This document lists the primary and secondary sources included in the 2019 Write On Competition and summarizes the cases. Following the principal case (on which you should focus your case comment) are the remaining sources listed by type.

**PLEASE NOTE, THE 2020 WRITE ON COMPETITION WILL HAVE FEWER MATERIALS THAN WHAT IS LISTED BELOW. FOR 2020, THE PACKET IS DESIGNED TO TAKE 5 DAYS TO COMPLETE BUT YOU WILL HAVE 21 DAYS.**

### Principal Case (12 Pages)
- United States v. Janet Sonja Schonewolf, 905 F.3d 683 (3d Cir. 2018) (12 pages)

### U.S. Supreme Court Cases (42 Pages)
- Alejandra Tapia v. United States, 131 S.Ct. 2382 (2011) (10 pages)

### U.S. Circuit Court Cases (144 Pages)
- United States v. Christopher Devon Crudup, 461 F.3d 433 (4th Cir. 2006) (8 pages)
- United States v. Amber Elaine Story, 635 F.3d 1241 (10th Cir. 2011) (8 pages)
- United States v. Leon W. Grant, 664 F.3d 276 (9th Cir. 2011) (7 pages)
- United States v. Randall L. Replogle, 678 F.3d 940 (8th Cir. 2012) (3 pages)
- United States v. Colt Matthew Taylor, 679 F.3d 1005 (8th Cir. 2012) (3 pages)
- United States v. Julie Ann Receskey, 699 F.3d 807 (5th Cir. 2012) (5 pages)
- United States v. Joseph Ray Mendiola, 696 F.3d 1033 (10th Cir. 2012) (10 pages)
- United States v. Jesus Javier Garza, 706 F.3d 655 (5th Cir. 2013) (11 pages)
- United States v. Michael Deen, 706 F.3d 760 (6th Cir. 2013) (8 pages)
- United States v. Brandon Michael Lifshitz, 714 F.3d 146 (2d Cir. 2013) (5 pages)
- United States v. Dayven Joseph, 716 F.3d 1273 (9th Cir. 2013) (10 pages)
- United States v. Walter Henry Vandergrift, 754 F.3d 1303 (11th Cir. 2014) (9 page)
- United States v. Joseph Michael Krul, 774 F.3d 371 (6th Cir. 2014) (9 pages)
- United States v. Alberto Omar Del Valle-Rodriguez, 761 F.3d 171 (1st Cir. 2014) (7 pages)
- United States v. Cynthia Lemon, 777 F.3d 170 (4th Cir. 2015) (5 pages)
- United States v. Alfonso Valencia, 776 F.3d 1173 (10th Cir. 2015) (3 pages)
- United States v. Jorge Avila Alberto Navarro, 800 F. 3d 1104 (9th Cir. 2015) (11 pages)
United States v. Ashley Larae Tidzump, 841 F.3d 844 (10th Cir. 2016) (5 pages)

United States v. Christopher Wayne Thornton, 846 F.3d 1110 (10th Cir. 2017) (9 pages)


U.S. DISTRICT COURTS (21 PAGES)


United States v. Timmy Isbel, 2015 WL 13658557 (E. D. Ky. 2015) (7 pages)

STATUTORY & REGULATORY PROVISIONS (3 PAGES)

18 U.S.C.A. 3553(a) (West 2018 (2 pages)

18 U.S.C.A. 3582(a) (West 2018) (1 page)

SECONDARY SOURCES – LEGAL (49 PAGES)


Madeline W. Goralski, Let the Judge Speak: Reconsidering the Role of Rehabilitation in Federal Sentencing, 89 ST. JOHN'S L. REV. 1282 (Winter 2015) (22 pages)

SECONDARY SOURCES – POPULAR (10 PAGES)

Eli Saslow, Against His Better Judgment: In the Meth Corridor of Iowa, A Federal Judge Comes Face to Face with the Reality of Congressionally Mandated Sentencing, WASH. POST (June 6, 2016), https://www.washingtonpost.com/sf/national/2015/06/06/against-his-better-judgment/?noredirect=on&utm_term=.a6dba2e4661b (7 pages)

