No. 19-6862

IN THE SUPREME COURT OF THE UNITED STATES

DALTON BETSINGER, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 6-9) that his prior Iowa convictions for manufacturing, delivering, or possessing with intent to deliver or manufacture methamphetamine, in violation of Iowa Code § 124.401(1)(c)(6) (2015), and for possessing with intent to deliver marijuana, in violation of Iowa Code § 124.401(1)(d) (2016), do not qualify as "controlled substance offense[s]" for purposes of Sentencing Guidelines § 4B1.2(b). Specifically, petitioner argues (Pet. 4-5) that the definition of "controlled substance offense" in Section 4B1.2(b) incorporates a generic federal standard for aiding and abetting liability, and he contends (Pet. 6-9) that his

Iowa drug convictions do not qualify as predicate convictions under that provision because Iowa's aiding-and-abetting-liability standard is broader than the generic federal standard.

The court of appeals summarily affirmed petitioner's sentence, Pet. App. 8, and its judgment does not warrant further review. In an earlier, published decision, the court had rejected the same argument petitioner raises. See United States v. Boleyn, 929 F.3d 932, 938-940 (8th Cir. 2019), petitions for cert. pending, Nos. 19-6671, 19-6672, 19-6677, 19-6687, 19-6688 (filed Nov. 15, 2019). The court in Boleyn "[a]ssum[ed] without deciding that [the] defendants" in that case "ha[d] posited the proper standard" for generic aiding-and-abetting liability -- namely, one that "requires proof that the accomplice intended to promote or facilitate the underlying crime." Id. at 939-940. But it determined that, even if the defendants' prior convictions needed to be measured against such a standard, "the Iowa law of aiding and abetting liability is substantially equivalent to, not meaningfully broader than, the standard * * * urged by [the] defendants." Id. at 940. Petitioner raised an "identical" claim in this case. Gov't C.A. Mot. for Summ. Affirmance 8 (July 11, 2019). The court of appeals' determination that Iowa law is not meaningfully different than the aiding-and-abetting standard petitioner posits, which is alone sufficient to sustain petitioner's sentence, does not warrant further review.

Petitioner disputes (Pet. 7-9) that determination and asserts that the Iowa courts have employed a different aiding-and-abetting standard that reaches a broader array of conduct. But that assertion does not warrant this Court's review, because it is fundamentally a question of state law. This Court has a "settled and firm policy of deferring to regional courts of appeals in matters that involve the construction of state law." Bowen v. Massachusetts, 487 U.S. 879, 908 (1988); see Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 16 (2004). Petitioner provides no reason to deviate from that practice in this case.

Further review is also unwarranted because the question presented pertains only to the proper interpretation of the Sentencing Guidelines. This Court ordinarily leaves issues of Sentencing Guidelines application in the hands of the Sentencing Commission, which is charged with "periodically review[ing] the work of the courts" and making "whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest." Braxton v. United States, 500 U.S. 344, 348 (1991). Given that the Sentencing Commission can amend the Sentencing Guidelines to eliminate a conflict or correct an error, this Court ordinarily does not review decisions interpreting the Sentencing Guidelines. See ibid.; see also United States v. Booker, 543 U.S. 220, 263 (2005) ("The Sentencing Commission will continue to collect and study appellate court decisionmaking. It will continue to modify

its Guidelines in light of what it learns, thereby encouraging what it finds to be better sentencing practices.").

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 (ACCA), 18 U.S.C. 924(e)(2)(A)(ii). Holding the petition in this case for Shular is unnecessary, however, because petitioner would not benefit even if this Court in Shular interprets the ACCA as requiring a state drug offense to match a "generic definition of aiding and abetting." Pet. 6. As noted above, the court of appeals in Boleyn "[a]ssum[ed]" arguendo that Sentencing Guidelines § 4B1.2(b) does incorporate the generic aiding-and-abetting standard that petitioner here posits, but, in light of its determination that the Iowa and generic aiding-and-abetting standards are "substantially equivalent," the court found that an Iowa conviction like petitioner's satisfies that provision. 929 F.3d at 940; see id. at 938-940. Petitioner's prior convictions thus qualify as "controlled substance offense[s]" under Sentencing Guidelines § 4B1.2(b), irrespective of the Court's resolution of the ACCA question presented in Shular, or any claimed effect of such resolution on the Sentencing Guidelines.

The petition for a writ of certiorari should be denied.*

Respectfully submitted.

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FEBRUARY 2020

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