

19-7011
No. _____

Supreme Court, U.S.

FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

Carl Golden,

petitioner,

v.

United States of America,

respondent.

On Petition for Writ of Certiorari to the
Eleventh Circuit Court of Appeals
Appeals No.: 18-14868

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Question One

This Court found that 18 U.S.C. § 922(g)(1), 924(a)(2) requires an elevated degree of intent for every non-jurisdictional element of the crime. **Rehaif v. United States**, 139 S.Ct. 2191 (2019). On the eve of trial, Mr. Golden pleaded guilty, if he had known the true nature of the § 922(g) mens rea, then he would not have pleaded guilty.

Does the Constitution require that the accused know the elements of a crime in order to validly plead guilty?

Question Two

When determining whether a prior conviction qualifies as a career-offender predicate, this Court holds the Constitution tolerates an abbreviated fact finding procedure: the categorical approach when the factual predicate is a prior conviction. Unlike its federal analogs, Florida's controlled-substance statute does not contain a knowing scienter for the illicit nature of the controlled substances.

Is Florida § 893.13 categorically a serious drug crime under the Sentencing Guidelines? Cf. **Shular v. United States**, 139 S.Ct. 2773 (2019)(certiorari granted).

Question Three

This Court provides that a criminal judgment becomes final when the opportunity for certiorari review expires or is exhausted. Further, this Court provides that new judicial rules are retroactively applicable to any non-final judgments. Congress enacted the First Step Act before Mr. Golden's conviction became final. Under the Act's amendments Mr. Golden did not violate the Armed Career Criminal Act.

Does the First Step Act apply such that Mr. Golden did not violate the ACCA?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

- **United States v. Carl Golden**, Dist. No. 8:18-cr-00118-SCB-SPF-1 (M.D. Fla. 2018).
- **United States v. Carl Golden**, Appeal No. 18-14868 (11th Cir. Aug. 26, 2019).

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OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The judgment of the United States District Court appears at Appendix C to the petition and is unpublished.

JURISDICTION

The United States Court of Appeals decided Mr. Golden's case on August 26, 2019. No petition for rehearing was filed to the United States Court of Appeals. The petition for a writ of certiorari was submitted by the prison mailbox rule within the 90 days allowed by rule.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 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 offense 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 have private property be taken for public use, without just compensation.

18 U.S.C. § 922(g)(1)

It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year ... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive a firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 924(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).

18 U.S.C. § 924(c)(3)(A), (B)

For purposes of this subsection the term "crime of violence" means an offense that is a felony and has an element the use, the attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

First Step Act Provision § 401(a)(1)

The Controlled Substance Act (21 U.S.C. 801 et seq.) is amended in section 102 (21 U.S.C. 802), by adding at the end the following: "(57) The term 'serious drug felony' means an offense described in section 924(e)(2) of title 18, United States Code, for which—

"(A) the offender served a term of imprisonment of more than 12 months, and

"(B) the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense.

"(58) The term 'serious violent felony' means—

"(A) an offense described in section 3559(c)(2) of title 18, United States Code, for which the offender served a term of imprisonment of more than 12 months; and

"(B) any offense that would be a felony violation of section 113 of title 18, United States code, if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months." and

(2) in Section 401(b)(1)(21 U.S.C. 841(b)(1))—

(A) in subparagraph (A), in the matter following clause (viii)—

(i) by striking "If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years" and inserting the following: "If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years"; and

(ii) by striking "after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release" and inserting the following: "after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years"; and

(B) in subparagraph (B), in the matter following clause (viii), by striking "If any persons commits such a violation after a prior conviction for a felony drug offense has become final" and inserting the following: "If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final".

STATEMENT OF THE CASE

In 2018, the United States indicted and convicted Carl Golden for the unlawful possession of an unauthorized weapon by a prohibited person, that is, a convicted felon in possession of a firearm. (App. A at 2). By the time of sentencing the United States Probation Office had concluded that Mr. Golden violated 18 U.S.C. §§ 922(g)(1), 924(e)(1)(Armed Career Criminal Act) rather than 18 U.S.C. §§ 922(g)(1), 924(a)(2)(unauthorized possession of a weapon by a prohibited person). Probation found that Mr. Golden had five prior convictions that qualified even though all five were more than 20 years prior.

