No. 18-6413

IN THE SUPREME COURT OF THE UNITED STATES

JOSHUA JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

BRIAN A. BENCZKOWSKI
Assistant Attorney General

JOSHUA K. HANDELL
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner's Alabama youthful-offender adjudication for unlawfully distributing a controlled substance at the age of 18 constitutes a "prior conviction for a felony drug offense" for purposes of 21 U.S.C. 841(b)(1)(A) (2012).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1, at 1-2) is not published in the Federal Reporter but is reprinted at 722 Fed. Appx. 975.

JURISDICTION

The judgment of the court of appeals was entered on May 17, 2018. A petition for rehearing was denied on July 18, 2018. Pet. App. A2, at 1-2.[1] The petition for a writ of certiorari was filed

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[1] The appendix to the petition containing the court of appeals' order denying rehearing is unlabeled. This brief refers to that appendix as Pet. App. A2 to distinguish it from the appendix (Pet. App. A1) containing the court of appeals' opinion.

on October 18, 2018.[2] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Middle District of Alabama, petitioner was convicted on one count of conspiracy to distribute and possess with intent to distribute cocaine hydrochloride, in violation of 21 U.S.C. 846. Judgment 1. The district court sentenced petitioner to 240 months of imprisonment, to be followed by ten years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1, at 1-2.

1. On separate occasions in November and December 2014, petitioner sold seven grams of cocaine base to a confidential source working with the U.S. Drug Enforcement Agency (DEA). Presentence Investigation Report (PSR) ¶¶ 30-31. In January 2015, petitioner sold the source 31 grams of cocaine hydrochloride. PSR ¶ 31. Pursuant to a judicially authorized wiretap, DEA agents determined that petitioner was responsible for trafficking multi-kilogram quantities of cocaine in and around Montgomery, Alabama.

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[2] As petitioner acknowledges, the petition was filed two days out of time under this Court's Rule 13.1. See Pet. 1 (ascribing the untimely filing to "a calendaring mistake by counsel"). This Court has discretion in a criminal case to entertain an untimely petition. See Schacht v. United States, 398 U.S. 58, 63-65 (1970). The government agrees with petitioner that counsel's two-day delay in filing the petition should not prejudice consideration of the petition in this criminal case.

PSR ¶ 32. Based on information obtained from other members of the same drug distribution network, the Probation Office later calculated that petitioner trafficked at least 16.5 kilograms of cocaine hydrochloride over a 22-month period ending with his arrest in August 2015. PSR ¶ 55 & n.3; see PSR ¶ 42.

A federal grand jury returned a 26-count superseding indictment charging petitioner and nine others with various drug and firearms offenses. Superseding Indictment 1-17. The grand jury charged petitioner specifically with one count of conspiracy to distribute five kilograms or more of cocaine hydrochloride and 28 grams or more of cocaine base, in violation of 21 U.S.C. 841(a)(1) and 846, and seven counts of possession with the intent to distribute cocaine, in violation of 21 U.S.C. 841(a)(1). Superseding Indictment 1-4.

The government subsequently gave notice, pursuant to 21 U.S.C. 851, that petitioner had a prior qualifying felony drug conviction for the purpose of an enhanced sentence under 21 U.S.C. 841(b)(1)(A) (2012). D. Ct. Doc. 377, at 1 (Apr. 20, 2016); see 21 U.S.C. 841(b)(1)(A) (2012) (providing for a sentence of "not * * * less than 20 years and not more than life imprisonment" for a violation of Section 841(a) "after a prior conviction for a felony drug offense has become final"). Petitioner's prior felony drug conviction was a youthful-offender adjudication in the Circuit Court of Montgomery County, Alabama, for unlawful

distribution of a controlled substance. PSR ¶ 156. Petitioner was 18 years old at the time of the offense conduct and the subsequent adjudication. Ibid. Petitioner pleaded guilty to the offense and was sentenced to a three-year suspended term of imprisonment and two years of probation. Gov't C.A. Br. 4-5. His probation was later revoked for a new offense, and he served 13 months in prison. PSR ¶ 156.

Pursuant to a plea agreement, petitioner pleaded guilty to the conspiracy charge in the superseding indictment, and the government dismissed the remaining counts against him. PSR ¶¶ 9-10. In his sentencing memorandum, petitioner contended that his Alabama youthful-offender adjudication for unlawful distribution of a controlled substance was not a prior felony drug conviction for the purpose of enhancing his sentence under 21 U.S.C. 841(b)(1)(A) (2012) because Alabama does not consider youthful-offender adjudications to qualify as convictions. Gov't C.A. Br. 12-13; see Ala. Code § 15-19-7(a) (1995) (providing that a "determination made under" Alabama's Youthful Offender Act, Ala. Code §§ 15-19-1 et seq. (1995), "shall not be deemed a conviction of a crime; provided, however, that if [the defendant] is subsequently convicted of crime, the prior adjudication as youthful offender shall be considered"). The district court rejected that contention based on circuit precedent and sentenced

petitioner to 240 months of imprisonment and ten years of supervised release. Sent. Tr. 19-20, 33, 79-80; Judgment 2-3.

