No. 19-6230

IN THE SUPREME COURT OF THE UNITED STATES

CLAUDIUS L. FINCHER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Sixth Amendment entitles a defendant whose offense carries a statutory-minimum sentence to demand a jury finding of facts relevant to his eligibility for a below-minimum sentence under the safety-valve statute, 18 U.S.C. 3553(f).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is reported at 929 F.3d 501. The order of the district court (Pet. App. 11a-15a) is not published in the Federal Supplement but is available at 2018 WL 3085202.

JURISDICTION

The judgment of the court of appeals was entered on July 9, 2019. The petition for a writ of certiorari was filed on October 4, 2019. 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 Western District of Wisconsin, petitioner was convicted of conspiracy to possess with the intent to distribute 100 grams or more of heroin, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B), 846. Judgment 1. The district court sentenced petitioner to 60 months of imprisonment, to be followed by four years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-10a.

1. In 2017, petitioner and his uncle ran a drug-selling operation in the Madison, Wisconsin, area. Pet. App. 2a; Presentence Investigation Report (PSR) ¶ 9. The Madison Police Department discovered the operation in the course of investigating another man's fatal overdose on heroin laced with fentanyl. PSR ¶¶ 11-13. After undercover officers conducted a series of controlled purchases of heroin from petitioner and his uncle, police traced the operation back to a small one-bedroom apartment in Sun Prairie, Wisconsin. PSR ¶¶ 14-17. The two men were subsequently arrested leaving the apartment to meet undercover officers for another arranged sale. Pet. App. 2a; PSR ¶ 20.

Following petitioner's arrest, police found 17 grams of heroin in petitioner's pockets. PSR ¶ 23. A search of the apartment resulted in the discovery of another 125 grams in a bedroom closet. PSR ¶¶ 27-29. During the search, police also

discovered several 40-caliber cartridges in the bedroom closet and a loaded 40-caliber handgun in a kitchen drawer. PSR ¶ 32.

A federal grand jury charged petitioner with conspiring to possess with the intent to distribute 100 grams or more of heroin, in violation of 21 U.S.C. 846; and two counts of distributing and possessing with the intent to distribute heroin, in violation of 21 U.S.C. 841(a)(1). Indictment 1, 3. Petitioner pleaded guilty to the conspiracy count, which carried a statutory-minimum sentences of five years of imprisonment. Plea Tr. 23; see 21 U.S.C. 841(b)(1)(B)(i); Pet. App. 3a. In return, the government agreed to dismissal of the distribution and possession counts. Plea Tr. 15.

At the plea hearing, the district court noted "a possibility that what we call the safety valve may apply" to petitioner. Plea Tr. 17 (emphasis omitted); see 18 U.S.C. 3553(f). Under Section 3553(f) and the corresponding sentencing guideline, district courts are authorized to sentence defendants convicted under certain drug statutes "without regard to any statutory minimum sentence, if the court finds at sentencing" -- and after hearing a recommendation from the government -- that five criteria have been met. 18 U.S.C. 3553(f); see Sentencing Guidelines § 5C1.2. At the time of petitioner's offense, those criteria were: "(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines; (2) the defendant did not use violence or credible threats of violence or possess a

firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense; (3) the offense did not result in death or serious bodily injury to any person; (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan." 18 U.S.C. 3553(f) (2012). The court explained that, if petitioner met the relevant criteria, Section 3553(f) would authorize the court to sentence petitioner to less than the five years of imprisonment that 21 U.S.C. 841(b)(1)(B)(i) would otherwise require. Plea Tr. 18.

2. At sentencing, the district court concluded that petitioner was not eligible to be sentenced under Section 3553(f) because he had possessed a gun "in connection with" the drug-conspiracy offense, 18 U.S.C. 3553(f)(2). Pet. App. 11a-15a.

The district court observed that petitioner's DNA was found on the gun discovered in the apartment and that petitioner did not dispute that the government had proved that he possessed the firearm. Pet. App. 12a. The court rejected petitioner's contention that the Sixth Amendment required a jury to determine

the facts concerning his safety-valve eligibility, including whether he possessed the gun "in connection with" the offense, 18 U.S.C. 3553(f). Pet. App. 12a-13a. The court explained that "[s]afety valve eligibility provides an opportunity for some defendants to get relief from a congressionally established madatory minimum sentence" and that "in determining safety valve eligibility, a district court is not finding facts that increase the defendant's criminal exposure." Id. at 13a. And the court found that, in this case, "[t]he facts and evidence as a whole suggest[ed] that the firearm was connected to [petitioner's] drug offense." Id. at 14a.

The district court subsequently sentenced petitioner to 60 months of imprisonment, to be followed by four years of supervised release. Sent. Tr. 14-19; Judgment 1-3.

3. The court of appeals affirmed. Pet. App. 1a-10a. As relevant here, the court expressly agreed with every other circuit to have addressed the issue that the Sixth Amendment does not require a jury to find the facts relevant to petitioner's eligibility for relief under the safety-valve statute. Id. at 5a-8a; see Pet. App. 6a (collecting cases). The court explained that "[u]nderlying these decisions is the recognition that a mandatory minimum sentence is not increased by the defendant's ineligibility for safety-valve relief," and thus did not implicate this Court's decisions requiring juries to find sentence-enhancing facts (other than the fact of a prior conviction). Ibid.; see Alleyne v. United

States, 570 U.S. 99 (2013); Apprendi v. New Jersey, 530 U.S. 466 (2000). Similarly observing that the minimum sentence "is already triggered by the offense" and "the safety-valve provision merely provides lenity," the court of appeals joined the consensus recognition that "judicial factfinding precluding safety-valve relief does not violate the Sixth Amendment." Pet. App. 7a.