Prior Convictions

PSR #	Conviction	Date of Offense
33	Strong Arm Robbery	09/17/1986
36	Delivery of Cocaine	08/13/1987
40	Delivery of Cocaine w/i 1000' of a School	11/30/1990
41	Aggravated Assualt	07/13/1991
45	Delivery of Cocaine	01/05/1994

At no point in the proceedings below did Mr. Golden admit that he understood that his two-decade old convictions prevented him from possessing a firearm. To the contrary, Mr. Golden believed that his rights had been restored. He did, however, admit to having the prior convictions. His attorney and the court told him that the convictions existence were sufficient for guilt regardless of his subjective knowledge.

On the other hand, Mr. Golden persistently challenged his status as an Armed Career Criminal Act violator. Succinctly, Mr. Golden argued that his Florida controlled-substance convictions were not categorically serious drug

offenses, and that his aggravated assault and strong armed robbery convictions were not categorically (or factually) violent. (Appx. A at 2).

The district court never considered Mr. Golden's lack of scienter regarding his status either as a prohibited person or as an armed career criminal. The district court rejected Mr. Golden's challenges to the qualifications of the prior conviction as ACCA predicates. (Appx. C at 2).

Mr. Golden appealed the district court's judgment. (Appx. A at 1). The Court of Appeals for the Eleventh Circuit affirmed the district court's judgment. (Id.)

During that process, this court issued a quartet of decisions that are relevant to, and likely control, the outcome of Mr. Golden's appeals: **Rehaif v. United States**, 139 S.Ct. 2191 (2019); **Wheeler v. United States**, S.Ct. No. 18-7187 (June 3, 2019); **Richardson v. United States**, 139 S.Ct. ____ (June 3, 2019); **Shular v. United States**, 139 S.Ct. 2773 (2019).

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit Court of Appeals decided Mr. Golden's appeal without the benefit of four of this Court's June 2019 decision that are relevant to resolving Mr. Golden's claims.

Combined and separately, these ruling favor remanding the cause to the court of appeals for reconsideration.

1. **The Eleventh Circuit's definition of 18 U.S.C. §§ 922(g)(1), 924(e)(1)'s elements conflicts with this Court's interpretation of the criminal statute. Consequently, the Eleventh Circuit affirms convictions that violate due process of law. This Court should exercise its supervisory powers and align the Eleventh Circuit with this Court's decisions.**

The Eleventh Circuit affirmed Mr. Golden's conviction for violating §§ 922(g)(1), 924(e)(1). But the appellate court did not consider this Court's opinion in **Rehaif**, 139 S.Ct. at 2191. If the appeals court had, then it would have realized the government did not prove that Mr. Golden violated either § 922(g) or the ACCA.

During the trial proceeding and appellate briefing, the Eleventh Circuit operated under a now plainly erroneous premise; those courts considered 18 U.S.C. § 922 as a strict-liability crime, particularly concerning the accused's status. **United States v. Jackson**, 120 F.3d 1226 (11th Cir. 1997); (see App. A at 4). Comparing Jackson with Rehaif shows that, on the current record, Mr. Golden received incorrect advice as to the true nature of the charges to which he pleaded. Although court and counsel correctly advised Mr. Golden as to what the law was at the time of the guilty plea, before the appeal completed, this Court clarified that law meant something different. But the timing of this Court's decision was subsequent to briefing and too close to the appeals court's opinion to impact its judgment.

Significantly, this Court explains it is the understanding of the law at the time of review that controls the reviewing court's decisions. See **Henderson v. United States**, 133 S.Ct. 1121 (2013)(a plain error is determined using the law available at the time of review).

In the light of Rehaif's holding, the Eleventh Circuit's prior precedent on § 922(g)'s mens rea evaporates. See **(Michael) Jackson v. United States**, 139 S.Ct. ___, S.Ct. No. 19-5260 (October 7, 2019)(granting the petition for certiorari, vacating the Eleventh Circuit's opinion and remanding for further consideration). In other words, the Rehaif ruling abrogated the Eleventh Circuit's precedent that dictated Mr. Golden's result.