2. The court of appeals affirmed in an unpublished per curiam decision. Pet. App. A1, at 1-2. The court explained that it had previously determined that an Alabama youthful-offender adjudication qualifies as a "conviction" for purposes of the career-offender enhancement in the Sentencing Guidelines. Id. at 2 (quoting United States v. Elliott, 732 F.3d 1307, 1313 (11th Cir. 2013)) (per curiam). The court further explained that, under its precedent, a state adjudication that qualifies as "'conviction'" under the career-offender enhancement also qualifies as a "'conviction' for purposes of enhancement under 21 U.S.C. § 841." Ibid. (quoting United States v. Fernandez, 58 F.3d 593, 599 (11th Cir. 1995)) (per curiam).

ARGUMENT

Petitioner contends (Pet. 4-18) that the court of appeals erred in treating his 2009 Alabama adjudication -- in which he pleaded guilty to unlawful distribution of a controlled substance and was sentenced to a suspended term of three years of imprisonment under Alabama's Youthful Offender Act -- as a "prior conviction for a felony drug offense" for purposes of 21 U.S.C. 841(b)(1)(A) (2012). That contention does not warrant this Court's review. The court of appeals' decision is correct and does not conflict any decision of this Court or any other court of appeals.

1. Under Section 841(b)(1)(A), a defendant is subject to a 20-year statutory-minimum sentence if the defendant is convicted of a drug offense punishable under that subparagraph "after a prior conviction for a felony drug offense has become final." 21 U.S.C. 841(b)(1)(A) (2012); see United States v. LaBonte, 520 U.S. 751, 758-759 (1997) (explaining that Congress enacted Section 841(b) to impose enhanced punishment on repeat drug offenders). In the absence of clear language directing reference to state law, federal law defines what constitutes a prior "conviction" for purposes of a federal statute. See Dickerson v. New Banner Inst., Inc., 460 U.S. 103, 111-112 (1983) ("Whether one has been 'convicted' within the language of the gun control statutes is necessarily * * * a question of federal, not state, law, despite the fact that the predicate offense and its punishment are defined by the law of the State."). That rule "makes for desirable national uniformity" in the interpretation and application of federal statutes, "unaffected by varying state laws, procedures, and definitions of 'conviction.'" Id. at 112.

In Dickerson v. New Banner Institute, supra, this Court held that a defendant's guilty plea to a state charge disqualified the defendant from obtaining a license to deal in firearms under 18 U.S.C. 922 (1976), which forbids issuance of such a license to a person "convicted" of certain crimes. 460 U.S. at 105. At the outset, the Court noted that "[t]he usual entry of a formal

judgment upon a jury verdict or upon a court's specific finding of guilt after a bench trial is absent." Id. at 111. Nevertheless, the state-court record contained three indicia that led the Court to categorize the prior adjudication as a conviction under federal law: "(a) the charge of a crime of the disqualifying type, (b) the plea of guilty to that charge, and (c) the [trial] court's placing [the defendant] upon probation." Ibid. Based on those factors, the Court "equate[d] a plea of guilty and its notation by the state court, followed by a sentence of probation, with being 'convicted.'" Id. at 114.[3]

The court of appeals correctly determined that petitioner's Alabama youthful-offender adjudication in 2009 qualifies as a "conviction." Pet. App. A1, at 2. In that adjudication, petitioner pleaded guilty in adult court to unlawful distribution of a controlled substance for conduct that occurred when he was age 18, and he was sentenced to a suspended term of three years of imprisonment. See pp. 3-4, supra. Petitioner did not dispute

[3] After Dickerson was decided, Congress amended Section 921 to provide that "[w]hat constitutes a conviction" for purposes of the firearms law in Chapter 44 of Title 18 "shall be determined in accordance with the law of the jurisdiction in which the proceedings were held." 18 U.S.C. 921(a)(20); see Beecham v. United States, 511 U.S. 368, 369 (1994). Lower courts have recognized that that amendment does not undermine the application of Dickerson's holding to other statutory provisions that Congress did not so modify. See, e.g., United States v. Norbury, 492 F.3d 1012, 1015 (9th Cir. 2007), cert. denied, 552 U.S. 1239 (2008); United States v. McAllister, 29 F.3d 1180, 1184-1185 (7th Cir. 1994).

below (and does not contest here) that unlawful distribution of a controlled substance is a "felony drug offense," 21 U.S.C. 841(b)(1)(A), and, as such, is "a crime of the []qualifying type," Dickerson, 460 U.S. at 111; see Sent. Tr. 5-6 (defense counsel's agreement to stipulate that petitioner was "not disputing the * * * the underlying charge" of distribution of controlled substances but only arguing "that [the adjudication] does not equal a conviction"); Gov't C.A. Br. 27 n.4. Petitioner likewise does not dispute that he entered a "plea of guilty to that charge," Dickerson, 460 U.S. at 111, or that the state court placed him on probation following that adjudication. See PSR ¶ 156. Thus, petitioner's 2009 Alabama adjudication has all the same features as the adjudication that this Court found to be a "conviction" in Dickerson. See 460 U.S. at 111, 114-115.

