

No. 21-60382

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA
Plaintiff-Appellee

v.

DARREN NICKEY
Defendant-Appellant

Appeal from the United States District Court
For the Southern District of Mississippi
Cause No. 3:18CR258-HTW-FKB

REPLY BRIEF FOR APPELLANT

Omodare B. Jupiter (MS Bar #102054)
Federal Public Defender
N. and S. Districts of Mississippi
200 S. Lamar Street, Suite 200-N
Jackson, MS 39201
Telephone: 601-948-4284
Facsimile: 601-948-5510

Abby Brumley Edwards (MS Bar #101929)
Assistant Federal Public Defender

Attorney for Defendant-Appellant

TABLE OF CONTENTS

	<u>page:</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
I. ARGUMENT: The district court ordered a substantively unreasonable 36-month prison sentence	1
II. CONCLUSION	2
CERTIFICATE OF SERVICE	3
CERTIFICATE OF COMPLIANCE WITH RULE 32(a)	4

TABLE OF AUTHORITIES

page(s):

rule:

Rule 32, Fed. R. App. P.4

V. ARGUMENT:

The district court ordered a substantively unreasonable 36-month prison sentence.

For the most part, Mr. Nickey relies on the arguments stated in his initial Brief to this Court. However, one important fact warrants further attention.

Appellate counsel for the United States Attorney's office appears to minimize or ignore the sentence recommendation of trial counsel for the United States Attorney's office. As set forth in detail in Mr. Nickey's initial Brief to this Court, even after continued badgering by the district court, trial counsel stood by its time served recommendation. *See* Sen. Hr'g Tr., ROA.181-92. This Court should place great weight on trial counsel's opinion regarding the unreasonableness of the 36-month sentence ordered by the district court.

II. CONCLUSION

For all of the reasons analyzed above and in Appellant's Brief, Mr. Nickey asks this Court to vacate the substantively unreasonable sentence ordered by the district court.

Submitted August 18, 2021.

Omodare B. Jupiter
Federal Public Defender

s/ Abby Brumley Edwards

Abby Brumley Edwards
Assistant Federal Public Defender
Southern District of Mississippi
200 S. Lamar Street, Suite 200-N
Jackson, MS 39201
Telephone: 601-948-4284
Facsimile: 601-948-5510

Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

I, Abby Brumley Edwards, certify that on August 18, 2021, a copy of the Reply Brief for Appellant was filed via this Court's electronic case filing system, which in turn forwarded electronic copies of the Reply Brief to all counsel of record in this case. A copy of the Reply Brief for Appellant was emailed directly to the government's lead counsel on the appeal of this case – Assistant United States Attorney Gregory Layne Kennedy – at gregg.kennedy@usdoj.gov. Also, a copy of the Reply Brief for Appellant was delivered via United States Mail, postage prepaid to appellant Darren Nickey.

s/ Abby Brumley Edwards
Abby Brumley Edwards
Assistant Federal Public Defender

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Certificate of Compliance with Type-Volume Limit,
Typeface Requirements, and Type-Style Requirements

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(a)(7)(B)(iii), this document contains 151 words.
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in proportionately spaced typeface using Microsoft Word in 14 point font size and Times New Roman type style.

s/ Abby Brumley Edwards

Abby Brumley Edwards

Assistant Federal Public Defender