No. ____________

IN THE
SUPREME COURT OF THE UNITED STATES

TYRONE KELLY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

Petition for a *Writ of Certiorari*

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QUESTION PRESENTED

Whether due process permits a sentencing court to treat as conclusively resolved by a guilty plea a disputed factual issue that the court expressly told the defendant would remain open for determination at sentencing?

List of Parties

All parties in the proceeding in the court below whose judgment will be reviewed are the following:

Tyrone Kelly

United States of America

Related Proceedings

U.S. District Court for the District of South Carolina

United States v. Tyrone Kelly, No. 3:21-cr-00522-JFA-7 (D.S.C. May 17, 2023) (criminal judgment). Reconsideration was denied on June 28, 2023.

U.S. Court of Appeals for the Fourth Circuit:

United States v. Tyrone Kelly, Nos. 23-4353 & 23-6704 (4th Cir. May 22, 2026) (affirmed).

TABLE OF CONTENTS

Table of Authorities

Cases

Constitutional Provisions

Rules

Statutes

Tyrone Kelly respectfully petitions this Court to issue a *writ of certiorari* to the U.S. Court of Appeals for the Fourth Circuit.

Opinions and Orders Below

The Fourth Circuit's opinion is unpublished and is reproduced in the Appendix at 1a-7a. The district court did not issue a written opinion, but relevant portions of the sentencing transcript are reproduced in the Appendix at 8a-24a. Mr. Kelly filed a post-hearing *pro se* motion for reconsideration, which was denied via an unpublished order reproduced in the Appendix at 50a-53a.

Jurisdiction

The district court had jurisdiction over the underlying criminal action. 18 U.S.C. § 3231. It entered final judgment on May 17, 2023.

The U.S. Court of Appeals for the Fourth Circuit had jurisdiction to consider the district court's final judgment. 28 U.S.C. §§ 1291, 1294.

This Court has jurisdiction to review the Fourth Circuit's judgment. 28 U.S.C. § 1254(1). The Fourth Circuit entered judgment on May 22, 2026. No rehearing was sought.

Constitutional Provision Involved

U.S. Const. Amend. V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand

> Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

I. Proceedings in the District Court

A. The Guilty Plea

Pursuant to a written plea agreement, Mr. Kelly pleaded guilty to Counts Ten and Twelve of the Superseding Indictment, which both charged using a communication facility to facilitate the commission of a felony under the Controlled Substances Act, in violation of 21 U.S.C. § 843(b), specifically "conspiracy to distribute, possession with intent to distribute, and distribution of controlled substances."

At the hearing, the district court explained the elements of the offense, and Mr. Kelly indicated that he understood them:

> If we held a trial, I would instruct the jury on what these two elements are and I would tell the jury that if the government failed to prove either one of these two elements beyond a reasonable doubt, then the jury would be required to find you not guilty. These two elements are:
>
> No. 1. That you knowingly, intentionally and unlawfully used a communication facility. And "communication facility" is just a fancy word to mean a telephone.

> The second element is that you used it to facilitate the commission of a felony under the Controlled Substances Act. In other words, to put it in plain language, you used a telephone to help carry out a drug violation, a drug law violation, either conspiracy to possess with intent to distribute or distribution of a controlled substance. Do you understand the charge – those two elements, rather?
>
> THE DEFENDANT: Yes, sir.

The Government provided a factual basis that Mr. Kelly used a phone in connection with the purchase of drugs on two occasions.[1] The Government proffered that Mr. Kelly used the phone to arrange to purchase 3.5 grams of heroin on two occasions from a known drug dealer on May 15, 2021.