2. Petitioner argues that further review is warranted because "[n]either this Court nor any other circuit court has clearly defined which adjudications are contemplated by the term 'conviction' in § 841(b)(1)(A)." Pet. 6 (emphasis omitted). But that contention is undermined by petitioner's acknowledgment that Dickerson set the parameters that have guided, over the last three and a half decades, "[a]ny court that has considered the question." Pet. 6-7; cf. Pet. 10 (noting that the Eleventh Circuit and "any other circuit that has looked at the question" has "reached back to Dickerson"). Dickerson resolves the question presented.

Petitioner suggests (Pet. 7-10) that the Court revisit Dickerson to consider whether to limit it to prior state-court adjudications involving "adult defendants" in "adult proceeding[s]" and "adult courts." Petitioner, however, was 18 years old when he committed the drug distribution offense at issue here, PSR ¶ 156, and he pleaded guilty in adult court, Gov't C.A. Br. 35. Although treated as a "youthful offender" for certain purposes because he was under the age of 21, his adjudication was not a juvenile-delinquency determination in juvenile court. See Ala. Code § 15-19-1 (1995) (providing for youthful-offender adjudication for a "person charged with a crime which was committed in his minority but was not disposed of in juvenile court and which involves moral turpitude or is subject to a sentence of commitment for one year or more") (emphasis added); see also United States v. Elliot, 732 F.3d 1307, 1311 n.2 (11th Cir. 2013) (per curiam) (noting that Alabama's Youthful Offender Act "applies to anyone who is under 21 years of age"). Petitioner's proposed distinction regarding "adult courts" therefore has no bearing on the disposition of this case. In any event, petitioner does not contend that there is any disagreement among the courts of appeals on whether an adjudication like this one qualifies as a "conviction" for purposes of Section 841(b)(1)(A).

Petitioner asserts (Pet. 10-11) that his youthful-offender adjudication is not a "conviction" under the plain meaning of that

term. But petitioner was "convicted" in the ordinary sense when he entered a plea of guilty in state court and was sentenced to a suspended prison term and probation. Cf. Dickerson, 460 U.S. at 114 (equating a "plea of guilty * * * followed by a sentence of probation, with being 'convicted'"). Petitioner also asserts (Pet. 11-16) that his youthful-offender adjudication is not a "conviction" in light of various canons of construction triggered, in his view, by Congress's 1988 amendment of 18 U.S.C. 924(e) to define a "conviction" "[a]s used in" that section to "include[] a finding that a person has committed an act of juvenile delinquency involving a violent felony." 18 U.S.C. 924(e)(2)(C); see Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, Tit. VI, Subtit. N, § 6451(2), 102 Stat. 4371. But even if it were correct, petitioner's argument about juvenile delinquency is inapposite. His 2009 Alabama adjudication was for conduct he committed at the age of 18; the adjudication occurred in adult court; and petitioner received a three-year suspended prison sentence and two years of probation (which he violated). See pp. 3-4, supra.

Finally, petitioner contends (Pet. 16-17) that Miller v. Alabama, 567 U.S. 460 (2012), and other recent developments in this Court's Eighth Amendment jurisprudence counsel in favor of granting certiorari in this case. Those cases have forbidden the imposition of certain penalties for an offense the defendant commits before reaching the age of 18. See id. at 465 (prohibiting

a mandatory sentence of life without parole for an offense committed before the age of 18); Roper v. Simmons, 543 U.S. 551, 578 (2005) (prohibiting a capital sentence for an offense committed before the age of 18). Petitioner, however, was 18 at the time of the drug-distribution crime at issue in his 2009 Alabama adjudication, PSR ¶ 156, and he does not raise any claim under the Eighth Amendment. Those decisions accordingly have no bearing on whether to treat the 2009 adjudication as a "conviction" for purposes of Section 841(b)(1)(A).

In any event, this case would be a poor vehicle for addressing the question presented because petitioner is concurrently serving a term of imprisonment of equal length to the one he challenges. Petitioner was also charged in a related case with one count of tampering with a witness, in violation of 18 U.S.C. 1512(b)(3). See Felony Information at 1, United States v. Jackson, No. 16-cr-99 (M.D. Ala. Apr. 22, 2016). He pleaded guilty to that offense and was sentenced to a term of 240 months of imprisonment, to be followed by three years of supervised release, both to be served concurrently with the sentence imposed in this case. See Judgment at 1-3, Jackson, supra, (No. 16-cr-99); Gov't C.A. Br. 7-9, 20-21. Petitioner did not appeal that separate conviction and sentence, and thus even if he prevailed on the question presented here -- which concerns only the length of his prison term on the drug-conspiracy charge -- it would have little practical effect.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Acting Solicitor General

BRIAN A. BENCZKOWSKI
Assistant Attorney General

JOSHUA K. HANDELL
Attorney

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