Tried to Make Them Go to Rehab, But *Tapia* Says No, No, No:

Why the *Schonewolf* Court’s Reasoning was Wrong
I. INTRODUCTION

A. Background to *United States v. Schonewolf*

Prior to the passage of the Sentencing Reform Act (SRA) in 1984, federal judges had broad sentencing discretion. In the “indeterminate sentencing” system, a defendant’s sentence was ultimately based upon his or her amenability to rehabilitation. However, this system fell into disfavor because it yielded unfair and disparate outcomes, and rehabilitation was no longer held to be a valid goal for imprisonment. The SRA created a new system of determinate sentences, reining in the discretion of judges. A Sentencing Commission composed of federal judges would now promulgate ranges of sentences in the form of Sentencing Guidelines. Under these Guidelines, federal judges were required to impose sentences of either imprisonment, fines, or probation. Judges had to consider four factors—retribution, deterrence, incapacitation, and rehabilitation—to ensure the sentences were “sufficient but not more than necessary.” If judges decided to impose a term of imprisonment, they were required to consider those factors “to the extent that they are applicable,” but also “recogniz[e] that imprisonment is not an appropriate means of promoting…rehabilitation.”

The Court reconciled these two statutes in *Tapia v. United States*. Engaging in a textual and contextual analysis of the two statutes at issue, 18 U.S.C. § 3553(a) and 18 U.S.C. § 3582(a), the Court determined that sentencing courts may not consider rehabilitative needs when deciding a sentence of imprisonment. However, the circuits split over how strict this prohibition against rehabilitation as a factor was. Some circuits interpreted *Tapia’s* holding narrowly; rehabilitation was impermissibly considered as a factor when imposing a sentence of imprisonment only if it is the “dominant factor” or its consideration was causally linked to the length of the sentence. But
other circuits interpreted Tapia’s holding to mean rehabilitation cannot be considered as a factor at all when imposing imprisonment as a punishment.  

B. United States v. Schonewolf

Janet Schonewolf was convicted in 2010 of a drug offense and sentenced to time served as well as five years of supervised release, with the condition to stop using drugs. After several years of staying drug-free Janet relapsed and was caught attempting to purchase heroin, but the District Court gave her a lenient sentence based on the progress she had made in her drug treatment program. Unfortunately, Janet relapsed again and was caught selling heroin; she was convicted and sentenced to two to four years of imprisonment for that charge, and a hearing was convened to determine her sentence for violating the terms of the supervised release again.

While the Sentencing Guidelines recommended a prison term of 24 to 30 months for Janet’s second violation, the District Court sentenced Schonewolf to 40 months in prison. The District Court previously asked the probation office what would be best for Janet, and subsequently justified the higher-than-recommended sentence because she had been granted a lenient sentence for her first violation, she was a danger to society and herself, and a prison term was the “last step” to give her a “fighting chance” to recover from her drug addiction. Janet appealed to the Third Circuit, claiming the District Court impermissibly considered rehabilitation as a factor when deciding the length of the imprisonment sentence; the Third Circuit reviewed for plain error because she did not raise the issue at the sentencing hearing itself.

In United States v. Schonewolf, the Third Circuit first adopted the narrow view of Tapia’s holding to determine if there had been a violation, arguing that this narrow view better aligned with Tapia itself. The Schonewolf Court believed the circumstances the Tapia Court confronted to be the “paradigmatic example” of a Tapia violation: a District Court that expressly tailored the
length of a defendant’s sentence so that the she would qualify for a prison rehab program. Thus, the Third Circuit reasoned that a Tapia violation can only be found if a sentence was expressly imposed or lengthened so that a defendant could obtain specific rehabilitative services, which aligns with the narrow view.

Applying the narrow view of Tapia to Janet Schonewolf’s case, the Third Circuit then held that there was no Tapia violation and thus no error. It found that the District Court’s primary reason for imposing the higher-than-recommended sentence was it had been lenient in the first violation, and was allowed to impose an higher sentence the second time. Any discussion of Janet’s rehabilitative needs was only a secondary factor, if even that. Because rehabilitation was not the dominant factor driving the longer sentence, the sentence did not run afoul of Tapia and the District Court was affirmed.

