

No. 18-8941

IN THE SUPREME COURT OF THE UNITED STATES

SHELDON LAMONT 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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 12-13) that his prior Florida convictions for possession with intent to sell cocaine, in violation of Fla. Stat. § 893.13(1)(a) (1995 & 1996), do not qualify as "serious drug offense[s]" under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(A)(ii). Specifically, petitioner argues (Pet. 13) that only state drug offenses that categorically match the elements of a "generic" analogue satisfy Section 924(e)(2)(A)(ii), and that his Florida drug convictions do not match such a generic analogue because the Florida drug statute does not

contain a mens rea element with respect to the illicit nature of the substances.

The petition for a writ of certiorari in Shular v. United States, No. 18-6662 (filed Nov. 8, 2018), seeks review of the same issue from the same court. As the government explained in its response to the petition in Shular, although the Eleventh Circuit's decision in that case correctly rejected the argument advanced by petitioner here, the question presented has divided the courts of appeals, it is important and frequently recurring, and it warrants review by this Court. See Gov't Cert. Br. at 5-14, Shular, supra (No. 18-6662). The same question is also presented in Hunter v. United States, No. 18-7105 (filed Dec. 6, 2018); Patrick v. United States, No. 18-7797 (filed Jan. 31, 2019); Hayes v. United States, No. 18-7833 (filed Feb. 5, 2019); Pressey v. United States, No. 18-8380 (filed Mar. 7, 2019); and Wilson v. United States, No. 18-8447 (filed Mar. 8, 2019). In its responses to the petitions for writs of certiorari in those cases, the government has maintained that the Court should hold the petitions pending the Court's disposition of the petition in Shular. See Gov't Cert. Br. at 10-12, Hunter, supra (No. 18-7105); Gov't Cert. Br. at 9-11, Patrick, supra (No. 18-7797); Gov't Cert. Br. at 10-12, Hayes, supra (No. 18-7833); Gov't Cert. Mem. at 1-3, Pressey, supra (No. 18-8380); Gov't Cert. Mem. at 1-3, Wilson, supra (No. 18-8447).

Petitioner contends (Pet. 4 n.1) that, if the Court grants review in Shular, it also should hold his petition pending the

Court's decision in Shular. Holding his petition is unnecessary, however, because petitioner would not benefit even if this Court adopted the interpretation of the ACCA that petitioner urges.¹

Petitioner's argument that his prior Florida convictions did not constitute "serious drug offense[s]" under Section 924(e)(2)(A)(ii) rests on the premise that the Florida statute under which he was convicted, Fla. Stat. § 893.13(1)(a) (1995 & 1996), unlike a generic analogue offense, did not contain a mens rea element with respect to the illicit nature of the substances. See Pet. 13. That premise is incorrect. Before 2002, the Florida Supreme Court had construed a related, drug-possession provision of Section 893.13 to contain a mens rea element with respect to the illicit nature of the substances, for reasons that apply equally to Section 893.13(1)(a). See Chicone v. State, 684 So. 2d 736, 738-744 (1996) (addressing Fla. Stat. § 893.13(6)(a) (1995)); see also Shelton v. Secretary, 691 F.3d 1348, 1349-1351 (11th Cir.), cert. denied, 569 U.S. 923 (2012). Petitioner committed and pleaded guilty to violations of Section 893.13(1)(a) in 1995 and 1996. See Presentence Investigation Report ¶¶ 33-34. In contending that Florida law did not impose a mens rea requirement

¹ Petitioner acknowledges (Pet. 4 n.1, 12) that he did not raise in the court of appeals the question whether his Florida drug crimes were "serious drug offense[s]" under Section 924(e)(2)(A)(ii), and the court did not address the issue. Petitioner asserts (*ibid.*), however, that, if the Court in Shular were to adopt his reading of that provision, he could then prevail in the lower courts "on plain error review."

with respect to the illicit nature of substances, petitioner cites (Pet. 13) legislation enacted by the Florida legislature in May 2002, which clarified that Section 893.13(1)(a) did not contain a mens rea element with respect to the illicit nature of the substances. See State v. Adkins, 96 So. 3d 412, 414-416 (Fla. 2012); see also 2002 Fla. Laws 1848. But because that 2002 legislation postdated petitioner's offenses, which occurred and of which he was convicted in 1995 and 1996, it had no effect on those prior state criminal proceedings or on the proper construction of Section 893.13 in those proceedings.

Because petitioner would not benefit from a decision in Shular adopting his interpretation of the ACCA, his petition need not and should not be held pending the disposition of the petition for a writ of certiorari in that case. The petition for a writ of certiorari should be denied.²

Respectfully submitted.

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Solicitor General

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² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.