATUTE AND REJECTIONS INVOLVED.....	3
STATEMENT OF CASE.....	7
REASON FOR GRANTING THE WRIT .....	11
CONCLUSION .....	19

## INDEX TO APPENDICES

APPENDIX A : Unpublished Opinion of the United States Court of Appeals for the Fourth Circuit decided December 2, 2025.

APPENDIX B: Order of the United States District Court for the Northern District of West Virginia entered June 5, 2025.

APPENDIX C: Transcript of Sentencing Hearing before the Honorable Gina Groh of the United States District Court for the Northern District of West Virginia on December 2, 2025.

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page</b>
<u>Gall v. United States</u> , 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007) .....	11,12
<u>Kimbrough v. United States</u> 52 U.S. 85, 101 (2007) .....	13
<u>United States v. Blume</u> , 877 F.3d 513, (4th Cir. 2017).....	18
<u>United States v. Cunningham</u> , 429 F.3d 673, 678 (7 <sup>th</sup> Cir. 2005).....	18
<u>United States v. Hernandez-Villanueva</u> , 473 F.3d 118, 122 (4th Cir. 2007) .....	15

United States v. Howard,  
773 F.3d 519, (4th Cir. 2014).....11, 15

United States v. Lymas,  
781 F.3d 106, (4th Cir. 2015) ..... 11,12

United States v. Miranda,  
505 F.3d 785, 792 (7<sup>th</sup> Cir. 2007)..... 18

United States v. Ross,  
912 F.3d 740, (4th Cir. 2019) .....18

United States v. Shortt,  
485 F.3d 243, (4th Cir. 2007) .....13

United States v. Slappy,  
872 F.3d 202, (4th Cir. 2017) ..... 18

**Other Authorities**

U.S. Sent. Comm'n, Recidivism of Federal Drug Trafficking Offenders Released in 2010 (January 2022) .....15

**OPINIONS BELOW**

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

The opinion of the United States Court of Appeals appears at Appendix A to the Petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the Petition and is unpublished

## **JURISDICTION**

The date on which the United States Court of Appeals issued its opinion was December 2, 2025. No petition for rehearing was filed. This petition was filed within 90 days of the date of the Court of Appeal's entry of judgment. Jurisdiction is conferred upon this Court by 28 U.S.C. 1254(1).

## **STATUTES AND REGULATIONS INVOLVED**

The issue presented in this case involves interpretation and application of 18 U.S.C. §353(a), which states:

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider-

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed-
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;

- (C) to protect the public from further crimes of the defendant; and (D) to provide defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentences and sentencing range established for (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines;
- (5) any pertinent policy statement (A) issued by the Sentencing Commission;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense

## **STATEMENT OF THE CASE**

On January 17, 2024 the Petitioner, Eric Anthony Garner (hereinafter "Garner") was charged in two counts of a 34 count indictment filed in the United States District Court for the Northern District of West Virginia.

Specifically, Mr. Garner was charged in Counts 1 and 2 with conspiracy to violate 21 U.S.C. § 841(a)(1). Ultimately, Mr. Garner entered a plea of guilty to

Count 1 of the indictment which charged him with conspiring with codefendants Gary Brown Jr., Saul Powell, Gary Rodriguez, Gary Brown III, and Delroy Singleton to deliver controlled substances in violation of 18 USC § 846.

Following his plea, the United States Probation Office compiled a presentence report. That report found Mr. Garner to have a Total Offense Level of 39 and a Criminal History Category II. Based upon those findings probation indicated a recommended guideline range of 292 to 365 months.

In response to the presentence report, Garner maintained objections at sentencing to the PSR findings as to the relevant drug weight, as well as being characterized as being an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. Prior to sentencing, Mr. Garner also filed a motion seeking a variance sentence below the recommended guidelines. Specifically Mr. Garner requested the court vary down five levels, with a resulting guideline range of 168 to 210 months.