C. Roadmap

This Comment will argue that although the Third Circuit reached the correct conclusion in Schonewolf, the narrow view of Tapia it used to reach that conclusion is incorrect. The broader view of Tapia is correct and should have been applied by the Third Circuit. First, this Comment will argue the District Court did consider rehabilitation in some way when determining Janet’s sentence. Second, Schonewolf’s narrow interpretation of Tapia is inconsistent with the Supreme Court’s logic in Tapia and its interpretation of § 3582(a). Third, the narrow view of Tapia is also inconsistent with Congressional intent and leads to bad policy outcomes. Finally, this Comment will argue the Schonewolf Court incorrectly collapsed two distinct inquiries in the plain error analysis into one, and the Third Circuit should have adopted the broader view to keep those inquires distinct. However, even under the broader view, the District Court should still be affirmed because any Tapia violation would not have substantially altered Schonewolf’s rights.
II. ANALYSIS

A. The District Court did Consider Rehabilitation as a Factor.

Even though the District Court did not mention a specific rehab program that it wanted Schonewolf to take, the District Court’s remarks to the probation office and to Schonewolf still constituted a consideration of rehabilitation. The District Court stated that the prison sentence needed to be “a significant period of time” to give Schonewolf a “fighting chance to recover” from her drug addiction, as well as protect others. In a similar situation in United States v. Grant, the Ninth Circuit found a sentencing court that wanted to give an “out of control” defendant a “time-out” considered rehabilitation when it sentenced him to 24 months in prison. In both Grant and Schonewolf, the sentencing court imposed higher-than-recommended prison sentences and justified it on the grounds that the defendant was struggling and needed prison to recover from drug addiction. Because the District Court discussed Schonewolf’s drug addiction and thought of prison as the “last step” in reversing the spiral of bad behavior, it considered her rehabilitative needs.

B. The Narrow View is Inconsistent with the Tapia Court’s Logic

The narrow “dominant factor” or “causal link” view of Tapia employed by the Third Circuit in Schonewolf is at odds with the Supreme Court’s logic in Tapia. With this view, rehabilitation can still be considered as a factor so long as other more “dominant” or “primary” factors were considered. However, if Tapia is the “paradigmatic example” of when rehabilitation is impermissibly considered, per the Schonewolf Court, then the presence of other reasons for imposing the sentence does not excuse the consideration of rehabilitation as a factor.

In Tapia, rehabilitation was not the only factor the district court considered when imposing the sentence at issue; also considered was the defendant’s criminal history, violent nature of the
crime committed, proclivity to recidivism, and need for deterrence.\textsuperscript{33} Despite the fact that multiple factors were considered besides rehabilitation, because the district court also considered rehabilitation the sentence ran afoul of § 3582(a). If Tapia is taken to be the model of what is an impermissible consideration of rehabilitation, then any consideration of rehabilitation is foreclosed.\textsuperscript{34} Thus, the broader view of Tapia is more aligned with the Court’s textualist interpretation and logic in Tapia: rehabilitation should not be considered at all, even if there are other permissible factors the sentencing court considers.\textsuperscript{35}

C. The Narrow View Frustrates Congressional Intent and Leads to Bad Policy Outcomes.

The narrow view used by the Third Circuit also runs against the Congressional intent in passing the SRA, which includes § 3582(a). At the time of passage, rehabilitation had lost its legitimacy as a goal of imprisonment, whether because it was condescending and ineffective\textsuperscript{36} or there was an ideological shift away from “liberal” rehabilitation towards a “conservative” tough-on-crime mindset.\textsuperscript{37} This skepticism towards rehabilitation is reflected in the instructions that Congress gave to the Sentencing Commission and the text of § 3582(a) itself.\textsuperscript{38}

The \textit{Schonewolf} Court’s narrow view of Tapia and § 3582(a) still allows rehabilitation to be considered if other factors were considered too, such as prior leniency. But judges are \textit{required} by § 3582(a) to consider other factors in § 3553(a), so there will always be other permissible reasons considered beyond rehabilitation.\textsuperscript{39} If rehabilitation can only be prohibited if the sentencing court offers no other reasons,\textsuperscript{40} or could not plausibly argue it was not the “dominant” reason,\textsuperscript{41} then the statutory prohibition on rehabilitation is rendered toothless by a careful judge. This frustrates Congress’ intent to take rehabilitation off the table as a factor entirely.\textsuperscript{42}

