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In the
Supreme Court of the United States

CHARLES DANA JOHNSON, II, *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**

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Dated: July 29, 2026

I. QUESTION PRESENTED FOR REVIEW

Petitioner's extensive criminal history – which the district court cited in imposing its sentence – was fueled by his equally extensive history of substance abuse – which the district court did not address, in spite of Petitioner's arguments. The issue is whether such a sentence, where the district court fails to address a defendant's non-frivolous argument for a reduced sentence, is “unreasonable” under *United States v. Booker*, 543 U.S. 220 (2005).

II. LIST OF ALL PARTIES AND RELATED CASES

PARTIES

- Petitioner – Charles Dana Johnson, II
- Respondent – United States of America

DIRECTLY RELATED CASES

- *United States v. Johnson*, No. 2:25-cr-00027, U.S. District Court for the Southern District of West Virginia. Judgment entered October 6, 2025.
- *United States v. Johnson*, Appeal No. 25-4561, U.S. Court of Appeals for the Fourth Circuit. Judgment entered on April 30, 2026.

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V. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, *United States v. Johnson*, 2026 WL 1180802 (4th Cir. 2026), is unpublished and attached to this Petition as Appendix A. The portion of the sentencing hearing transcripts in which the district court explained the sentence imposed is attached to this Petition as Appendix B. The district court's judgment and commitment order is unpublished and attached as Appendix C.

VI. JURISDICTION

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered on April 30, 2026. No petition for rehearing was filed. This Petition is filed within 90 days of the date the court's entry of that judgment. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

VII. STATUTES AND REGULATIONS INVOLVED

The issue in this Petition requires interpretation and application of 18 U.S.C. § 3553, which provides, in pertinent part:

(a) Factors To Be Considered in Imposing a Sentence. – 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

VIII. STATEMENT OF THE CASE

A. Federal Jurisdiction

On March 4, 2025, an indictment was returned in the Southern District of West Virginia charging Charles Dana Johnson, II with being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). JA6-9.¹ Because that charge constitutes an offense against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. This is an appeal from the final judgment and sentence imposed after Johnson pleaded guilty to the indictment. JA10-13. A Judgment and Commitment Order was entered on October 6, 2025. JA56-62. Johnson filed a timely notice of appeal on October 20, 2025. JA63. The Fourth Circuit had appellate jurisdiction under 28 U.S.C. § 2253 and 28 U.S.C. § 1291.

B. Facts Pertinent to the Issue Presented

This case arose from a traffic stop during which two firearms were recovered from Johnson. After pleading guilty to possession of those firearms, Johnson was sentenced to 84 months in prison, a sentence longer than either party requested. The issue for this appeal is whether the district court failed to adequately engage with one of Johnson's non-frivolous mitigation arguments at sentencing.

1. Johnson pleads guilty to being a felon in possession of a firearm.

On November 17, 2024, Johnson was pulled over while driving in Wood County, West Virginia. During a pat down search, Johnson told the officer that he

¹ "JA" refers to the Joint Appendix that was prepared in this case for the appeal to the Fourth Circuit.

had two firearms in his waistband and that he was a prohibited person. JA66. Johnson explained that he was speeding because his throttle had been stuck and that he “took the pistols from a friend who was threatening suicide.” JA67. Johnson also told the officer that there was marijuana in the car and that he had a medical marijuana card. A “green leafy substance . . . consistent with marijuana” was recovered from the car, but it was never tested. JA67. On March 4, 2025, Johnson was indicted for being a felon in possession of a firearm. JA6-9.

On March 6, 2025, Johnson reached out to investigators to retrieve his phones that were seized during the traffic stop. When he arrived at the police department, Johnson was arrested on an outstanding warrant related to the indictment. After an officer “removed a hypodermic syringe from his coat sleeve,” Johnson said he had no other items on his person JA68. However, officers later found a bag behind where Johnson had been sitting that included “a small amount of suspected methamphetamine and fentanyl” and a package of Suboxone with one strip left. JA68. None of those suspected drugs were tested. Johnson explained they were for personal use and admitted that “he sold drugs to support his addiction to drugs.” JA68. Johnson also told investigators that he had taken possession of the firearms at the request of a friend who asked him to “remove the firearms from her home due to a violent male being at her house.” JA68.