After hearing the factual basis, Mr. Kelly contested whether he was requesting the drugs for distribution or for personal use, an issue that the district court agreed to reserve for sentencing:

> THE COURT: All right. Mr. Kelly, is that a correct summary of your criminal involvement with these telephone calls related to drug transactions?
>
> THE DEFENDANT: Yes, sir. Yes, sir. Basically what – basically she was saying – she was saying they were balls. She's absolutely correct, but basically everything – everything that we did was to use, to use, to use, so –

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[1] While normally using a telephone to purchase drugs for personal use does not qualify as the target felony required for conviction, *see Abuelhawa v. United States*, 556 U.S. 816, 818 (2009), Mr. Kelly had prior qualifying convictions that render simple possession a felony, *see* 21 U.S.C. § 844 (raising the maximum sentence to two years with one prior qualifying conviction and three years for two prior qualifying convictions).

THE COURT: What is a "u"?

THE DEFENDANT: To use the drugs.

MS. TAYLOR: To use, Your Honor.

THE DEFENDANT: Yeah, to use. It was basically to use, you know what I'm saying? Me and Jessica wasn't – me and Jessica wasn't distributing drugs or anything.

MR. WATKINS: Your Honor, what he's getting into is that he's an addict and we'll argue that at the sentencing.

THE COURT: Right.

THE DEFENDANT: I don't disagree with her –

THE COURT: Right.

THE DEFENDANT: – she was absolutely correct, but at the same time, I don't want you to get the thought that I was buying dope to go resell.

THE COURT: All right. Well, today, all I have to do is to determine that you used a phone –

THE DEFENDANT: Yes, sir.

THE COURT: – to facilitate a drug transaction.

THE DEFENDANT: Yes, sir.

THE COURT: Whether that transaction was to get you some drugs to sell –

THE DEFENDANT: Yes, sir.

THE COURT: – to someone else or to use for yourself is not

THE DEFENDANT: Yes, sir.

THE COURT: – before me today.

> THE DEFENDANT: Yes, sir.
>
> THE COURT: Now, at sentencing that might become important.
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: And we will take that up at the sentencing hearing. Mr. Watkins is going to argue on your behalf that you were making these phone calls to purchase drugs for your own use.
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: The government might contend it was for something else.
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: To give to other people.
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: If that is a disputed issue at the sentencing hearing, I have to determine what the facts were. You don't have a right to a jury trial –
>
> THE DEFENDANT: Correct.
>
> THE COURT: – on that.
>
> THE DEFENDANT: Correct.
>
> THE COURT: I am the jury. I am the fact-finder.
>
> THE DEFENDANT: I'm fine with that.

The district court explicitly accepted the factual basis, while acknowledging the reserved issue as to the purpose of purchasing the drugs:

> [T]he Court recognizes that he has acknowledged his guilt on Counts 10 and 12, with the parties disagreeing on the purpose of the phone call, the ultimate purpose of the phone call. Whether it's

> for personal use or later distribution, the parties disagree on that at this point and that will be a matter that will probably be in contention at the sentencing hearing.

B. The Presentence Report

When calculating the base-offense level, pursuant to U.S.S.G. § 2D1.6, the PSR looked to the "base offense level…calculated from the guideline for the underlying offense," which the PSR writer thought was "conspiracy to distribute, possession with intent to distribute, and distribution of controlled substances…." Based upon statements of other defendants in the case, the PSR determined that Mr. Kelly was responsible for quantities of heroin, crack cocaine, and methamphetamine, resulting in a converted drug weight of 13,364.325 kg. That resulted in the PSR assigning a base level of 34. The PSR declined to award credit for acceptance of responsibility in part because Kelly maintained that the two phone calls for which he pleaded guilty were to obtain drugs for personal use.

In terms of criminal history, the PSR assigned 15 points, placing him in Category VI.

The PSR thus calculated the Guideline sentencing range as 96 months, the combined statutory maximum for the two counts of conviction.

C. The Sentencing Hearing

Pursuant to his written objection to the PSR, Mr. Kelly objected at sentencing to the base-offense level being calculated with reference to drug distribution rather than simple possession. At sentencing, however, the district court rejected his argument that the target offense for the phone count was simple possession. It did so not on the facts but based on its belief that he had already conclusively admitted the intent to distribute at the guilty plea. [12a ("THE COURT: I used the word 'felony' under the Controlled Substances Act, to wit, conspiracy to distribute, possession with intent to distribute, and distribution of controlled substances…. And you pleaded guilty with your eyes open to that fact.")].

