

IN THE SUPREME COURT OF THE UNITED STATES

ZYTRELL MONTAE HORTON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

A. TYSEN DUVA
Assistant Attorney General

ALLAYA LLOYD
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether, on plain-error review, a showing of inadequate explanation of a sentence automatically meets the defendant's burden to show that the district court's error affected his substantial rights.

RELATED PROCEEDINGS

United States District Court (W.D. Tex.):

United States v. Horton, No. 22-cr-51 (Nov. 22, 2024)

United States Court of Appeals (5th Cir.):

United States v. Horton, No. 22-50877 (Oct. 17, 2023)

United States v. Horton, No. 24-50938 (Jan. 28, 2026)

IN THE SUPREME COURT OF THE UNITED STATES

No. 25-7437

ZYTRELL MONTAE HORTON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A11) is reported at 165 F.4th 921. A prior opinion of the court of appeals is reported at 158 F.4th 680.

JURISDICTION

The judgment of the court of appeals was entered on January 28, 2026. The petition for a writ of certiorari was filed on April 28, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Western District of Texas, petitioner was convicted on one count of possessing fentanyl with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Pet. App. A2. Petitioner was sentenced to 240 months of imprisonment, to be followed by three years of supervised release. Id. at A2-A3. After the court of appeals remanded for resentencing, the district court imposed the same term of imprisonment and term of supervised release. Id. at A3. The court of appeals affirmed. Id. at A1-A11.

1. On April 2, 2022, J.Z. contacted Fort Hood emergency services via 911 and reported that his friend, L.G. -- an Army soldier -- was in medical distress. C.A. ROA 35; Pet. App. A2. Upon arrival at J.Z.'s residence, emergency personnel observed what they believed to be evidence of illegal drug use. C.A. ROA 35; Presentence Investigation Report (PSR) ¶ 7. L.G. was transported to Fort Hood's medical center and subsequently died. PSR ¶ 8. According to the autopsy report, the cause of L.G.'s death was fentanyl and cocaine intoxication. PSR ¶ 19.

Interviews with J.Z. revealed that J.Z. had provided L.G. with petitioner's contact information to purchase illegal drugs, that L.G. had purchased illegal drugs, and that L.G. may have used the drugs. C.A. ROA 35; see PSR ¶¶ 7, 9. Later that day, undercover law-enforcement agents contacted petitioner via

cellphone, and petitioner agreed to sell the agents pills that he said did not contain fentanyl. C.A. ROA 36; see PSR ¶¶ 11-12.

After carrying out the controlled purchase, law enforcement conducted a presumptive test of the purchased pills, which resulted in a positive result for fentanyl. PSR ¶ 14. Two days later, petitioner contacted the undercover agents to ask if the agents wanted to purchase additional pills. PSR ¶ 15. Agents carried out another controlled purchase with petitioner for 20 additional pills. PSR ¶¶ 15-17; see C.A. ROA 36-37.

2. A federal grand jury in the Western District of Texas charged petitioner with one count of possessing fentanyl with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Indictment 1. Petitioner pleaded guilty. Pet. App. B1.

The Probation Office calculated an advisory Sentencing Guidelines range of 210-240 months of imprisonment, which included an enhancement because "the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance." Sentencing Guidelines § 2D1.1(a)(2) (2021); see Pet. App. A2. The presentence report observed that petitioner's "sale of fentanyl-laced Percocet pills 'resulted in' the death of an Army soldier, L.G." Pet. App. A2; see PSR ¶ 27.

Petitioner objected to that enhancement, asserting that no evidence linked the drug sale to L.G.'s overdose. Pet. App. A2; see 9/28/22 Sent. Tr. (Sent. Tr.). The government then "offered testimony from an agent * * * who supervised the investigation of L.G.'s death" regarding the evidence connecting petitioner and L.G., including that "L.G. bought the disguised fentanyl from [petitioner] shortly before his overdose," and that law enforcement had carried out "two similar undercover buys from [petitioner]" shortly after L.G.'s death. Pet. App. A2; see Sent. Tr. 5-13. The district court also heard statements from L.G.'s family members. Sent. Tr. 24-26.

The district court overruled petitioner's objection and sentenced petitioner to the statutory maximum of 240 months of imprisonment, to be followed by three years of supervised release. Pet. App. A2-A3; see PSR ¶ 66. In imposing the sentence, the court stated that "it's frustrating to me that the maximum amount of time I can give is 240 months. If I could * * * give more, I would." Sent. Tr. 29.

3. Petitioner appealed, and the government conceded that the guidelines enhancement for L.G.'s death was plain error under United States v. Greenough, 669 F.3d 567 (5th Cir. 2012), because "L.G.'s death was not part of the crime to which [petitioner] pled guilty." Pet. App. A3 (citing Greenough, 669 F.3d at 575). The court of appeals remanded for resentencing. Ibid.