On June 9, 2025, Johnson pleaded guilty to the indictment. JA10-13. There was no plea agreement. JA66.

2. Johnson highlights his history of addiction as part of his sentencing arguments.

Following Johnson's guilty plea, a Presentence Investigation Report ("PSR") was prepared to assist the district court at sentencing. JA64-91. The probation officer concluded that Johnson's advisory Guideline range was 70 to 87 months in prison. JA69-70; JA78; JA85. Neither Johnson nor the Government had any objection to those calculations. JA91.

The PSR also set forth Johnson's lengthy history of substance abuse. It began with the use of marijuana at age eight, which continued to "the day of his arrest for the instant offense." JA83. Between the ages of ten and thirteen Johnson also used powder and crack cocaine, in addition to also abusing "prescription opiates in his youth." JA83. Johnson began using methamphetamine approximately a decade prior to this offense, at one point using an "eight-ball" every day. He last used methamphetamine (mixed with fentanyl) "the day of his arrest for the instant offense." JA83. Johnson also has a history of using mushrooms, LSD, and ecstasy that extended into 2024. JA83. All this in spite of completing a treatment program while previously incarcerated. JA84.

Johnson picked up that theme in his memorandum filed prior to sentencing, in which he argued for a downward variance sentence of 60 months in prison. JA21. Johnson cited several factors in support of such a sentence. One was his history of addiction, with Johnson noting that he was "currently 37 years old, and he has struggled with addiction for most of his life" and "recognizes that his drug use is the root cause of his criminal activity." JA22. Other factors included the nature of

Johnson's prior drug convictions involving marijuana and his youth when he was first convicted of a drug offense. JA23-24. Johnson also highlighted the nature of his offense, that he never used either of the firearms and that he quickly admitted their possession to the officer who conducted the traffic stop. JA21-22. In its memorandum filed prior to sentencing, the Government argued for a sentence "at the bottom of the Guidelines range of 70-87 months." JA14.

3. The district court imposes a sentence of 84 months in prison, longer than either party requested.

A sentencing hearing for Johnson was held on October 2, 2025. JA26-55. The district court confirmed that there were no objections to the Guideline calculations in the PSR and adopted them. JA28-29; JA31.

The Government reiterated its argument that the proper sentence was "at the bottom of the guideline range in this case, a sentence of 70 months." JA33. The Government argued that Johnson "knew he couldn't have guns" but "chose to do that anyway" and then "told inconsistent stories about why he had them." JA33. At the time he had only been off parole "for about two months . . . which indicates that he didn't really learn anything from his past sentences and his past parole revocations." JA33-34. The Government did note that during the traffic stop Johnson consented to a pat down and admitted both to possession of firearms and that he was a prohibited person. That "does merit some consideration" because "rather than try to hide, obscure, cause a violent incident . . . he de-escalated it as quickly as he could" and "that deserves a lower sentence than someone who didn't act in such a manner." JA34.

As to Johnson's prior marijuana convictions, the Government, while "acknowledging that marijuana is not treated in the same manner as it once was," argued that one conviction only counted because of parole revocations and that whatever the legal status of marijuana in some states "it's not legal in any state to distribute marijuana outside of the licensing scheme" for that state. JA35.

Johnson reiterated his argument for a 60-month sentence, noting that much of his criminal history calculation was based on "two marijuana convictions that total about three and a half ounces of marijuana" and occurred "when he was a kid." JA36. One prior conviction "only counts because [of] his parole revocations due to his ongoing and undisputed drug addiction." JA36. Johnson continued that he "has struggled with drug addiction since he was a child" which is "something that he certainly recognizes" and is "something the Court should take into consideration in evaluating whether a downward variance is appropriate." JA37. After touching on Johnson's conduct during the traffic stop and his role in caring for his mother, Johnson returned to the theme of addiction, arguing that he "is somebody that cares a lot. He wants to be a good person. He wants to recover from his addiction he's struggled with his whole life" JA37. Johnson "is somebody that has struggled with addiction for a long time," but counsel believed "that he has achieved sobriety in this case with his lengthy incarceration up-to-date."² JA38.

