

CASE NO. _____

SUPREME COURT OF THE UNITED STATES
October 2019 Term

LAWRENCE STRICKLAND,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

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

PETITION FOR A WRIT OF CERTIORARI

Submitted on Behalf of Petitioner

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QUESTION PRESENTED

1. Does it violate the Fifth Amendment Due Process Clause and the Sixth Amendment for the district court to make a finding that two “armed career criminal” predicate offenses were “committed on occasions different from one another” when the conduct occurred within days of one another and without an intervening arrest or conviction?

PARTIES TO THE PROCEEDINGS

Federal Public Defender Lee T. Lawless, through Assistant Federal Public Defender Michael A. Skrien, 325 Broadway, Cape Girardeau, MO 63701, represented petitioner Lawrence Strickland in lower courts. The United States is represented by United States Attorney Jeffrey Jensen, Thomas Eagleton Courthouse, 111 South 10th Street, Saint Louis, MO. 63102 and Assistant United States Attorney Paul Hahn, 555 Independence Street, Cape Girardeau, MO 63703.

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OPINION BELOW

The opinion below affirming the judgment appealed from for which certiorari is sought is unpublished reported at 759 F. App'x 544. It appears in the Appendix (Appx.) at A-1.

JURISDICTION

The petitioner, Lawrence Strickland, was prosecuted in a one count indictment in the United States District Court for the Eastern District of Missouri, Southeastern Division, for violation of Title 18 U.S.C. § 922(g)(1). He appealed his sentence to the Eighth Circuit Court of Appeals invoking the Court's jurisdiction under 28 U.S.C. § 1291. His sentence was affirmed by order entered March 5, 2019. Appx. at 1. The jurisdiction of this Court to review the judgment of the Eighth Circuit Court of Appeals is invoked under 28 U.S.C. § 1254(1).

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Title 18 U.S.C. § 924(e)(1)

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

STATEMENT OF THE CASE

On August 21, 2017, Lawrence Strickland pled guilty to one count of being a felon in possession of a firearm, in violation of Title 18 U.S.C. § 922(g). At sentencing, the district court found that Mr. Strickland should be subject to the penalty provisions of § 924(e) which allow for an enhanced range of punishment because he had three prior convictions for either a violent felony or serious drug offense. On October 14 and 19, 1999, Mr. Strickland made two sales, each less than five grams, of crack to the same undercover agent. There were no intervening arrests and the two incidents were consolidated in one case. Mr. Strickland objected to the determination claiming two of the convictions should be counted as one as they were part of a continuing course of conduct without intervening arrest or conviction.

The district court found that the number and nature of Mr. Strickland's prior convictions qualified him to be sentenced under the enhanced range, overruled Mr. Strickland's objection, and on February 20, 2018, sentenced him to fifteen years in prison.

Mr. Strickland appealed his conviction to the Eighth Circuit Court of Appeals and on March 5, 2019, an opinion was issued affirming the district court's finding.

GROUND FOR GRANTING THE WRIT

II. The Eighth Circuit Court of Appeals upheld an important question of federal law concerning prior convictions used to greatly alter a defendant's range of punishment which conflicts with the Constitution of the United States.

To qualify as a predicate conviction, each must be a separate and distinct criminal episode, rather than part of a continuous course of conduct. *United States v. Willoughby*, 653 F.3d 738, 741 (8th Cir. 2011). To determine whether an act is a distinct criminal episode, this Court considers: (1) the time lapse between offenses, (2) the physical distance between their occurrence, and (3) their lack of overall substantive continuity, a factor that is often demonstrated in the violent-felony context by different victims or different aggressions. *Id.* at 743. In *Willoughby*, the Eighth Circuit found that two drug sales very close in time were not two separate incidents under the armed career criminal act. *Id.*

Mr. Strickland opposes the characterization of one course of conduct being considered as two separate offenses for Title 18 U.S.C. § 924(e) purposes. On October 14 and 19, 1999, Mr. Strickland made two sales of crack to the same undercover agent. There were no intervening arrests and the two incidents were consolidated in one case. These two incidents are too close in time to be considered separate under the statute. The statute was intended to target recidivist individuals. The enormous increase in the range of incarceration is intended to punish those who violate the law again and again, and again with some period of time in between to ensure the intent of the individual. It is designed to target the individual whose intent is to continue breaking the law in light of being caught and punished over and over and over again.

Assistant Attorney General at the time, Stephen S. Trott, stated in congressional hearings:

These are people who have demonstrated, by virtue of their definition, that locking them up and letting go doesn't do any good. They go on again, you lock them up again, you let them go, it doesn't do any good, they are back for a third time. At that

juncture, we should say, “That’s it; time out; it is all over. We as a people will never give you the opportunity to do this again.”

Armed Career Criminal Act: Hearing before the Subcomm. On Crime of the House Comm. on the Judiciary, 98th Cong., 2d Sess. 47, 64 (1984).

The statute was intended to punish those who had been given the opportunity to learn from their mistakes and continued to commit crimes not once or twice, but three times and with the above quote inferring they be “locked up” in between offenses. Accordingly, the statute requires the incidents be committed on occasions different from one another. 18 U.S.C. § 924(e). With no notice as to what exactly the phrase “on occasions different from one another” means, there is a clear violation of due process. Clarity and certainty are required before such an extreme deprivation of liberty can be demanded. The *Willoughby* case necessarily claims there are different occasions that can count as one under ACCA. The logic that follows is that there is a line somewhere, but that line can only be determined on a case by case basis. This is neither clarity nor certainty.

Mr. Strickland asks this Court to conclude that a greater degree of certainty is necessary in these circumstances as a matter of due process. When it is for purposes of the Armed Career Criminal Act, significant liberty issues are at stake - a ten-year maximum sentence vs. a life maximum with a fifteen year *minimum*. The heightened standard of certainty is one way to help ensure the courts below can avoid the urge to examine the actual facts of the case in making the determination required in these circumstances. It will also help avoid the problem of courts below finding an answer where there is none. When courts do so, they ignore the teachings of this Court and the requirements founded in either statutory construction or the Constitution.

CONCLUSION

WHEREFORE, Petitioner Strickland requests that this Court grant his Petition for a Writ of Certiorari to the Eighth Circuit Court of Appeals.

Respectfully submitted,

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