

No.

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM FILING,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the Eleventh Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district court can fulfill its duty to make independent findings supporting a guideline adjustment by adopting the probation office's findings contained within a Presentence Investigation Report?

PARTIES TO THE PROCEEDING

Parties to the proceeding include William Filing (Appellant/Petitioner) and the United States of America (Appellee/Respondent).

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PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The decision of the Eleventh Circuit Court of Appeal, *infra*, is attached as Appendix A.

JURISDICTION

The Judgment of the Eleventh Circuit Court of Appeal was entered on August 19, 2026. A Petition for Panel Rehearing was timely filed and denied on September 14, 2026. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

U.S.S.G. § 3C1.1 provides that:

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels.

U.S.S.G. § 3C1.1.

STATEMENT OF FACTS

On October 24, 2024, the government filed a two-count Indictment, in the Middle District of Florida, Tampa Division, naming Mr. Filing as the defendant. Count One charged that on or about June 8, 2022, Mr. Filing committed the offense of Receipt of Child Pornography, in violation of 18 U.S.C. §§ 2252(a)(2) and (b)(1).

Count Two charged that on or about June 9, 2022, Mr. Filing committed the offense of Receipt of Child Pornography, in violation of 18 U.S.C. §§ 2252(a)(2) and (b)(1).

Mr. Filing ultimately proceeded to trial, during which the government introduced evidence that images of child pornography had been transmitted to Mr. Filing's phone on June 8 and June 9, 2022. Conversely, Mr. Filing testified that he did not knowingly receive any images of child pornography on June 8 or June 9, 2022, and that his ex-boyfriend, Sean Bagby, had access to his phone during those dates. Mr. Bagby denied meeting Mr. Filing until July or August of 2022, and denied having had access to his phone. The jury ultimately returned a verdict of guilty on both counts of knowingly receiving child pornography.

Prior to sentencing, the United States Probation Office prepared a Presentence Investigation Report ("PSR"). Pursuant to the PSR, Mr. Filing's base offense level was calculated to be 22. Following the application of multiple adjustments, Mr. Filing's offense level became 35, but the offense level was then further adjusted by 2 levels because:

Adjustment for Obstruction of Justice: Pursuant to §3C1.1, if the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and the obstructive conduct related to the defendant's offense of conviction and any relevant conduct; or a closely related offense, increase by 2 levels. During the trial, the defendant testified that his former boyfriend committed the instant offenses, which was contradicted by testimony from the former boyfriend, and previous statements the defendant made to law enforcement following his arrest. Additionally, the defendant's testimony as to when he and his former boyfriend first met and were involved in a

relationship was conflicting and contradicted by a previous statement that he made to law enforcement following his arrest. Therefore, the offense level is increased by 2 levels.

Id. at 13.

Mr. Filing's total offense level was therefore determined to be 37, and his criminal history category was set at I, resulting in a guideline imprisonment range of 210 to 262 months imprisonment.

During sentencing, Mr. Filing objected to the obstruction of justice adjustment, arguing:

DEFENSE COUNSEL: I have just a very brief objection to the guideline score sheet. I would object to the enhancement of two points for obstruction of justice.

I -- I understand that the jury found him guilty so obviously they rejected his defense. However, I -- I would argue that the punishment is that he's not accepting responsibility for the criminal conduct, but simply a defendant exercising his right to testify -- his Constitutional right to testify and knowing that if the jury finds him guilty, it does not -- should not mean that he should receive an enhancement simply for testifying in his own defense.

So I am asking the Court not impose that two level enhancement for obstruction of justice.

(District Docket Entry 89, at 6).

The following exchange then ensued:

THE COURT: You know what, it's the Consti- -- it's not held against you that you invoke your Constitutional right to go to the trial. That's a Constitutional right, to go to trial.

But the problem is when he testifies and the jury rejects what he had to say, it leads one to the conclusion that he wasn't honest in his testimony and that's -- that's the element of the obstruction of justice.

You know, very often we have defendants, as you know, who -- who choose not to testify, right? And so they don't have that obstruction of justice added to their score sheet because they invoke their Constitutional right to remain silent. There was no, I'll just say, false testimony provided. But the jury rejected what he had to say. That -- that again leaves you with the conclusion that he wasn't honest when he testified to the Grand Jury -- I mean, to the -- to the jury.

Let me -- let me get a response, though, if you don't mind, Mr. Hernandez, from Ms. Favorit.

Ms. Favorit, do you see it the same way I do or is there something else that needs to be said here?

THE PROSECUTOR: I did just want to add in, of course, under the 3C1.1, which is the obstruction enhancement, under the commentary, you know, it states that it is not intended to punish a defendant for exercising that Constitutional right.

THE COURT: Which, the Constitutional right to go to trial? Because nobody is punishing him for that --

THE PROSECUTOR: Correct.

THE COURT: -- at all.

THE PROSECUTOR: Exactly.