² Johnson was detained after his March 6, 2025, arrest and had been in custody approximately seven months by the time of sentencing. JA64.

Following the argument of the parties, the district court read into the record a considerable amount of the information from the PSR concerning the facts of the case and Johnson's background. JA38-45. That included mention of Johnson's substance abuse history. JA43-44. The district court then imposed a sentence of 84 months in prison, to be followed by a three-year term of supervised release. JA45.

The district court explained that it had considered "the guideline range . . . the arguments and statements that have been made and to the [18 U.S.C. §] 3553(a) factors." JA47. It explained that Johnson knowingly possessed two firearms as a prohibited person at a time while "you were an active drug user" which "increases the risk of danger associated with the firearms." JA47. Johnson also "lied to officers about why you had the firearms," which was "an aggravating factor." JA47-48. The district court also noted that Johnson had only been discharged from parole "about two months" before the traffic stop. JA48. The district court also noted Johnson's criminal history, observing that it "includes violent offenses." JA48.

The district court then noted the arguments of Johnson's counsel, stating that "[s]he points to your substance abuse history, the need for treatment, in addition to arguing that your criminal history is overstated." JA49. The district court rejected the argument that Johnson's criminal history was overstated, concluding that the "older convictions only still have points attributed because the periods of incarceration were extended by parole violations" and that "you began committing offenses as a young adult and continued to commit new crimes or parole violations within months of being released from prison." JA50. The district court discounted

Johnson’s “cooperation with the search,” concluding it was outweighed by attempts to deceive investigators as to why he possessed the firearms and his attempts to conceal drugs when he was arrested. JA49. The district court did not directly address Johnson’s substance abuse history.

4. The Fourth Circuit affirms.

Griffin sought review of his sentence from the Fourth Circuit. He argued that his sentence was procedurally unreasonable “because the district court failed to address the merits of his nonfrivolous argument for a lesser sentence.” *United States v. Johnson*, 2026 WL 114814 at *12 (Defendant’s Brief). Johnson argued that while the district court “identified and addressed most” of the factors Johnson relied on in arguing for a lesser sentence, “the district court failed to adequately consider one factor when imposing sentence.” *Id.* at *15. That was “his lengthy history of substance abuse” that was linked to “the other defining citation of his ‘history and characteristics,’ 18 U.S.C. § 3553(a)(1), his criminal history.” *Id.* at *15-16. Such an argument was “far from frivolous.” *Id.* at *16. In conclusion, Johnson argued that while “the district court acknowledged Johnson’s history of substance abuse, it did not engage with the particular argument he had made about it – that it fueled his criminal history.” *Id.* at *17.

The Fourth Circuit affirmed Johnson’s sentence in an unpublished, *per curiam*, four-paragraph opinion. *United States v. Johnson*, 2026 WL 1180802 (4th Cir. 2026). Of those four paragraphs, only one sentence could be construed as a substantive engagement with Johnson’s argument: “Upon review, we conclude that the district

court adequately explained the within-Guidelines sentence and sufficiently addressed Johnson’s nonfrivolous arguments for a lower sentence.” *Id.* at *1. The court did not provide a citation to the record to show where the district court “sufficiently addressed” the argument Johnson elaborated in his brief.

IX. REASON FOR GRANTING THE WRIT

The writ should be granted to determine whether a sentence imposed when a district court fails to address a defendant’s non-frivolous argument is “unreasonable.”