With respect to the drug quantity attributed to distribution for the purposes of the base offense level, the Government presented witness testimony about Mr. Kelly's alleged drug dealing (for which Mr. Kelly never pleaded guilty). That testimony covered alleged drug dealing in general—but not specifically about the drug transaction that formed the basis of the two counts of conviction.

Based on the hearing evidence as to drug quantity that had been distributed over the course of the alleged conspiracy, the district court lowered the base offense level from 34 to 24. [23a]. That reduction did not, however, ultimately impact the PSR's Guideline range, which remained 96 months (i.e., the statutory maximum for the combined two counts of conviction).

In his allocution, Mr. Kelly maintained that he "was just buying drugs…just getting high" but "wasn't selling no dope to the community." [92a].

The district court determined that Mr. Kelly "deserve[d] just a slight reduction because of his addiction…." [42a]. It ultimately decided on a six-month variance, to 90 months (45 months on each count, consecutive), plus one year of supervised release and the special assessment. [43a-44a]. Because of his substance abuse, drug testing was ordered while on supervised release. [45a-46a].

II. The Fourth Circuit's Decision

On appeal, Mr. Kelly argued, among other things, that he did not receive the benefit of his plea bargain. [App. 4a]. Specifically, he complained that the district court had erroneously believed that Mr. Kelly admitted in his guilty plea that he had an intent to distribute the drugs rather than to use them personally. [*Id.*]. The Fourth Circuit rejected that claim, concluding that the district court found an intent to distribute based upon the witness testimony at the sentencing. [App. 5a]. Accordingly, the Fourth Circuit affirmed in an unpublished decision.

REASONS FOR GRANTING THE PETITION

The Due Process Clause requires that "when a [guilty] plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Santobello v. New York*, 404 U.S. 257, 262 (1971). At the change-of-plea hearing below, without objection from the prosecutor, the district court assured Mr. Kelly that the issue of personal use or distribution would be decided at sentencing. On appeal below, Mr. Kelly argued that that promise was not fulfilled, depriving him of the promised consideration in his plea bargain.

Although Mr. Kelly's trial counsel did not specifically object at sentencing that litigating personal use vs. intent-to-distribute was required under Due Process, this Court has held that frustration of plea bargains is reachable via plain-error review. *See Puckett v. United States*, 556 U.S. 129 (2009). Given that Mr. Kelly personally told the district court that he did not plead to intent to distribute, [20a-21a], the issue may actually be preserved. The Fourth Circuit did not, however, address, much less apply, the standard of legal review based upon its erroneous belief that the district court had ruled on the merits of the contested evidence at the hearing.

The Fourth Circuit's factual premise was, however, incorrect. As the district court told Mr. Kelly, "[t]he indictment gives us the underlying offense" for the phone count, [19a], which was "conspiracy to distribute, possession with intent to distribute, and distribution of controlled substances." Rather than weighing the evidence and rendering a decision on the merits of the reserved issue of the target offense—simple possession or possession with intent to distribute—the district court determined that the issue was already foreclosed against Mr. Kelly. Because the panel affirmed on a materially different premise, the Fourth Circuit has not yet addressed the effect of the district court's plea-hearing assurance, the proper standard of review, or whether the sentencing court could treat the reserved issue as conclusively resolved by the plea.

Mr. Kelly asks that this Court grant *certiorari*, vacate, and remand ("GVR"). That GVR procedure is appropriate, among other instances, where "a reasonable probability [exists] that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration…." *Lawrence v. Chater*, 516 U.S. 163, 167 (1996). Given the constitutional principle at stake, this Court should exercise that discretionary power here.

CONCLUSION

Accordingly, the petition for a *writ of certiorari* should be granted, the decision below should be vacated, and the case should be remanded to the Fourth Circuit for further consideration.

Dated: August 20, 2026

Respectfully submitted,

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