The court heard arguments and testimony and evidence as to those issues objected to. The court denied Garner's objections and accepted the calculations set forth in the PSR. Based on those findings, consistent with the PSR, the court found Mr. Garner's total offense level to be 39, and his criminal history category II, resulting in a recommended sentencing range of 292 to 365 months.

The court then addressed Mr. Garner's motion for a variance sentence. After hearing argument the court denied the motion and imposed a sentence of 300 months, together with a period of supervised release.

Regarding sentencing, and with reference to the requested variance sentence, counsel for Mr. Garner argued that a sentence at any point within guideline range recommended by the PSR would be tantamount to a life sentence, presenting the significant probability that Mr. Garner would die in prison, and that such a sentence would be greater than necessary to achieve the recognized goals of sentencing.

Counsel also pointed to Mr. Garner's significantly advanced age at the time of his release, even under the variance sentence requested, and its impact on the prospect of the any continued criminality, which counsel asserted would be extraordinarily low.

The district court stated that it had considered all the factors set forth in 18 U.S.C. §3553(a), declaring that, in light of those factors, including the nature of the instant offense, defendant's criminal history, his personal history and characteristics that a downward variance was not warranted, and denied Garner's motion.

The court then announced its basis for its sentence. The court primarily pointed to Mr. Garner's role in the offense as a leader in the conspiracy in which he directed drug transactions and provided assistance to codefendant Gary Brown Jr. by conducting transactions when Brown was unable or unavailable. The court also

pointed to Garner's use of his residence, and other locations, in executing the business of the conspiracy, as well as the fact that the drug trade was his primary source of income.

The court also noted Mr. Garner's long history of substance abuse, finding he would benefit from participation in drug treatment programs within the Bureau of Prisons. The court made note of Garner's age and physical infirmities, but stated only the observation that his physical disabilities had not prevented him from "consistent violations of the law, including the industrious efforts involved in the conspiracy in this case."

The court ultimately stated that it believed the 300 month sentence was warranted as it "reflects the serious nature of the offense and will serve as punishment for defendant's criminal conduct." The court also stated "overall, it meets the sentencing objectives of punishment, general deterrence, incapacitation, and rehabilitation." Notably, the court did not address Mr. Garner's age in any meaningful manner, or not explain how the impact of the sentence imposed in light of defendant's age related to the objectives of sentencing.

## REASONS FOR GRANTING THE WRIT

The present petition, while involving a somewhat fact specific issue, presents issues germane to effective implementation of sentencing policy under the United States Sentencing Guidelines and 18 USC § 3553.

### I. STANDARD OF REVIEW

Sentencing decisions, including procedural and substantive decisions, made by the district court are reviewed by appellate courts for reasonableness under an abuse of discretion standard. Gall v. United States, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007), United States v. Howard, 773 F.3d 519, 527-28 (4th Cir. 2014).

#### A. Relevant Caselaw

A review of whether a sentence is reasonable requires consideration of both the procedural and substantive reasonableness of the sentence. United States v. Lymas, 781 F.3d 106, 111-112 (4th Cir. 2015) (quoting Gall v. United States, 552 U.S. 38, 41 (2007)).

## 1. Procedural Reasonableness

In determining procedural reasonableness, the appellate courts must consider, whether the district court properly calculated the guideline range, gave the parties an opportunity to argue for an appropriate sentence, considered the 18 U.S.C. §3553 (a) factors, and sufficiently explained the selected sentence. Lymas at 111-12.

In its review of procedural correctness, this Court must:

Ensure the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the §3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence-including an explanation for any deviation from the Guideline range.

Gall, 552 U.S. at 51.

## 2. Substantive Reasonableness

As to substantive reasonableness. Sentencing judges are afforded great discretion, however, the sentence should be individualized and should impose the least sentence possible to the achieve the purposes of sentencing as set forth in 18 U.S.C. §3553(a)(2). [Emphasis Added]. Those purposes are: (A) to reflect the seriousness of the offense, promote respect for the law and provide just punishment; (D) to afford adequate deterrence to criminal conduct; (C) to protect the public from the defendant's crimes, and (D) to provide the defendant with rehabilitation. 18 U.S.C. 3553(a)(2). Subsection (a) of §3553 identifies 7 factors the court is to utilize in determining a sentence that meets those purposes. Among those is the need to

avoid unwarranted disparities among sentence A "sentence that fails to fulfill the purposes [of sentencing] cannot be saved, even if supported by consideration of the other 6 factors." United States v. Shortt, 485 F.3d 243, 249 (4th Cir. 2007).