Johnson argued for a sentence of 60 months in prison, a downward variance from the advisory Guideline range. As part of that argument, Johnson relied on the fact he had a history of substance abuse dating back to his childhood which became “the root cause of his criminal activity.” JA22. While the district court identified that argument during the explanation of the 84-month sentence it imposed, it did not actually address that argument or explain why it was not a mitigating factor. Whether such a sentence is “unreasonable” under *United States v. Booker*, 543 U.S. 220 (2005), is an important question of federal law that this Court should resolve. *See* Rules of the Supreme Court 10(c).

A. A sentencing court must address a defendant’s nonfrivolous argument that it should impose a variance sentence.

In an advisory Guideline system, “[t]he courts of appeals review sentencing decisions for unreasonableness.” *United States v. Booker*, 543 U.S. 220, 261 (2005). The reasonableness of a sentence “is not measured simply by whether the sentence falls within the statutory range, but by whether the sentence was guided by the

Sentencing Guidelines and by the provisions of § 3553(a).” *United States v. Green*, 436 F.3d 449, 456 (4th Cir. 2006). Ultimately, the “appellate review of the reasonableness of a sentence focuses on whether the sentencing court abused its discretion in imposing the chosen sentence.” *United States v. Pauley*, 511 F.3d 468, 473 (4th Cir. 2007).

There are three key portions of the sentencing process that must occur during the imposition of a sentence. First, the district court “should . . . calculate the applicable Guidelines range.” *Pauley*, 511 F.3d at 473, citing *Gall v. United States*, 552 U.S. 38, 49 (2007). Second, “the sentencing court must give both the government and the defendant ‘an opportunity to argue for whatever sentence they deem appropriate.’” *Pauley*, 511 F.3d at 473, quoting *Gall*, 552 U.S. at 49. Those calculations and arguments provide a basis for the district court to move on to its final step in the process, to “consider all of the § 3553(a) factors to determine whether they support the sentence requested by either party” and impose a proper sentence. *Pauley*, 511 F.3d at 473, citing *Gall*, 552 U.S. at 49. The sentence must be “sufficient, but not greater than necessary, to comply with the purposes” of sentencing. 18 U.S.C. § 3553(a).

In addition, “failing to adequately explain the chosen sentence” is a “significant procedural error.” *United States v. Heath*, 559 F.3d 263, 266 (4th Cir. 2009), quoting *Gall*, 552 U.S. at 51. That is because the district court is required to conduct an “individualized assessment” of each case when imposing sentence. *Gall*, 552 U.S. at 50. That “individualized assessment requires that district courts consider the

defendant's nonfrivolous arguments for a downward departure." *United States v. Blue*, 877 F.3d 513, 518 (4th Cir. 2017), citing *Gall*, 552 U.S. at 50. A "perfunctory recitation of the defendant's arguments or the § 3553(a) factors" is not sufficient. *Ibid.* Thus, in *Blue*, the Fourth Circuit found that when a defendant presented six nonfrivolous arguments in favor of a variance sentence and the district court only addressed two before imposing a sentence within the Guideline range that failure "render[ed] Blue's sentence procedurally unreasonable." *Id.* at 519. That was because "providing the defendant with ample opportunity to present arguments and properly considering those arguments are separate requirements of procedural reasonableness." *Id.* at 520. Noting that "our review of sentences for procedural reasonableness relies on statements contained in the sentencing record," the Fourth Circuit concluded that it "cannot assume that a sentencing court truly considered a defendant's nonfrivolous arguments . . . when the record fails to make it patently obvious." *Id.* at 521 (cleaned up); *see also United States v. Ross*, 912 F.3d 740 (4th Cir. 2019)(sentence unreasonable when district court did not address defendant's mental health argument at sentencing); *United States v. Lewis*, 958 F.3d 240, 244 (4th Cir. 2020)(sentence procedurally unreasonable "because the court failed to explain its sentence adequately and did not address Lewis' nonfrivolous mitigation arguments"); *United States v. Torres-Reyes*, 952 F.3d 147 (4th Cir. 2020)(sentence procedurally unreasonable where district court ruled on defendant's objection to Guideline enhancement, but not on alternative argument for variance if enhancement was applied). The need for the district court to confront the arguments of the parties is so

fundamental to sentencing that the failure to do so even renders a sentence plainly unreasonable in revocation proceedings. *See United States v. Slappy*, 872 F.3d 202 (4th Cir. 2017).

