

No. 18-7000

IN THE SUPREME COURT OF THE UNITED STATES

LUIS ROLANDO BUENO JIMENEZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner was convicted of conspiracy to possess with intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a) (2012), a provision of the Maritime Drug Law Enforcement Act, 46 U.S.C. 70501 et seq. Judgment 1. That offense carries a statutory-minimum sentence of ten years of imprisonment, 21 U.S.C. 960(b)(1)(B) (2012); 46 U.S.C. 70506(a)-(b) (2012), and in 2017, the district court sentenced petitioner to 120 months of imprisonment, to be followed by five years of supervised release, Judgment 2-3. Petitioner contends (Pet. 10-23) that, as a matter of statutory construction, he was eligible

for relief under a prior version of the statutory "safety valve," 18 U.S.C. 3553(f) (2012), which at that time provided that, "in the case of an offense under * * * 21 U.S.C. 841, 844, 846[] or * * * 21 U.S.C. 960, 963[] * * * the court shall impose a sentence pursuant to [the Sentencing G]uidelines * * * without regard to any statutory minimum sentence," ibid. That issue -- which is not relevant to the current version of the statute -- does not warrant this Court's review. The Court has recently denied review of the same issue.¹ See Castillo v. United States, No. 18-374 (Jan. 7, 2019); see also Rolle v. United States, 572 U.S. 1102 (2014) (No. 13-7467); Morales v. United States, 572 U.S. 1063 (2014) (No. 13-7429). It should follow the same course here.

1. For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Castillo, supra (No. 18-374), petitioner was ineligible for safety-valve relief under 18 U.S.C. 3553(f) (2012). By its plain terms, that version of Section 3553(f) applied only when a defendant was convicted "of an offense under" 21 U.S.C. 841 or 960 (2012), or 21 U.S.C. 844, 846, or 963. 18 U.S.C. 3553(f) (2012). Petitioner was not convicted of any offense under any of those listed provisions, see Judgment 1, and the provision was not applicable

¹ Another pending petition for a writ of certiorari raises the same question. See Anchundia-Espinoza v. United States, No. 18-6482 (filed Oct. 25, 2018).

to other offenses, including violations of 46 U.S.C. 70503(a)(1) (2012). See Gov't Br. in Opp. at 8-13, Castillo, supra (No. 18-374).² The decision below is therefore correct, and its approach is consistent with the decisions of most courts of appeals to consider the issue. See id. at 13-14 (citing cases).

Three months before the court of appeals issued the decision below, the D.C. Circuit reached a different conclusion in United States v. Mosquera-Murillo, 902 F.3d 285, 292-296 (2018). The shallow conflict between Mosquera-Murillo and the decisions of other courts of appeals, in which the majority view favors the approach taken in this case, does not warrant review here. Although petitioner received a statutory-minimum sentence of ten years of imprisonment, the district court explained that it selected that sentence based on its view that petitioner "should get the same sentence" as one of his co-defendants. Pet. App. 36a; see also id. at 34a. The consideration that drove petitioner's sentence thus was not his own ten-year statutory minimum but rather the statutory-minimum sentence of his co-defendant, which petitioner could not and did not himself challenge on appeal.

2. In any event, the petition for a writ of certiorari does not present an issue of prospective importance to future

² We have served petitioner with a copy of the government's brief in opposition in Castillo.

defendants. Title IV of the First Step Act of 2018, Pub. L. No. 115-391 (enacted Dec. 21, 2018; see S. 756, 115th Cong., 2d Sess. (2018)), amends Section 3553(f) by adding offenses under “section 70503 or 70506 of title 46” to the list of offenses eligible for safety-valve relief under that statute. First Step Act § 402(a)(1)(A); see 18 U.S.C. 3553(f) (2012). As a result, future defendants who are convicted under Section 70503(a)(1) will qualify for safety-valve relief. A writ of certiorari is thus unwarranted.

Respectfully submitted.

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