## B. Application To The Case At Hand

The sentence imposed by the district court was deficient both procedurally and substantively based on the court's failure to adequately consider Mr. Garner's age, both in terms of the impact of its impact on his age at the time of his release, and its effect on his likelihood to reoffend, and the need for continued segregation from society.

At the time of his sentencing, Mr. Garner was 58 years old. The 300 month sentence, taking into consideration the credit for time served, would make him over 81 1/2 years old at the time of his release. As counsel suggested to the court at sentencing, such a sentence is the equivalent of a life sentence for Mr. Garner.

The basic mandate and overriding principle of 18 U.S.C. §3553(a) requires a district court to impose a sentence "sufficient, but not greater than necessary" to comply with the primary purposes of sentencing set forth in §3553. Kimbrough v. United States, 52 U.S. 85, 101 (2007). Those purposes are: (a) retribution (the "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"); (b) deterrence ("to afford adequate deterrence to

criminal conduct"); (c) incapacitation ("to protect the Public from further crimes of the defendant"); and (d) rehabilitation ("to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner"). 18 U.S.C. §3553(a)(2). Therefore, the goals of sentencing, and the factors identified to address those goals notwithstanding, the overarching principle in § 3553 is the command that the court "impose a sentence sufficient **but not greater than necessary** to comply with the purposes set forth in paragraph (2) of the statute. 18 U.S.C. § 3553(a). [Emphasis Added]

A sentence that is the least sentence necessary to achieve sentencing goals set forth in §3553(a) must reflect consideration of the age of the defendant at the time of his release, and consider the likelihood of recidivism at that juncture.

The United States has argued that Mr. Garner's age at the time of the instant offense made him an outlier in the generally accepted idea that criminality tends to lessen with age. However the additional factor in that calculus is that issue underlying Mr. Garner's involvement in the offense, is long-standing and significant drug addiction. The court appropriately recognized Mr. Garner's significant substance abuse issues and recommended him for all available treatment and programming within the Bureau of Prisons. These resources would work to ensure that at the time of his release, Mr. Garner would occupy significantly different position with reference to the abuse of controlled substances and would be more

likely to fall into the category of those individuals with significantly reduced risk of recidivism with advancing age. It is well recognized that offenders tend to cease or reduce their involvement in criminal activity as they age. United States v. Howard, 773 F.3d 519 (4th Cir. 2014.).

The sentence suggested by counsel in his motion for downward variance, would still have seen his release at between 70 and a half and over 74 years of age, well beyond the point that it the study cited in the Howard decision which identified a significant reduction in recidivism.

"The court must articulate the reasons for the sentence imposed, particularly explaining any departure or variance from the sentencing range." United States v. Hernandez-Villanueva, 473 F.3d 118, 122 (4th Cir. 2007). The district court gave no significant consideration to Mr. Garner's advanced age at the point of his release. He was 58 at the time of sentencing. In the unlikely event he manages to survive his incarceration, his risk of recidivism will be greatly diminished. See U.S. Sent. Comm'n, Recidivism of Federal Drug Trafficking Offenders Released in 2010, at 28, Figure 12 (January 2022). (Drug Trafficking Offenders over 60, as well as all other offenders over 60, reoffend at a rate almost half of those in the 50-59 age bracket, and considerably less than those under 50).

The appellate court below rejected Mr. Garner's arguments as to the procedural and substantive deficiencies in the district court's sentencing out of hand,

by simply pointing to the district court's statements acknowledging his age of 58, and the observation that previous imprisonments had not deterred him from "committing escalated to criminal activities."