The district court rejected Mr. Golden's challenges to his § 922(g) conviction overlooking that those challenges ran directly to his understanding of what conduct violated the law. (App. A at 3). This Court's long-settled rule is that an accused's unknowing, unintelligent, or involuntary guilty plea is constitutionally invalid and a criminal judgment based on it is a nullity. See, e.g., **Lee v. United States**, 137 S.Ct. 1958 (2019); **Brady v. United States**, 397 U.S. 742 (1970); **Boykin v. Alabama**, 395 U.S. 238 (1969)(unless the record affirmatively establishes a knowing guilty plea, the conviction is invalid regardless of the evidence); **Henderson v. Morgan**, 426 U.S. 637 (1976)(plea is constitutionally invalid if accused was incorrectly informed about the true nature of the charges).

On the existing record, under current law, Mr. Golden's § 922(g) conviction offends the Constitution; the record does not show that Mr. Golden comprehended, or even knew, the elements of the crime of conviction. This Court should grant certiorari, vacate the Eleventh Circuit Court of Appeals opinion, and remand the cause to that court for reconsideration of whether Mr. Golden's conviction has force and effect after the rules announced in **Rehaif**.

2. The Eleventh Circuit applies a non-traditional categorical approach to qualify felony drug-crime convictions as career-offender predicates. As a result, the Eleventh Circuit ignores the disalignment between the elements of the Florida § 893.13 offense and its federal controlled-substance analogs. Thereby, creating a conflict with this Court's decisions and with the rulings of other circuits. This Court should grant the writ in order to bring uniformity to the law.

Mr. Golden's sentence, without the ACCA designation, was 15 to 21 months rather than the 180 months the district court imposed. Because of his prior Florida controlled-substance convictions, the district court designated Mr. Golden a career-offender. (App. A at 2). The Sentencing Guidelines recommend considerably harsher penalties for armed career offenders than for non-career offenders. See **Beckles v. United States**, 137 S.Ct 886 (2017). The career-offender designations increased Mr. Golden's punishment 900 percent.

From the beginning, Mr. Golden objected to the criminal court's holding that his Florida convictions were serious drug offenses. (App. A at 2). As part of those objections, Mr. Golden showed that Florida Criminal Statute § 893.13 convictions did not require the same level of scienter that the federal drug offenses required. (App. A at 5). Nevertheless, the district court qualified Mr. Golden's Florida § 893.13 convictions (Nos. F92-27553, F12-6361) as career offender predicates. (App. B at 1). Mr. Golden argued that none of the Florida convictions, categorically, met the ACCA's definition of serious drug offense, the Florida criminal elements did not match any federal-controlled substance crime.

The district court recognized the Eleventh Circuit, however, had previously foreclosed this type of challenge through its non-traditional application of the categorical approach. See **United States v. Smith**, 775 F.3d 1262, 1267 (11th Cir. 2014)(disclaiming any need to "search for the elements of 'generic' definitions of "serious drug offense"); see, e.g., **United States v. Shular**, 736 Fed. Appx.

876 (11th Cir. 2018)(unpublished)(certiorari granted, certiorari briefing to complete on December 20, 2019); cf. **United States v. Aviles**, 2019 U.S. App. LEXIS 27517 (September 12, 2019)(describing the Third Circuit's use of the traditional categorical approach). In sum, the Eleventh Circuit departed from the ordinary categorical approach, which pretermitted Mr. Golden's career-offender sentencing challenges and his appeals. (App. A at 5).

The Eleventh Circuit's categorical approach, one that does not require a court to identify the generic elements of a category of crimes, stands in stark contrast to this Court's decisions and that of other federal circuit courts. Cf., e.g., **Mathis v. United States**, 136 S.Ct. 2243 (2016); **Shepard v. United States**, 544 U.S. 13 (2005); **Taylor v. United States**, 495 U.S. 575 (1990). This court should grant the writ, vacate the Eleventh Circuit's ruling, and remand the cause with directions to the Eleventh Circuit to apply the traditional categorical approach when determining whether Fla. Stat. § 893.13 constitutes a generic version of a "serious drug felony".