Allowing consideration of rehabilitation as the \textit{Schonewolf} Court does also leads to inefficient policy outcomes Congress was trying to avoid. Congress recognized in passing the SRA
that prison is not rehabilitative in it of itself, and allowing judges to consider rehabilitation needs when sentencing defendants to prison provides cover for imposing longer prison sentences than recommended. While judges are mandated to impose prison time for certain crimes, at least some recognize that prison is not conducive to rehabilitation. Longer prison sentences justified by “rehabilitation” will not help those defendants, many of whom struggle with drug addiction, which should be treated like a chronic medical condition not a criminal act. Allowing rehabilitation to justify imposing imprisonment could discourage judges from diverting defendants into alternative programs, such as drug courts, which are more effective in getting drug addicted defendants the help they need. Adopting the broad view and enacting a total ban on rehabilitation as a factor would stop judges from imposing longer prison sentences, and could encourage diversion into alternative programs where rehabilitation can be considered overtly.

D. The Narrow View Improperly Conflates Inquiries in the Plain Error Analysis.

Finally, the Schonewolf Court commits a basic analytical error using the narrow view of Tapia because it collapses two parts of the plain error analysis into one. Courts that apply the narrow view of Tapia under a plain error review usually only find a violation if the sentencing court uses rehabilitation and the sentence is tailored such that it is clear it would have been different without rehabilitation as a factor. But this confuses whether a sentencing court impermissibly considered rehabilitation with whether that consideration made any difference. These are two distinct inquires; when reviewing for plain error, it is possible to have a Tapia violation but that any consideration of rehabilitation did not affect the outcome substantially. The Third Circuit should have adopted the broader view of Tapia because under that view the question is just whether the sentencing court used rehabilitation as a factor, and leaves aside the effect of that consideration.
But even if the Third Circuit used the broader view and kept the two inquiries distinct, the District Court’s sentence should still be affirmed. Prior leniency, which is what the District Court said was the basis for its upward variance, has been found to be a legitimate basis for sentences imposed above the Guidelines’ recommendation. Additionally, the District Court mentioned rehabilitation as a factor only after imposing the sentence, which argues against the consideration of rehabilitation affecting Schonewolf’s substantial rights. Because the District Court also based their decision in part on leniency, Schonewolf likely could not prove that her sentence would have been radically different but-for the District Court’s consideration of her rehabilitation. Her substantial rights were not affected because rehabilitation was not the but-for cause of the longer sentence, and so under the plain error analysis Schonewolf’s conclusion is still correct.

III. CONCLUSION

The Third Circuit’s holding that the narrower view of Tapia is the better one to evaluate potentially impermissible considerations of rehabilitation is incorrect. This holding is at odds with the Court’s logic and interpretation of § 3582(a) itself, and the Congressional intent in passing the SRA, which wanted to take rehabilitation off the table completely. It also leads to bad policy outcomes because it gives judges greater license to impose longer sentences on defendants who are struggling with drug addiction and would be least helped by a stint in prison. The Schonewolf Court also confuses the question of whether rehabilitation was considered with whether that consideration affected a defendant’s substantial rights by employing the narrow view, and should use the broad view to keep the two inquires distinct. However, despite using the wrong reasoning, the Schonewolf Court ultimately reached the correct conclusion in affirming the District Court because the consideration of rehabilitation was not a but-for cause of the longer sentence.


3 *Id.* at 365.

4 Avila, *supra* note 1, at 408.

5 *See* *Tapia v. United States*, 564 U.S. 319, 325 (2011).

6 *Mistretta*, 488 U.S. at 368.

7 *Tapia*, 564 U.S. at 325.

8 *Id.*

9 18 U.S.C.A. § 3553(a)(2) (West 2018); *see Tapia*, 564 U.S. at 325.


11 *See Tapia*, 564 U.S. at 328.