However, it does mention that inaccurate testimony or statements can result in an obstruction and I believe that is partially why the jury found him guilty because his testimony did not match his interview with law enforcement, which did not match the testimony in the rest of the trial, for example, Sean Bagby in this case.

Specifically, the defendant blamed his ex-boyfriend, Sean Bagby, said that he was on the phone and gave a time period for using the phone, which contradicted what he told law enforcement in his interview outside of the trial. And then Sean Bagby came in and said they had not even met in June 2022 when the crime took place. So we believe that

that is enough to obtain this obstruction enhancement.

I think it should be noted, too, that -- I know we discussed this a little bit with the jury commentary about the defendant thanking them for their service. I think that that could also be considered he was seeking favor from those jurors potentially in the nicety when he was told not to speak to them.

But really, we wanted to focus on the -- what we believe to be untruthful testimony about the date that he met and was with Sean Bagby and that somebody else had committed the crime.

THE COURT: All right. Well, I agree. Mr. Hernandez, that's why the points were added here. I -- I note your objection, but it's overruled.

Id. at 6-8.

Although the court overruled the obstruction of justice objection, it ultimately varied downward and imposed concurrent sentences of 180 months imprisonment followed by a life time of supervised release on both counts.

Mr. Filing then appealed to the 11th Circuit Court of Appeals, arguing that the district court had reversibly erred by failing to make independent findings supporting an obstruction of justice adjustment. The 11th Circuit affirmed, finding that the district court had fulfilled its duties by adopting the PSR in which the probation office had purportedly made the necessary findings.

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT A DISTRICT COURT CANNOT FULFILL ITS DUTY TO MAKE INDEPENDENT FINDINGS SUPPORTING A GUIDELINE ADJUSTMENT BY ADOPTING THE PROBATION OFFICE'S FINDINGS CONTAINED IN A PRESENTENCE INVESTIGATION REPORT.

At issue in this Petition is whether a district court can fulfill its duty to make independent findings supporting a guideline adjustment by adopting the probation office's findings contained within a PSR. This Court should establish that a district court cannot do so.

In *United States v. Dunnigan*, 507 U.S. 87, 113 S. Ct. 1111, 122 L. Ed. 2d 445 (1993), this Court held that “if a defendant objects to a sentence enhancement resulting from her trial testimony, a district court must review the evidence and make independent findings necessary to establish a willful impediment to or obstruction of justice, or an attempt to do the same, under the perjury definition we have set out.” *Dunnigan*, 507 U.S. at 95, 113 S. Ct. at 1117(citing, U.S.S.G. § 6A1.3 (Nov.1989); Fed.Rule Crim.Proc. 32(c)(3)(D); *Burns v. United States*, 501 U.S. 129, 134, 111 S.Ct. 2182, 2185, 115 L.Ed.2d 123 (1991)). This Court further explained that “[w]hen doing so, it is preferable for a district court to address each element of the alleged perjury in a separate and clear finding.” *Id.* “The district court's determination that enhancement is required is sufficient, however, if, as was the case here, the court makes a finding of an obstruction of, or impediment to, justice that encompasses all of the factual predicates for a finding of perjury.” *Id.* (citations omitted).

“In determining what constitutes perjury, we rely upon the definition that has gained general acceptance and common understanding under the federal criminal perjury statute, 18 U.S.C. § 1621.” *Dunnigan*, 507 U.S. at 94, 113 S. Ct. at 1116. “A witness testifying under oath or affirmation violates this statute if she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.” *Id.* (citing, 18 U.S.C. § 1621(1); *United States v. Debrow*, 346 U.S. 374, 376, 74 S.Ct. 113, 114, 98 L.Ed. 92 (1953); *United States v. Norris*, 300 U.S. 564, 574, 576, 57 S.Ct. 535, 539, 540, 81 L.Ed. 808 (1937)).

Here, instead of making the independent determination required by *Dunnigan*, the district court merely deferred to the Probation Office’s findings contained within the PSR. The problem with doing so was threefold. First, the Probation Office’s assessment of Mr. Filing’s testimony is inaccurate – he never testified that his ex-boyfriend committed the crimes; he only testified he had access to the phone during the relevant dates. Second, the Probation Office’s findings do not address the elements of perjury. Third, even if the probation office’s findings were accurate and addressed the elements of perjury, they would still be insufficient to support enhancement because those findings were required to be made independently by the district court, and adopting another’s findings as one’s own is the very antithesis of making an independent finding.