The appellate court's analysis as to both of these points fails to appreciate or address Mr. Garner's arguments in any meaningful fashion. In purporting to address Mr. Garner's arguments for a downward variance relating to his age, the deficiency of the district court's analysis was its failure to consider the length of the sentence imposed in relation to Mr. Garner's age at the time of his release, as opposed to his age at the time of sentencing, The sentence imposed by the district court, and affirmed by the Court of Appeals would have Mr. Garner released in his early 80s, well past his life expectancy and presenting a high likelihood that he will not survive such sentence.

Conversely the variance sought would have Mr. Garner released in his early to mid-70s, at a point where he might have some reasonable possibility of surviving the sentence, and at a point where his risk of reoffending will have dramatically dropped in all likelihood. At sentencing, counsel urged the court to consider the significant likelihood that such an advanced age would significantly lower Mr. Garner's likelihood of reoffending. Counsel also suggested that his physical infirmities would likely further reduce those probabilities.

The district court, however, focused on Mr. Garner's age at the time of his

offense and conviction, finding that his age and physical impairments or infirmities at that point had not frustrated his criminal activity. This analysis, focusing on Mr. Garner's present age does not touch on his age at discharge, and the relevance of that issue in terms of likelihood of reoffending and the need to protect the public.

In this respect, it cannot be said that the district court addressed or seriously considered Mr. Garner's arguments. Issues of risk of reoffending and the need to protect the public must necessarily be viewed in terms of a defendant's age at the time of release, as any dangers presented or related issues do not exist until a defendant is released. In turn, the Court of Appeals' short-shrift analysis of the issues and its blanket acceptance of the district courts findings, disposing of Mr. Garner's arguments in a single paragraph, simply perpetuated the district court's error.

The failure to consider defendant's age in the context of a case such as that at hand, and the simple focus on the length of a sentence called for under the guidelines, creates an arbitrary scheme whereby the impact of a sentence, and the penalty to be paid, is arbitrarily a function of the defendant's age at the time of his sentencing. Whereas, a younger defendant who receives the 300 months sentence that Mr. Garner received, and the sentence is discharged and the individual leaves his incarceration certainly older, but with significant life left. Conversely, Mr. Garner receiving the same sentence suffers what is tantamount to a life sentence.

Such an arbitrary scenario certainly raises concerns for unnecessary disparity in sentences, and clearly leaves Mr. Garner with a longer sentence than is necessary to achieve the goals of sentencing. Mr. Garner's criminal conduct calls for a sentence of significant length. It does not call for a life sentence.

A district court must address or consider all nonfrivolous reasons presented for imposing a different sentence and explain why he has rejected those arguments." United States v. Ross, 912 F.3d 740, 744 (4th Cir. 2019), citing United States v. Blume, 877 F.3d 513, 518 (4th Cir. 2017), United States v. Slappy, 872 F.3d 202, 207 (4th Cir. 2017). The district court gave little, if any, consideration to Mr. Garner's age as a function of his personal characteristics, or the implications of the same as to unwarranted disparity in sentences. The appellate court simply perpetuated that error.

"[W]hen a court gives little or no attention to the defendant's principal argument when that argument 'was not so weak as not to merit discussion.'" There can be no confidence that the courts have considered the section 3553(a) factors." United States v. Miranda, 505 F.3d 785, 792 (7<sup>th</sup> Cir. 2007); citing, United States v. Cunningham, 429 F.3d 673, 678 (7<sup>th</sup> Cir. 2005). However the Court of Appeals in this instance did not recognize or acknowledge the inadequacies in the district court's sentencing analysis. Where the Court of Appeals fails, or declines to do so,

and fully discharge its obligations in these respects, it is necessary that this court do so.

## CONCLUSION

For the foregoing reasons, Appellant, Eric Anthony Garner, respectfully requests the Court grant the instant petition and issue a writ of certiorari.

SUBMITTED BY:



Derrick W. Lefler  
Lefler Law Offices  
1607 Honaker Ave.  
Princeton WV 24740  
304-425-4484  
Leflerlaw@Frontier.Com