

No. 18-
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

JOSHUA JACKSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is an Alabama youthful-offender adjudication a “conviction” for purposes of sentencing enhancement under 21 U.S.C § 841(b)(1)(A)?

PARTIES TO THE PROCEEDINGS

Petitioner is Joshua Jackson, the defendant-appellant below. Respondent is the United States of America, the plaintiff-appellee below.

CORPORATE DISCLOSURE

The Petitioner, Joshua Jackson, is an individual, so there are not disclosures to be made pursuant to Supreme Court Rule 29.6.

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The Eleventh Circuit issued a per curiam opinion affirming Mr. Jackson's sentence. *United States v. Jackson*, 722 Fed. Appx. 975 (11th Cir. 2018). This decision is reproduced in Appendix A.

STATEMENT OF JURISDICTION

The judgment of the Eleventh Circuit was entered on May 17, 2018. A timely petition for rehearing en banc was filed on June 6, 2018, and was denied on July 18, 2018. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254.

Petitioner is aware that this Petition is being filed on the 92nd day after entry of judgment by the Eleventh Circuit Court of Appeals. He respectfully requests that this Court exercise its discretion to review the Petition on the merits because the ends of justice require that this Court to have the opportunity to pass judgment on the propriety of Mr. Jackson's lengthy sentence as well as a question that could affect federal sentencing practice across the country. *See Schacht v. United States*, 398 U.S. 58, 63-64 (1970). Additionally, the otherwise untimeliness of the petition is not attributable to any action of the defendant, but rather a calendaring mistake by counsel.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

21 U.S.C. § 841(b)(1)(A) provides, in pertinent part: "If any person commits such a violation after a prior conviction for a felony drug offense has become

final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment..."

STATEMENT OF THE CASE

On August 12, 2015, the Petitioner, Joshua Jackson, was indicted alongside 10 codefendants in the Middle District of Alabama on the charge of conspiring to distribute and possess with intent to distribute 5kg or more of cocaine and 28g or more of crack-cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. Doc. 1 On January 14, 2016, the United States gave notice pursuant to 21 U.S.C. § 851 that it sought to enhance the potential punishment for Mr. Jackson pursuant to § 841(b)(1)(A) based on a 2008 Alabama youthful offender adjudication for the unlawful distribution of a controlled substance. Doc. 198. On September 3, 2015, Mr. Jackson entered a not guilty plea.

On March 3, 2016, the grand jury returned a superseding indictment against Mr. Jackson and his codefendants. Doc. 269. The superseding indictment recharged Mr. Jackson with conspiring to possess and distribute 5kg or more of cocaine and 28g or more of crack cocaine. *Id.* Counts 2 through 8 further charged Mr. Jackson with possession with intent to distribute cocaine and actually distributing cocaine. *Id.* Following the superseding indictment, Mr. Jackson gave notice of his intent to plead guilty to Count 1 on April 18, 2016. Doc. 358.

In his guilty plea, Mr. Jackson reserved the right to challenge the sentencing enhancement under § 841 on appeal. Doc. 408; 409. On April 25, 2016, the district court accepted Mr. Jackson's guilty plea. Doc. 446. On June 15, 2017, the district court sentenced Mr. Jackson to 240 months' imprisonment as the mandatory minimum applicable to his § 846 conviction pursuant to § 841(b)(1)(A). Doc. 740; Doc. 760, pg. 79. Mr. Jackson filed a timely notice of appeal on July 24, 2017.

At sentencing, and on appeal, Mr. Jackson challenged the use of his Alabama youthful offender adjudication as a prior felony conviction under 21 U.S.C. § 802(44) to trigger the mandatory minimum sentencing provisions of § 841(b)(1)(A). Mr. Jackson based this challenge on the grounds that Alabama law specifically states that youthful offender adjudications are not "convictions" and does not comport with the constitutional requirements and protections afforded during adult-court proceedings in Alabama. Doc. 641. The United States countered Mr. Jackson's argument by citing to *United States v. Acosta*, 287 F.3d 1034 (11th Cir. 2002) and *United States v. Elliot*, 732 F.3d 1307 (11th Cir. 2013), decisions which held that youthful-offender adjudications qualified as "convictions" under federal law.