At resentencing, without the enhancement, petitioner's Sentencing Guidelines range was 10-16 months. Pet. App. A3. Petitioner argued that the district court could not consider L.G.'s death because it had not been "indicted and proven." Ibid. The government contended that the court could consider petitioner's role in L.G.'s death as a potential basis for a variance from the formal guidelines range, and it requested an upward variance to 240 months of imprisonment. Ibid.; see 11/20/24 Sent. Tr. (Resentencing Tr.). The government also referenced the evidence that the government had presented at the initial sentencing hearing indicating that petitioner "had supplied the pills" to L.G., as well as "victim impact statements" made by L.G.'s family members. Resentencing Tr. 9-10. Moreover, the government noted that petitioner had been convicted on an unrelated state murder charge that had been pending at the time of the initial sentencing. See id. at 3, 10; see also Pet. App. A9.

The district court imposed a sentence of 240 months of imprisonment, to be followed by three years of supervised release. Resentencing Tr. 11-12. The court "cite[d] to [18 U.S.C.] 3553(a) to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, also to afford adequate deterrence to criminal conduct, [and] to protect the public from further crimes of the

defendant.” Ibid. Petitioner did not object following imposition of the sentence. Pet. App. A3.

4. The court of appeals affirmed. Pet. App. A1-A11.

The court of appeals first explained that it would review petitioner’s procedural-reasonableness claim -- which asserted that the district court had insufficiently explained the sentence -- for plain error because petitioner “could have asked the district court for further explanation during the sentencing hearing, but [he] did not.” Pet. App. A5 (brackets in original) (quoting United States v. Mondragon-Santiago, 564 F.3d 357, 361 (5th Cir.), cert. denied, 558 U.S. 871 (2009)); see id. at A4-A5. And applying the plain-error standard, the court of appeals agreed with petitioner that the district court’s “insufficient explanation was clear error,” but found that the “error did not affect [petitioner’s] substantial rights.” Id. at A5-A6. The court of appeals observed that “[petitioner] offers no rejoinder whatsoever to the Government’s argument that the court’s inadequate explanation did not affect his sentence, and the transcript of the sentencing hearing indicates that there were sufficient facts presented in favor of the variance such that explaining the sentence would not have led the district court to change its mind.” Id. at A6-A7.

The court of appeals separately found that the sentence was substantively reasonable. Pet. App. A7-A9. It rejected petitioner’s argument that the district court was precluded from

taking L.G.'s death into account. Id. at A8. And it also rejected petitioner's argument that "'nothing in the record establishe[d]' why the 224-month variance 'was properly justified.'" Id. at A9 (brackets omitted). It observed that the record "amply shows that [petitioner's] sale of disguised fentanyl to L.G., at a minimum, directly contributed to L.G.'s fatal overdose"; that "within days of L.G.'s death, undercover agents purchased from [petitioner] an additional 30 pills that, as the Army investigator testified, [petitioner] 'represented to be Percocet' but were 'actually Fentanyl'"; and that "as the Government argued at resentencing, [petitioner] pled guilty to the state murder charge that was pending at the time of his original sentence." Ibid. And it explained that "the record of both sentencing hearings reflects the gravity of [petitioner's] repeated dealing of disguised fentanyl." Ibid.

ARGUMENT

Petitioner contends (Pet. 4-12) that a district court's failure to sufficiently explain a sentence automatically affects a defendant's substantial rights and therefore automatically satisfies the third requirement of the test for plain error under Federal Rule of Criminal Procedure 52(b). Petitioner's contention lacks merit, and this Court has repeatedly denied

petitions raising similar issues.¹ It should follow the same course here.

1. Petitioner does not appear to dispute that Rule 52(b) requires that his claim of inadequate explanation be reviewed solely for plain error. Under the plain-error standard, petitioner may obtain such relief only if he shows that (1) the district court committed an error, (2) the error was "clear" or "obvious," (3) the error affected "substantial rights," and (4) the error seriously affected "the fairness, integrity or public reputation of judicial proceedings." United States v. Olano, 507 U.S. 725, 732-737 (1993) (citation omitted). He failed to satisfy that standard because, as the court of appeals correctly recognized, the district court's purported insufficient explanation did not affect his substantial rights. Pet. App. A6-A7.