“[A] rigid ‘requirement of fact-finding’ ensures ‘that courts will not automatically enhance sentences whenever the accused takes the stand and is

thereafter found guilty.” *United States v. Rosario*, 988 F.3d 630, 632–33 (2d Cir. 2021) (citing, *United States v. Catano-Alzate*, 62 F.3d 41, 42 (2d Cir. 1995)). Mr. Filing’s case is the perfect example of why such a rigid requirement is necessary. Mr. Filing received an obstruction of justice adjustment for no other reason than he took the stand and he was found guilty – he never testified that his ex-boyfriend committed the crimes as was the asserted basis for the obstruction of justice adjustment put forth by the probation office. Had the court taken the time to make an independent determination of whether the adjustment applied, including an on the record finding concerning each perjury element, the district court would have realized as much and declined to apply the adjustment.

Accordingly, to ensure that every defendant who testifies at trial and is ultimately found guilty does not automatically receive an obstruction of justice adjustment, which would have a chilling effect on the right to testify in one’s own defense, it is imperative that this Court establish that the district courts cannot simply defer to the probation office’s obstruction finding, and must, instead, make truly independent findings concerning each perjury element. Consequently, this Court should grant review, establish that the district courts cannot simply defer to the probation office’s obstruction finding, and must, instead, make truly independent findings concerning each perjury element, reverse Mr. Filing’s Judgment and Sentence, and remand his case for further proceedings. *Dunnigan*, 507 U.S. at 95, 113 S. Ct. at 1117; *Rosario*, 988 F.3d at 632–33.

CONCLUSION

For the reasons stated above, this Court should grant the instant Petition for Writ of Certiorari.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Dane K. Chase", is written over a horizontal line.

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APPENDIX A

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13999
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM JACK FILING,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:24-cr-00463-VMC-AEP-1

Before NEWSOM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

William Jack Filing appeals his 180-month sentence, a 30-month downward variance from the Sentencing Guidelines range,

arguing that the district court clearly erred in imposing an obstruction-of-justice enhancement under U.S.S.G. § 3C1.1 because the court failed to make independent factual findings to support the application of the enhancement. His argument is foreclosed by precedent, so we affirm.

When “a defendant objects to a sentence enhancement resulting from [his] trial testimony, a district court must review the evidence and make independent findings necessary to establish a willful impediment to or obstruction of justice, or an attempt to do the same.” *United States v. Dunnigan*, 507 U.S. 87, 95 (1993). If the government still seeks to apply the enhancement, “it has the burden of introducing sufficient and reliable evidence to prove the necessary facts by a preponderance of the evidence.” *United States v. Washington*, 714 F.3d 1358, 1361 (11th Cir. 2013) (citation modified). Once the district court has imposed an enhancement for obstruction of justice, we review “the district court’s factual findings for clear error and the application of the factual findings to the sentencing guidelines de novo.” *United States v. Guevara*, 894 F.3d 1301, 1311 (11th Cir. 2018) (citation modified).

Section 3C1.1 of the United States Sentencing Guidelines provides for a two-level enhancement in cases where

- (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the

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defendant's offense of conviction and any relevant conduct; or (B) a closely related offense.

U.S.S.G. § 3C1.1.

The text of § 3C1.1 includes “a clear mens rea requirement of *willfully* obstructing or attempting to obstruct the administration of justice.” *Guevara*, 894 F.3d at 1311 (citation modified). A defendant obstructs justice by committing perjury, which is “false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.” *United States v. Duperval*, 777 F.3d 1324, 1337 (11th Cir. 2015) (citation modified). We generally require “an explanation by the district court as to why it has applied the obstruction of justice enhancement” *Guevara*, 894 F.3d at 1311.

A district court can satisfy this requirement by making “a general finding of obstruction encompassing all the factual predicates of perjury.” *Duperval*, 777 F.3d at 1337 (citation modified). A district court need not make specific findings as to the conduct that amounted to obstruction where “it both adopts a presentence investigation report [PSI] that contains specific findings and the defendant fails to request that the court make more specific findings.” *United States v. Wayerski*, 624 F.3d 1342, 1352 (11th Cir. 2010). But “[c]lear factual findings are necessary to assess whether” a defendant's conduct amounts to obstruction. *United States v. Alpert*, 28 F.3d 1104, 1108 (11th Cir. 1994) (en banc). A sentencing court must do more than just adopt the PSI “and recite its agreement with the

arguments of the prosecutor and [its] recommendation.” *United States v. Banks*, 347 F.3d 1266, 1269 (11th Cir. 2003).

Here, the district court did not clearly err in finding that Filing committed perjury during his trial testimony and imposing the obstruction-of-justice enhancement on that basis. The district court made a general finding that Filing committed perjury by providing false testimony at trial. It also adopted the PSI, which contained specific findings to support the application of the enhancement. And beyond that, the court did not simply adopt the PSI without comment; it also explained that it was troubled by Filing’s dishonesty while testifying. Finally, the PSI contained specific findings to support the application of the enhancement, including the fact that Filing’s testimony contradicted Filing’s previous statements and those of a witness. We therefore affirm.

AFFIRMED.

APPENDIX B

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13999

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM JACK FILING,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:24-cr-00463-VMC-AEP-1

Before NEWSOM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

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