The district court determined that it was bound by the Eleventh Circuit's holdings in *Acosta* and *Elliot* and overruled Mr. Jackson's challenge to the § 851 enhancement. On appeal, the Eleventh Circuit affirmed Mr. Jackson's

sentence in an unpublished per curiam opinion stating, that under *Elliot*, “a youthful offender who pled guilty and was adjudicated must also be considered to have sustained a conviction for purposes of the Guidelines career offender enhancement, even if state law does not consider him ‘convicted.’” *Jackson v. United States*, 722 Fed. Appx. 975, 975 (11th Cir. May 17, 2018) (per curiam) (quoting *Elliot*, 732 F.3d at 1013). The Eleventh Circuit also noted that “a state adjudication that ‘is considered a “conviction” for purposes of career offender status . . . [is] also . . . considered a “conviction” for purposes of enhancement under 21 U.S. § 841.’” *Id.*, quoting *United States v. Fernandez*, 58 F.3d 593, 599 (11th Cir. 1995).

Subsequent to that decision, Mr. Jackson sought rehearing en banc and was denied.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to answer whether 21 U.S.C. § 841 and 21 U.S.C. § 802(44) consider non-adult criminal adjudications to be “convictions” for purposes of sentencing.

The present petition asks this Court to answer a relatively straight-forward question: are non-adult criminal adjudications “convictions” for purposes of sentencing enhancement under federal law? While the question is straightforward, neither Congress nor the circuits courts have clearly answered that question. The answer has grave importance to the Petitioner, who, like thousands of other individuals across this country, have run afoul of

the law at a young age, but did not face the stiff consequences and penalties of suffering an adult-court criminal conviction. Instead, their states have afforded them a diversionary path separate from, and less severe than, typical adult-court prosecution, conviction, and sentencing. These separate paths – through statutory schemes – are specifically designed to protect and reform youthful offenders. In *Acosta* and *Elliot*, the Eleventh Circuit concluded these adjudications must be treated the same as adult-court convictions, but the court’s reasoning behind this conclusion is lacking.

Mr. Jackson’s case clearly reveals a hole in federal law. In 2008, Mr. Jackson was adjudicated a youthful offender in Alabama for the unlawful distribution of a controlled substance. An Alabama youthful-offender adjudication does not unfold in the same manner as an adult criminal proceeding. *See e.g. Baldwin v. State*, 456 So. 2d 117, 123-24 (Ala. Crim. App. 1983) (“In Alabama, the proceedings under the Youthful Offender Act are not criminal in nature and are used to protect persons in a specified age group, who would otherwise be tried as adults, from the harsh consequences of the criminal adjudicatory process. *Raines v. State*, 294 Ala. 360, 317 So. 2d 559 (1975); *Burke v. State*, 991 So. 2d 308, 310–11 (Ala. Crim. App. 2007) (“The Youthful Offender Act is intended to extricate persons below twenty-one years of age from the harshness of criminal prosecution and conviction.” (quotation marks omitted)). Once it has been determined that a defendant will be tried as

a youthful offender, “no further action shall be taken on the indictment or information.” § 15-19-1(b), Ala. Code 1975. The nature of the proceeding is “substantially different from ordinary adult criminal proceedings.” *Russell v. State*, 897 So. 2d 434 (Ala. Crim. App. 2004). Instead, the youthful-offender process is akin to a juvenile delinquency proceeding. *Raines*, 317 So. 2d at 563 (“[The youthful-offender adjudication process] is an extension, so to speak, of the protective juvenile process”).

Mr. Jackson’s youthful offender adjudication does not, on its face, bear the hallmarks of a traditional adult-court criminal adjudication. While it contemplates criminal conduct, prosecution, and punishment, a youthful offender adjudications is not the same thing as a traditional criminal conviction in adult court. This Court should grant certiorari in this case to clarify whether the term “conviction” as it is used in § 841 contemplates non-adult criminal adjudications for purposes of sentencing enhancement. Several grounds justify granting this writ.

A. Neither this Court nor any other circuit court has clearly defined which adjudications are contemplated by the term “conviction” in § 841(b)(1)(A).

Section 841 doesn’t define the term “conviction.” Neither does § 802(44), which does define “felony drug offense” also used in § 841. Any court that has considered the question of what constitutes a “conviction” under federal law, and, in particular, under § 841, has turned to this Court’s now thirty-five year

old decision in *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983). There, this Court concluded that the term “conviction” used in 18 U.S.C. §§ 922(g) and (h) contemplated a situation where individual pleaded guilty in *adult court* to an offense that carried a punishment of more than one-year imprisonment even though that conviction was later expunged under state law. *Id.* at 114. In response to the *Dickerson* decision, however, Congress passed the “Firearm Owners’ Protection Act,” Public Law 99–308, which amended 18 U.S.C. § 921(a)(20)¹ to include the following language:

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

§ 101, PL 99-308; *see also* § 921(a)(20). This Court has recognized that in the wake of this amendment, the central holding of *Dickerson* still stands: federal statutes are to be construed upon federal law, not state law. *See Taylor v. U.S.*, 495 U.S. 575, 591 (1990) (citing *Dickerson* for the proposition that “absent plain indication to the contrary, federal law are not to be construed so that their application is dependent on state law). However, since *Dickerson*, this

¹ Section 921 defines the terms used in § 922.