Because petitioner did not show that a more detailed explanation would "have led the district court to change its mind," Pet. App. A7, petitioner cannot satisfy his burden to show that that he suffered prejudice. Rather than try to satisfy that prerequisite for plain-error relief, petitioner contends that he does not actually need to do so. He instead contends (Pet. 9) that when a district court procedurally errs by providing an

¹ See, e.g., Guerrero v. United States, 581 U.S. 1007 (2017) (No. 16-7254); Alcorn v. United States, 565 U.S. 1159 (2012) (No. 11-5024); Salgado v. United States, 564 U.S. 1022 (2011) (No. 10-8671); Saldana-Martinez v. United States, 562 U.S. 1274 (2011) (No. 10-7821); Mondragon-Santiago v. United States, 558 U.S. 871 (2009) (No. 08-11099).

inadequate explanation of a sentence, prejudice should be “presumed” because “the nature of the error makes a specific showing of harm structurally impossible.”

But the requirement that an error have affected a defendant’s substantial rights “in the ordinary case means [the defendant] must demonstrate that it ‘affected the outcome of the district court proceedings.’” Puckett v. United States, 556 U.S. 129, 135 (2009) (citation omitted). While this Court has “noted the possibility that certain errors, termed ‘structural errors,’ might ‘affec[t] substantial rights’ regardless of their actual impact on” district court proceedings, it has cautioned that “‘structural errors’ are ‘a very limited class’ of errors that affect the ‘framework within which the trial proceeds,’” such as the denial of counsel or a biased or improperly constituted adjudicator. United States v. Marcus, 560 U.S. 258, 263 (2010) (brackets in original) (quoting Johnson v. United States, 520 U.S. 461, 468 (1997)) (collecting examples of structural errors); accord Greer v. United States, 593 U.S. 503, 513 (2021). This Court has further explained that “‘if the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other errors that may have occurred’ are not ‘structural errors.’” Marcus, 560 U.S. at 265 (quoting Rose v. Clark, 478 U.S. 570, 579 (1986)).

Accordingly, the Court has frequently rejected assertions of structural error in the explanations or instructions provided by

the district court. See, e.g., Greer, 593 U.S. at 513-514 (district court's errors in not mentioning knowledge-of-status element in plea colloquy or jury instructions are "not structural"); Hedgpeth v. Pulido, 555 U.S. 57, 58 (2008) (per curiam) (erroneous instruction concerning an invalid theory of guilt does not constitute structural error); United States v. Dominguez Benitez, 542 U.S. 74, 81-83 (2004) (defendant must show prejudice to succeed on unpreserved claim challenging as inadequate district court's explanation of rights during plea colloquy); United States v. Vonn, 535 U.S. 55, 63 (2002) (plain-error review applies to claim that the district court failed to conduct an adequate plea colloquy); Neder v. United States, 527 U.S. 1, 8-10 (1999) (omitting an offense element in jury instructions is not structural error). There is no apparent reason why "a reviewing court would find it any more difficult to assess the likely consequences" of an inadequate sentencing explanation. Marcus, 560 U.S. at 264.

Indeed, holding that a deficient explanation at sentencing is per se reversible plain error would effectively eliminate a key purpose of the plain-error rule, i.e., "concentrat[ing] * * * litigation in the trial courts, where genuine mistakes can be corrected easily." Vonn, 535 U.S. at 72. Such a course would not be appropriate even if the error were deemed structural. See Puckett, 556 U.S. at 140 ("declin[ing] to resolve whether 'structural' errors * * * automatically satisfy the third prong

of the plain-error test” where the error was not preserved) (citation omitted). Where a defendant has, but forgoes, the opportunity to prompt the district court to offer a fuller explanation of its sentence, the defendant should not be permitted to obtain reversal without establishing actual prejudice from the error.²

2. A substantial majority of the courts of appeals, including the court below, agree that a deficient sentencing explanation does not automatically affect substantial rights. See United States v. Gilman, 478 F.3d 440, 447-448 (1st Cir. 2007); United States v. Lynn, 592 F.3d 572, 580 & n.5 (4th Cir. 2010); United States v. Mondragon-Santiago, 564 F.3d 357, 364-365 (5th Cir.), cert. denied, 558 U.S. 871 (2009); United States v. Guarino, 517 F.3d 1067, 1069 (8th Cir.), cert. denied, 555 U.S. 903 (2008); United States v. Mendoza, 543 F.3d 1186, 1194-1195 (10th Cir. 2008); United States v. Steiger, 99 F.4th 1316, 1324-1325 (11th Cir. 2024) (en banc); accord United States v. Avendano-Soto, 116 F.4th 1063, 1068-1069 (9th Cir. 2024) (explaining that, “even if there were error, [the defendant] could not show that the error ‘affects substantial rights’” because the defendant “provide[d] no