12 *See, e.g.*, *United States v. Receskey*, 699 F.3d 807, 812 (5th Cir. 2012) (finding no *Tapia* violation because the consideration of rehabilitation was only an alternative justification for sentence).

13 *See, e.g.*, *United States v. Del Valle-Rodriguez*, 761 F.3d 171, 175 (1st Cir. 2014) (finding no *Tapia* violation because the consideration of rehabilitation was not casually linked to the length of the sentence).

14 *See, e.g.*, *United States v. Thornton*, 846 F.3d 1110, 1115 (10th Cir. 2017) (finding a *Tapia* violation because consideration of rehabilitation was a factor among others when determining length of sentence).


16 *Id.*

17 *Id.*

18 *Id.* at 686. This sentence was to run concurrently with the state conviction for selling the drugs.

19 *Id.* at 693 n.58.

20 *Id.* at 686.
21 Id. at 687.

22 Id. at 692.

23 Id.

24 Id. at 694.

25 Id. at 693.

26 Id.


28 Schonewolf, 905 F.3d at 686.

29 See United States v. Grant, 664 F.3d 276, 278 (9th Cir. 2011).

30 See id.; Schonewolf, 905 F.3d at 686.


32 See Schonewolf, 905 F.3d at 692; see also United States v. Krul, 774 F.3d 371, 375 (6th Cir. 2014) (comparing the instant case to Tapia to illustrate what constituted an impermissible consideration of rehabilitation in imposing a sentence).


34 See id. at 328 (majority opinion) (“[W]hen sentencing an offender to prison, the court shall consider all the purposes of punishment except rehabilitation—because imprisonment is not an appropriate means of pursuing that goal.”).

35 See United States v. Vandergrift, 754 F.3d 1303, 1311 (11th Cir. 2014); see also United States v. Mendiola, 696 F.3d 1033, 1043 (10th Cir. 2012) (Gorsuch, J., concurring) (“[I]t follows ineluctably (plainly) that § 3582(a) prohibits a court from relying on rehabilitation considerations any time it chooses to send someone to a term of confinement in a federal prison . . . .”).

36 See Avila, supra note 1, at 408.


38 See Tapia, 564 U.S. at 329.

39 United States v. Thornton, 846 F.3d 1110, 1116 (10th Cir. 2017).
See United States v. Valencia, 776 F.3d 1173, 1175 (10th Cir. 2015).

See, e.g., United States v. Taylor, 679 F.3d 1005, 1007 (8th Cir. 2012) (finding a Tapia violation because the sentencing court expressly calculated the term of imprisonment so the defendant would qualify for rehabilitative services).

See United States v. Grant, 664 F.3d 276, 280 (9th Cir. 2011).

See Avila, supra note 1, at 419.

See, e.g., United States v. Receskey, 699 F.3d 807, 808-09 (5th Cir. 2012) (sentencing defendant to thirty months in prison rather than the three to nine months recommended by the Sentencing Guidelines).

See Eli Saslow, Against His Better Judgment: In the Meth Corridor of Iowa, a Federal Judge Comes Face to Face with the Reality of Congressionally Mandated Sentencing, WASH. POST (Jun. 6, 2015), https://www.washingtonpost.com/sf/national/2015/06/06/against-his-better-judgment/?noredirect=on&utm_term=.a6dba2e4661b.

See United States v. Schonewolf, 905 F.3d 683, 685 n.3 (3d Cir. 2018)

See Avila, supra note 1, at 408, 419.

See United States v. Thornton, 846 F.3d 1110, 1114 (10th Cir. 2017); United States v. Krul, 774 F.3d 371, 376 (6th Cir. 2014) (Griffin, J., concurring).

See United States v. Tidzump, 841 F.3d 844, 847 (10th Cir. 2016); United States v. Lemon, 777 F.3d 170, 174-75 (4th Cir. 2015).

See, e.g., United States v. Todd, 756 F. App’x 170, 177 (3d Cir. 2018) (affirming the district court’s sentence despite a Tapia violation because defendant did not prove the sentence would have been different but-for the consideration of rehabilitation).


See United States v. Receskey, 699 F.3d 807, 812 (5th Cir. 2012).


See Todd, 756 F. App’x at 177.