Court has not revisited the question of *what types* of adjudication constitutes a conviction.

While the Eleventh Circuit has considered the question of what types of adjudications qualify as a “conviction” under § 841, the court’s jurisprudence demonstrates how guidance from this Court is necessary as to the question of whether the term “conviction” contemplates non-adult criminal adjudications, such as youthful offender adjudications under State law. The Eleventh Circuit has considered “youthful offender” statutory schemes from at least four states and concluded in each case that the youthful offender adjudication qualified as a prior conviction under federal law. In *United States v. Pinion*, 4 F.3d 941 (11th Cir. 1993) and *United States v. Wilks*, 464 F.3d 1240 (11th Cir. 2006), the Eleventh Circuit concluded that the adjudications in question stemming from South Carolina and Florida, respectively, qualified as a “convictions” for enhancement purposes under the sentencing guidelines because the adjudications were convictions in adult court where the sentencing range was limited due to the offender’s age. *See Pinion*, 4 F.3d at 945 and *Wilks*, 464 F.3d at 1243. Despite the sentencing limitations, both *Pinion* and *Wilks* were otherwise treated as adult defendants. These conclusions logically follow *Dickerson*: because the two were otherwise convicted in an adult criminal proceeding, the adjudications should count as convictions.

Nevertheless, the Eleventh Circuit’s holdings in *Acosta* and *Elliot*, which considered New York and Alabama youthful-offender adjudications, respectively, lack a logical and justified reliance on *Dickerson*. Both compare the youthful offender adjudications in question to nolo contendere pleas in Florida involving adult defendants. *See Acosta*, 287 F. 3d 12 1036-37, citing *United States v. Mejias*, 47 F.3d 401 (11th Cir. 1995) and *United States v. Fernandez*, 58 F.3d 593 (11th Cir. 1995); *see also Elliot*, 732 F.3d at 1311-12 (discussing *Acotsa*). In *Mejias* and *Fernandez*, the Court had considered the nolo contendere pleas to be a conviction under federal law despite Florida’s treatment of the adjudications. The *Acosta* Court reasoned, “If a defendant who is not even adjudicated guilty [through a *nolo contendere* plea] is considered to have suffered a conviction within the meaning of section 841, then a youthful offender who pleads guilty and is adjudicated must also be considered to have suffered a prior conviction, even if the state law does not consider him “convicted” and his record is sealed.” *Id.* Without explanation the court would not look into the proceeding in question to consider whether a distinction between an adult proceeding and juvenile proceeding needed to be made.

In *Elliot* and *Acosta*, the Eleventh Circuit failed to consider whether the distinct nature of youthful offender proceedings requires a different conclusion as to whether they can be treated the same as adult court criminal proceedings for purposes of prior convictions under federal law. A more thorough and

definitive analysis of this unique question is required in order to preserve the due process rights of defendants sentenced under § 841. The Eleventh Circuit – as well as any other circuit that has looked at the question – reached back to *Dickerson* for guidance, but this Court’s analysis in *Dickerson* did not consider the potential for adjudications other than those occurring in adult courts.

B. A federal definition of “conviction” in § 841 that comports with traditional rules of statutory construction would not include a youthful-offender adjudication as “conviction.”

The question of whether youthful-offender adjudications are “convictions” under federal law can readily be answered in the negative with the application of well-accepted rules of statutory construction. Under the ordinary-meaning, related-statutes, surplusage, title-and-headings and rule of lenity cannons, an Alabama youthful-offender adjudication is not a “conviction” within the meaning of federal law.

1. An ordinary reading of the word “conviction” does not include an Alabama youthful-offender adjudication.

“The ordinary-meaning rule is the most fundamental semantic rule of interpretation. It governs constitutions, rules, and private instruments. Interpreters should not be required to divine arcane nuances or to discover hidden meanings.” *See* Antonin Scalia & Bryan A. Garner, *Reading Law: An Interpretation of Legal Texts* 69 (2012).