² To the extent petitioner argues (Pet. 10-12) that the decision below is inconsistent with Molina-Martinez v. United States, 578 U.S. 189 (2016), and Rosales-Mireles v. United States, 585 U.S. 129 (2018), he is mistaken. Unlike Molina-Martinez, the case at this stage does not involve a guidelines calculation error. See 578 U.S. at 198. And, as petitioner notes (Pet. 11), Rosales-Mireles concerned the fourth element of plain-error review. 585 U.S. at 137-139.

basis for [the court of appeals] to find that there is a reasonable probability he would have received a different sentence had the district court given a more complete explanation for its sentence”) (citation omitted); see also United States v. Waknine, 543 F.3d 546, 554-555 (9th Cir. 2008) (requiring defendant to show “a reasonable probability that he would have received a different sentence if the district court had expressly considered the [18 U.S.C.] 3553(a) factors” and finding the requirement satisfied); United States v. Hammons, 558 F.3d 1100, 1105 (9th Cir. 2009) (similar).

Petitioner asserts (Pet. 12-13) that the Second, Sixth, and D.C. Circuits have concluded that an erroneous failure to explain a sentence automatically affects a defendant’s substantial rights. See United States v. Lewis, 424 F.3d 239, 247-249 (2d Cir. 2005); United States v. Blackie, 548 F.3d 395, 402-403 (6th Cir. 2008); In re Sealed Case, 527 F.3d 188, 191-193 (D.C. Cir. 2008). Those decisions concluded that “the required showing of prejudice should be slightly less exacting” for sentencing “than it is in the context of trial errors,” Sealed Case, 527 F.3d at 193 (citation omitted), and that the failure to adequately explain the sentences in those cases necessarily affected the defendants’ substantial rights because it “preclude[d] appellate review of the substantive reasonableness of the sentence[s],” ibid.; see Lewis, 424 F.3d at 247 (similar); see also Blackie, 548 F.3d at 402-403 (“join[ing]”

the Second and D.C. Circuits in finding that 18 U.S.C. 3553(c)(2) “confers a substantial right to meaningful appellate review”).³

But all of the cited decisions predate this Court’s decision in United States v. Marcus, which expressly disapproved of relaxing the requirements of plain-error review for certain types of claims, 560 U.S. at 265-267, provided additional clarity about the boundaries of what errors should be considered structural, id. at 263, and supplied further guidance concerning when an error affects substantial rights, id. at 263-265. The cited decisions also predate Greer v. United States, which similarly clarified the structural-error category. See 593 U.S. at 513-514. The Second, Sixth, and D.C. Circuits have not directly attempted to reconcile their decisions with Marcus or Greer, and may reconsider their positions as to application of the third element of plain-error review in cases claiming inadequate explanation of a sentence in light of this Court’s precedents.⁴ And this Court has repeatedly denied review of petitions asserting that Lewis, Blackie, and

³ Petitioner additionally cites cases to support his proposition that “[m]ajor variances supported only by boilerplate explanations have been vacated in several jurisdictions.” Pet. 14. But those cases did not apply plain-error review and are thus irrelevant to the question presented by the petition. See United States v. Perez-Delgado, 99 F.4th 13, 20 (1st Cir. 2024); United States v. Reyes-Correa, 81 F.4th 1, 10 (1st Cir. 2023); United States v. Wilcher, 91 F.4th 864, 869-871 (7th Cir. 2024).

⁴ The Sixth Circuit has also noted some intracircuit disagreement on what showing is required under the third element of plain-error review “[a]s applied to ‘an inadequacy-of-explanation challenge.’” United States v. Aguilar-Andres, 780 Fed. Appx. 231, 235 (6th Cir. 2019) (citation omitted) (collecting cases).

Sealed Case generated a conflict warranting this Court's intervention. See p. 8 n.1, supra.

This case would be a particularly inappropriate vehicle for further review, because the court of appeals did not find the sentencing explanation as precluding meaningful appellate review. To the contrary, the court fully considered the substantive reasonableness of petitioner's sentence, finding that the record justified the extent of the variance. Pet. App. A7-A9. In particular, the court of appeals noted that "the overall tenor of resentencing shows that L.G.'s death was an important ingredient in the sentencing decision"; that even though the enhanced penalty did not apply, the district court was "permit[ted] * * * to weigh under [section] 3553(a) the fact that a defendant contributed to someone's death"; that the record "amply show[ed]," among other things, that petitioner's "sale of disguised fentanyl to L.G., at a minimum, directly contributed to L.G.'s fatal overdose"; and that petitioner had "pled guilty to the state murder charge that was pending at the time of his original sentence." Id. at A8-A9. The court of appeals therefore explained that, while "the 224-month variance is large," "the record of both sentencing hearings reflects the gravity of [petitioner's] repeated dealing of disguised fentanyl." Id. at A9.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

A. TYSEN DUVA
Assistant Attorney General

ALLAYA LLOYD
Attorney

SEPTEMBER 2026