

No. 19-6675

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL RAY BISHOP, 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

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Petitioner contends (Pet. 8-19) that his prior Florida conviction for conspiracy to sell, manufacture, deliver, or possess with the intent to sell, manufacture, or deliver a controlled substance, in violation of Fla. Stat. § 893.13(1)(a) (2013), does not qualify as a “controlled substance offense” for purposes of Sentencing Guidelines §§ 2K2.1(a)(3) and 4B1.2(b) (2016). Specifically, petitioner argues (Pet. 8-12, 18-19) that only a state drug offense that categorically matches the elements of a “generic” analogue is a “controlled substance offense” under those provisions, and that his Florida drug conviction does not match

the generic analogue because the relevant Florida drug statute does not contain a mens rea element with respect to the illicit nature of the substance.

This Court has granted review in Shular v. United States, No. 18-6662 (argued Jan. 21, 2020), to decide whether a state drug offense must categorically match the elements of a "generic" analogue to qualify as a "serious drug offense" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(A)(ii). As petitioner notes (Pet. i), the proper disposition of the petition for a writ of certiorari may be affected by this Court's resolution of Shular. See United States v. Smith, 775 F.3d 1262, 1267 (11th Cir. 2014) (rejecting arguments as to both 18 U.S.C. 924(e)(2)(A)(ii) and Sentencing Guidelines § 4B1.2(b) for related reasons), cert. denied, 135 S. Ct. 2827 (2015); see also Pet. App. 15-16 (relying on Smith in determining that petitioner's conviction for violating Fla. Stat. § 893.13(1)(A) (2013) constituted a "controlled substance offense" under Sentencing Guidelines § 2K2.1(a)(3) (citation omitted)). The petition in this case should therefore be held pending the decision in Shular and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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