“We give the words of a statute their ordinary, contemporary, common meaning, absent an indication Congress intended them to bear some different import.” *Williams v. Taylor*, 529 U.S. 420, 431 (2000) (Internal citations omitted). Black's Law defines “conviction” as being found “guilty of a crime.” *Conviction*, Black's Law Dictionary (10th ed. 2014). The term “conviction” does not plainly contemplate an adjudication akin to an Alabama youthful offender adjudication. Previously, this Court has only considered traditional adult-court proceedings in determining what constitutes a conviction for sentencing purposes. *See Dickerson*, *supra*. *Dickerson* did not address or define “conviction” to lay out which proceedings across the country would fall under that definition. Instead, the Court simply looked at a proceeding and decided it qualified as a conviction. *Id.* In no way were the proceedings in question akin to an Alabama youthful-offender adjudication.

An Alabama youthful-offender adjudication bears vast differences from standard adult-court felony proceedings. As such, it cannot be said that a youthful offender has been “convicted” through a youthful-offender adjudication in the same way an adult has been convicted after a finding of guilt in an adult court.

2. Applying the proper canons of statutory construction to definition of “conviction” under § 841 with amendments of the “Anti–Drug Abuse Act of 1988” evidences Congress’ intent to exclude youthful-offender adjudications from the definition of “conviction” under § 841.

In the Anti-Drug Abuse Act of 1988, Public Law 100-690, § 6451 under the heading “Violent Felonies by Juveniles,” Congress specifically amended 18 U.S.C. § 924(e) to include, “(C) the term ‘conviction’ includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.” P.L. 100-690, § 6451. In the very next section, Congress amended § 841(b)(1)(A) to include a life-sentence enhancement for those previously convicted of two or more prior convictions for a felony drug offense. *Id.*, § 6452. Under the traditional canons of statutory interpretation, the conscious decision of Congress to exclude juvenile delinquency adjudications from the definition of “conviction” in § 841 when it had explicitly done so in § 924(e) means Congress did not intend for “conviction” in § 841 to contemplate Alabama juvenile delinquency or youthful offender adjudications. Four canons justify this conclusion.

First, under the related-statutes canon, this Court must read § 841 *in pari materia* with § 924(e). An *in pari materia* analysis is needed here because the definition of “conviction” for purposes of § 841 is unclear. *See e.g. Acosta*, 287 F. 3d at 1037 (“Section 841 does not provide a specific definition of the word “conviction” which would permit us easily to determine whether the New York adjudication meets the intent of the statute.”); *see also Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972) (“The rule of *in pari materia*—like any canon of statutory construction—is a reflection of practical experience in the

interpretation of statutes: a legislative body generally uses a particular word with a consistent meaning in a given context.”). Congress chose to amend § 924(e) to include juvenile delinquency adjudications for violent offense within the definition of “conviction.” Congress did not, however, amend “conviction” in § 841 to include juvenile delinquency adjudications as well. *See United States v. Owens*, 15 F.3d 995, 998 (11th Cir. 1994) (“18 U.S.C. § 924(2)(c) specifies that ‘the term ‘conviction’ includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.’ Congress thus *explicitly* includes juvenile offenses within the purview of its definition of ‘prior convictions’ under the Act.”) (Emphasis added).²

This Court should look at this act as evidence Congress made the conscience decision not to include juvenile delinquency adjudications within the meaning of “conviction” in § 841. *See Dean v. United States*, 137 S. Ct. 1170, 1177 (2017), quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007) (“We have said that ‘[d]rawing meaning from silence is particularly inappropriate’ where ‘Congress has shown that it knows how to direct sentencing practices in express terms.’”); *see also Chicago v. Env'l. Def. Fund*, 511 U.S. 328, 338 (1994), quoting *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (“[I]t is generally presumed that Congress acts

² Notably, Congress did not likewise amend § 924(e)’s definition of “conviction” to include acts of juvenile delinquency involving a “serious drug offense.”