3. Unaddressed in the courts below, under the recently enacted First Step Act, Mr. Golden's prior convictions no longer qualify as ACCA predicates. Mr. Golden's conviction is not yet final, see Clay v. United States, 537 U.S. 522 (2003), the First Step Act changes apply, thus his ACCA indictment and conviction are invalid. This Court should grant the writ and remand the cause to correct the miscarriage of justice.

The First Step Act installed a 15-year limitation period for qualifying drug convictions as a "serious drug felony" that constitutes an ACCA predicate. "The term serious drug felony means an offense described in section 924(e)(2) of title 18, United States Code, for which:

- (A) the offender served a term of imprisonment of more than 12 months; and
- (B) The offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense."

First Step Act § 401(a)(1).

Mr. Golden's ACCA conviction rests on three drug convictions, all of which ended (including the prison terms) more than 15 years before this crime commenced. (App. B at 1)(PSR items 36, 40, 45). Although Congress chose to make these §401 sentencing¹ changes proactive only, this Court has found that so-called pipeline cases, that is, cases pending on direct appeal, thus not yet final, may receive the benefit of the change. See, e.g., **Wheeler**, S.Ct. No. 7187 (June 3, 2019)(vacating and remanding); **Richardson**, 139 S.Ct. at ____ (June 3, 2019)(remanding to the Court of Appeals to determine if the Constitution requires the non-retroactive § 403 be applied to all non-final convictions).

This Court should remand the cause and direct the Court of Appeals to apply the principles in its retroactivity jurisprudence² and its plain error-review holdings³ direction that results in the conclusion that Mr. Golden did not violate the Armed Career Criminal Act. Simply, Mr. Golden did not have three qualifying predicates (and possibly none).

It is worth noting that the law has not settled on whether Mr. Golden's so-called crimes of violence are categorically violent. Pending before the Eleventh Circuit is **Welch v. United States**, No. 14-15733 (11th Cir. Sep. 13, 2019)(oral arguments on November 22, 2019), which will determine the nature of a Florida robbery under the statute in force at the time of Mr. Golden's convictions. Plus, a similar challenge to the categorical nature of the assault conviction appears to be pending in this Court. Hence, it is conceivable he will have no career-offender predicates, let alone enough to violate the ACCA.

Summary

The Eleventh Circuit did not address the First Step Act disqualification of the ACCA predicates. Because that oversight might have resulted in a miscarriage

¹ We believe these are changes in the elements of the ACCA crime, thus more than mere sentencing changes. But that issue does not have to be reached to justify remand; and should be addressed first in the court below.

² **Teague v. Lane**, 489 U.S. 288 (1989); **Griffith v. Kentucky**, 479 U.S. 314 (1987)

³ , 133 S.Ct. at 1121.

of justice—a sentence 5 years more than the law allows and 16 years more than Guidelines advise—this Court should vacate the Eleventh Circuit opinion and remand to the court of appeals to determine if the First Step Act renders the non-final ACCA judgment invalid, see generally **United States v. Davis**, 139 S.Ct. 2319 (2019), and if the developing law extinguishes the assault or robbery charges as crimes of violence.

CONCLUSION

In June 2019, this Court clarified the construction of § 922(g)'s scienter elements; thereby, illuminating fundamental error in the voluntariness of Mr. Golden's guilty plea. The lower courts did not have the benefit of this Court's holding when deciding Mr. Golden's guilty plea or affirming his conviction; this Court should remand the matter for the lower courts to determine in the first instance whether Mr. Golden's § 922(g) conviction is valid.

Additionally, this court should remand the cause with directions to consider the First Step Act's application to judgments which are on direct appeal, thus not yet final.

Finally, this Court's ruling in **Shular** will likely prove determinative of Mr. Golden's second question, thus he requests that, if remand is not otherwise granted, this Court defer or stay this in deciding this petition until the decision in **Shular** is rendered.

Prepared with the assistance of Frank L. Amodeo and respectfully submitted by Carl Golden on this 17th day of November, 2019.

Carl Golden
Carl Golden

VERIFICATION

Under penalty of perjury as authorized in 28 U.S.C. § 1746, I declare that the factual allegations and factual statements contained in this document are true and correct to the best of my knowledge.

Carl Golden