B. Johnson made a nonfrivolous argument for a lesser sentence, based on his history of substance abuse and how it impacted his criminal history, with which the district court did not engage.

In this case, the district court failed at the second step in the sentencing process. Johnson made an argument for a downward variance from the advisory Guideline range based on several factors. While the district identified them all and addressed most of them, the district court failed to adequately consider one factor when imposing sentence.

Among the factors upon which Johnson based his argument for a variance sentence was his lengthy history of substance abuse. As set forth in the PSR, Johnson began using drugs when he was eight years old (marijuana) and continued until his arrest on this charge (methamphetamine, marijuana, LSD, mushrooms) at 36 years old. JA83. In his sentencing memorandum Johnson tied this history to the other defining feature of his “history and characteristics,” 18 U.S.C. § 3553(a)(1), his criminal history, stating that he “recognizes that his drug use is the root cause of his criminal activity.” JA22. At sentencing, Johnson further argued that he had “struggled with drug addiction since he was a child,” tying that to his history of parole revocations that were “due to his on-going and undisputed drug addiction.” JA36. That was “something the Court should take into consideration.” JA37.

That argument is not frivolous. *See, e.g., United States v. Hendrickson*, 25 F. Supp. 3d 1166, 1176 (N.D. Iowa 2014)(imposing downward variance based partly on defendant's history of addiction to which his criminal history "is directly related"). It is not unusual for a long-time drug addict to resort to property crimes, such as Johnson's 2010 robbery conviction, to help further his habit. Neal Kumar Katyal, *Deterrence's Difficulty*, 95 Mich. L. Rev. 2385, 2438 n.167-168 (1997) (collecting research on addicts and the commission of crime)("statistics show that untreated drug addicts support their habit upon release by committing an enormous number of crimes such as robbery, assault, burglary, auto theft, and shoplifting"); Michael P. O'Connor & Celia M. Rumann, *Market Solutions to Global Narcotics Trafficking and Addiction*, 5 Phoenix L. Rev. 123, 144 (2011)(one study "of a paltry 356 heroin users in Miami, Florida found that they committed nearly 120,000 crimes in a single year, for an average of 332 crimes per addict in that single year"). It is, likewise, sadly common for a drug addict to sell drugs in order to help pay for his habit. Stephen Hunter, *et al.*, *New Jersey's Drug Courts: A Fundamental Shift From the War on Drugs to a Public Health Approach for Drug Addiction and Drug-Related Crime*, 65 Rutgers L. Rev. 795, 800 (2012)("drug addicts sell small quantities of drugs in order to buy enough to support their own habit"); Millie Joy Humphrey, *Dead On Arrival: Illinois' Drug-Induced Homicide Statute*, 14 T.M. Cooley J. Prac. & Clinical L. 277, 281 (2013)(quoting an answer from a drug addict who explained "we start dealing to support our habit"). That is what Johnson admitted doing to law enforcement. JA88.

While the district court acknowledged Johnson's history of substance abuse, it did not engage with the particular argument he had made about it – that it fueled his criminal history. The district court relied on that criminal history as part of its basis for imposing a sentence longer than even the Government requested. JA48-49. Yet the district court did not engage with Johnson's argument that his addiction helped explain that history, treating it only as an aggravating factor. That is not the kind of engagement with Johnson's nonfrivolous argument that this Court's precedents require.

X. CONCLUSION

For the reasons stated, this Court should grant certiorari in this case.

Respectfully submitted,

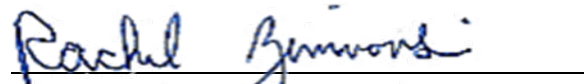
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Dated: July 29, 2026