intentionally and purposely when it includes particular language in one section of a statute but omits it in another.”). That Congress acted to consider juvenile adjudications to be the equivalent of adult convictions for purposes of § 924(e), but refused to do so for § 841, should lead this Court to conclude that the definition of “conviction” in § 841 does not contemplate Alabama youthful-offender adjudications. *See e.g. United States v. Huggins*, 467 F.3d 359, 361 (3d Cir. 2006) (observing that § 841 does not define “conviction” in the manner 924(e) does to include juvenile delinquency adjudications and noting “we see no reason to write one into that provision where Congress has not seen fit to do so.”); *United States v. Peyton*, 716 F.Supp. 2d 1 (D.D.C.2010); *United States v. Ivory*, 2010 WL 1816236 (D.Kan. Feb.26, 2010); *see also United States v. Graham*, 622 F.3d 445, 459–60 (6th Cir. 2010) (recognizing the difference between § 924(e) and § 841(b)(1)(A) “could support an argument that juvenile-delinquency adjudications were not intended to be counted” under § 841(b)(1)(A), but declining to reach the issue); *cf. United States v. Gauld*, 865 F.3d 1030, 1034 (8th Cir. 2017), quoting *Dean*, 137 S.Ct. at 1177 (“To read prior conviction as embracing juvenile-delinquency adjudications would require ‘[d]rawing meaning from silence,’ which is ‘particularly inappropriate where Congress has shown that it knows how to direct sentencing practices in express terms.’”).

Second, interpreting “conviction” in § 841 to include juvenile delinquency or youthful-offender adjudication where Congress has explicitly provided for that definition in 924(e) but not § 841 would necessarily violate the surplusage canon of statutory construction. “If possible, every word and every provision is to be given effect (*verba cum effectu sunt accipienda*). None should be ignored. None should needlessly be given an interpretation that cause it to duplicate another provision or to have no consequence.” Scalia & Garner, *supra*, at 174. This Court’s present inclusion of youthful-offender adjudications into the definition of “conviction” in § 841 necessary renders the language adding juvenile delinquency adjudications to the definition of “conviction” in § 924(e) “to have no consequence.” *Id.*

In a similar vein, a third canon, the title-and-headings canon, gives credence to the conclusion that Congress wanted to limit the inclusion of juvenile delinquency adjudications as a “conviction” in § 924(e) only in cases where the juvenile had committed a violent offense. *See* Scalia & Garner, *supra*, at 221. The section of act amending § 924(e) was entitled, “Violent Felonies by Juveniles.” P.L. 100-690, § 6451. Here, Congress unequivocally spoke to its concern of punishing juvenile recidivists who committed violent acts as an adult and also in their youth. However, Congress has not spoken in a like manner regarding juvenile and drug offenses. As such, this canon instructs that Congress had a specific purpose and intent to further punish

those who committed violent offenses as juvenile delinquents, but not those who committed drug offenses as delinquents.

Finally, the rule of lenity should apply to keep courts from considering youthful-offender adjudications as “convictions” under § 841. As discussed, *supra*, Congress did not define “conviction” in § 841. While this Court has precedent on point, that precedent rests upon an unsound foundation, and, as discussed, *supra*, warrants reconsideration. In the context of other rules of statutory interpretation, it cannot be said “beyond a reasonable doubt” that Congress intended Alabama youthful-offender adjudications to be considered “convictions” for purposes of § 841. *See* Scalia & Garner, *supra*, at 299 (“The criterion [for applying the rule of lenity] is this: whether, after all the legitimate tools of interpretation have been applied, ‘a reasonable doubt persists.’”) (citation omitted). As such, the rule of lenity should apply to prevent youthful-offender adjudications from being considered “convictions” under § 841.

C. This Court should take up this question in light of the Court’s recent jurisprudence regarding juvenile sentencing.

In recent years, this Court’s Eighth Amendment jurisprudence has consistently recognized the differences in juvenile and adult offenders and how they should be treated differently. *See e.g. Montgomery v. Louisiana*, 136 S. Ct. 718 (2016); *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560

U.S. 48 (2010); and *Roper v. Simmons*, 543 U.S. 551 (2005). This Court has now repeatedly recognized that “[c]hildren are constitutionally different from adults for purposes of sentencing.” *Miller*, 567 U.S. at 471 (noting that this principle was established by *Roper*, and *Graham*). One of the key aspects of youth that the Court has relied on throughout its decisions on juvenile sentencing has been that a “child’s character is not as ‘well formed’ as an adult’s, his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].’” *Id.* at 2464, quoting *Roper*, 543 U.S. at 570. Such concerns should lead this Court to consider how these juvenile or youthful offender adjudications can be used to severely enhance a criminal sentence.

These principles and concerns were undoubtedly in mind when states like Alabama created a process to adjudicate youthful or juvenile criminal offenders through a process separate, distinct, and less harsh than traditional adult criminal court. As such, this Court should take this opportunity to consider the question of how juvenile or youthful offender adjudications should be considered under § 841.

CONCLUSION

Based on the foregoing, this Court should grant Mr. Jackson's petition for a writ of certiorari.

Respectfully submitted,

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