ARGUMENT

Petitioner contends (Pet. 20-22) that the Sixth Amendment entitles a defendant whose offense carries a statutory-minimum sentence to demand a jury finding of facts relevant to his eligibility for a below-minimum sentence under the safety-valve statute, 18 U.S.C. 3553(f). The court of appeals correctly rejected that contention. Its decision does not conflict with any decision of this Court or, as petitioner recognizes (Pet. 20), with another court of appeals. Further review is not warranted.

1. In Apprendi v. New Jersey, 530 U.S. 466 (2000), this Court held that the Sixth Amendment right to a jury trial and the Fifth Amendment right to due process entitle a criminal defendant to a jury determination beyond a reasonable doubt on every element of a charged crime. Id. at 477. And based on its review of the history of sentencing practices at the Founding and at common law, the Court further concluded that "facts that expose a defendant to a punishment greater than that otherwise legally prescribed were by definition 'elements' of a separate legal offense." Id. at 483 n.10. Accordingly, the Court determined that "[o]ther than the

fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Id. at 490.

In Alleyne v. United States, 570 U.S. 99 (2013), the Court extended Apprendi to apply to any fact that increases the prescribed statutory-minimum sentence for an offense. The plurality reasoned that facts that "increase the floor" of the legally prescribed sentencing range, like "facts that increase the ceiling," "alter the prescribed range of sentences to which a defendant is exposed and do so in a manner that aggravates the punishment." Id. at 108. The Court accordingly stated that "[j]uries must find any facts that increase either the statutory maximum or minimum because the Sixth Amendment applies where a finding of fact both alters the legally prescribed range and does so in a way that aggravates the penalty." Id. at 113 n.2.

The court of appeals correctly recognized that the reasoning of Apprendi and Alleyne do not apply to the eligibility criteria for sentencing under the safety-valve statute, 18 U.S.C. 3553(f). As the court explained (Pet. App. 6a-7a), unlike the factual findings at issue in Apprendi and Alleyne, factual findings relevant to a defendant's eligibility for safety-valve relief do not increase the legally prescribed sentencing range and therefore do not aggravate the legally prescribed penalty. See Alleyne, 570 U.S. at 112 ("[T]he legally prescribed range is the penalty affixed

to the crime.") (emphasis omitted). To the contrary, "the only effect of the judicial fact-finding" under Section 3553(f) "is either to reduce a defendant's sentencing range or to leave the sentencing range alone, not to increase it." United States v. Holguin, 436 F.3d 111, 117 (2d Cir.), cert. denied, 547 U.S. 1185 (2016). Facts relevant to a defendant's safety-valve eligibility are thus not elements of the offense and are not required to be submitted to the jury and found beyond a reasonable doubt.

Petitioner contends (Pet. 20) that the difference between facts that increase the statutory-minimum sentence and decrease the statutory-minimum sentence is "a distinction without a difference" because criminal statutes that do the latter "could be rearticulated in the negative, such that a judicial finding of fact could eliminate an otherwise-applicable increase in the range." But the difference between "facts in aggravation of punishment and facts in mitigation" is a "distinction th[is] Court has often recognized" as constitutionally significant. Apprendi, 530 U.S. at 491 n.16. As the Court explained in Apprendi, when a judge finds facts that may permit a defendant to "escape the statutory maximum," he is "neither exposing the defendant to a deprivation of liberty greater than that authorized by the verdict according to statute, nor is the judge imposing upon the defendant a greater stigma than that accompanying the jury verdict alone." Ibid. The "[c]ore concerns animating the jury and burden-of-proof requirements are thus absent from such a scheme." Ibid.

2. As petitioner recognizes (Pet. 20), every court of appeals to have decided the question presented has determined that the Sixth Amendment does not require a jury to find the facts relevant to a defendant's eligibility for the safety valve. See Pet. App. 7a; United States v. Harakaly, 734 F.3d 88, 98 (1st Cir. 2013), cert. denied, 572 U.S. 1008 (2014); United States v. King, 773 F.3d 48, 55 (5th Cir. 2014), cert. denied, 575 U.S. 972 (2015); United States v. Leanos, 827 F.3d 1167, 1169 (8th Cir. 2016); United States v. Lizarraga-Carrizales, 757 F.3d 995, 999 (9th Cir. 2014), cert. denied, 135 S. Ct. 1191 (2015); see also United States v. Caballero, 672 Fed. Appx. 72, 75 (2d Cir. 2016), cert. denied, 137 S. Ct. 1599 (2017); United States v. Juarez-Sanchez, 558 Fed. Appx. 840, 843 (10th Cir. 2014); United States v. Silva, 566 Fed. Appx 804, 808 (11th Cir. 2014) (per curiam), cert. denied, 135 S. Ct. 1190 (2015).

Petitioner suggests (Pet. 16-18) that review is warranted because a recent amendment to Section 3553(f) has expanded the number of defendants who may be eligible to be the sentenced under the provision, and granting certiorari may forestall future litigation on this issue. But petitioner does not contend that the recent change to the criminal-history eligibility criteria is relevant to the resolution of the question presented or would reasonably cause any court of appeals to reconsider its prior resolution of this issue. In any event, it is not at issue in

this case, which would accordingly be an unsuitable vehicle for addressing it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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