

IN THE
UNITED STATES SUPREME COURT

No. 19-7314

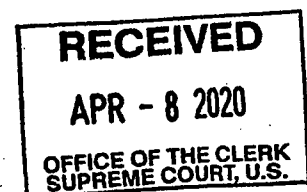
JOHNNY L. DAWSON,
Petitioner,

V.

UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S REPLY TO THE UNITED STATES
BRIEF IN OPPOSITION (BIO)

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THE SOLICITOR GENERAL'S RESPONSE FAILED TO
ADDRESS PETITIONER'S UNDERLYING CONSTITUTIONAL
QUESTION WHICH IS RECURRING AND UNRESOLVED RESULTING
IN PROTRACTED LITIGATION TO "NO-END" WITH RESPECT TO
THE ARMED CAREER CRIMINAL (ACCA) CASES

Petitioner informed the court in his initial ...
brief that the Supreme Court Justices during the
oral arguments in Johnson unanimously agreed that the
Armed Career Criminal cases were congesting the Court
docket to "NO-END." "Yet another ACCA cases enters -
this arena." See Initial Brief. The Solicitor General
leads this Honorable Court down the path of never-ending
protracted litigation with respect to the underlying
constitutional question presented in Petitioner's ..
initial brief. Specifically, irrespective of the U.S.
Supreme Court's decision in Shular v. United States,
2020 WL 908904 (U.S. Feb. 26, 2020), Petitioner then
asserted that § 924(e)(2)(A)(ii), should be interpre-
ted to require mens rea that the defendant know the
illicit nature of the substance, citing this Court's
precedent Staples v. United States, 511 U.S. 600, 618
-19 (1994); McFadden v. United States, 135 S. Ct. 2298
2302, 2305 (2015); Elonis v. United States, 135 S. Ct.

2001, 2009 (2015). This question was presented in the initial questions. See (Q12). For the record, ... without any emperical data, just considering the cases in the pipeline here at Coleman FCI, the Court's ... failure to resolve this question will not only result in Supreme Court congestion, rather it will certainly create a significant wave of new litigation throughout the district and appellate courts in the United States.

The Court should grant certiorari to resolve this underlying consitutional question.

ARGUMENT

The Solicitor General argues "The prior legislation thus had no effect on his prior state criminal proceedings or on the proper constuction of Section § 893.13 in those proceedings." GR at pg411. Petitioner argues that when the Florida Supreme Court interprets a statute ..., "it tells us what the statute always meant." Robinson, 692 So. 2d at 886. The fact that the Florida State .. Legislature clarified Section § 893.13 is distinction without a difference. see Rivers v. Roadway Express, Inc., 511 U.S. 298, 312-13, 114 S. Ct. 1510, 128 L. Ed. 2d 274 (1994)("A judicial construction of a statute is

an authoritative statement of what the statute - meant before as well as after the decision of the .. case giving rise to that construction."); id. at 313 n.12 ("[W]hen this Court construes a statute, it is explaining its understanding of what the statute has meant continuously since the date it became law."). This is patently true here because Robinson said its holding was "[i]n accord with [its] decision in McCloud" in 1976. See Robinson, 692 So. 2d at 886.

In Shelton I, the petitioner sought federal habeas corpus relief, challenging the constitutionality of - Florida Statute § 893.13, which had been amended to eliminate the mens rea requirement for drug offenses. 802 Fed. Supp. at 1293. The district court found .. § 893.13 as amended was facially unconstitutional because it violated Due Process Clause, and granted the petitioner habeas relief. Id. at 1308. Thereafter, the Florida Supreme Court upheld § 893.13 as constitutional under the due process requirements as articulated by that court and the U.S. Supreme Court. State v. Adkins, 96 So. 3d 412, 423 (Fla. 2012). In conjunction, the Eleventh Circuit issued an opinion reversing the district court's grant of habeas relief in Shelton I,

holding the state court did not unreasonably apply clearly established federal law, as determined by the U.S. Supreme Court. Shelton v. Sec., Dep't of Corr., 691 F.3d 1348, 1353-56 (11th Cir. 2012) (Shelton II). In doing so, the Eleventh Circuit expressed "no view on the underlying constitutional question," but held that Adkins was not an unreasonable application of - federal law. Id at. 1355. (emphasis added in bold).

In Shular v. United States, 589 U.S. ____ (2020), the Court opined:

Shular argues in the alternative that even if § 924(e)(2)(A) does not call for a generic-offense-matching analysis, it requires knowledge of the substance's illicit nature. See Brief - for Petitioner 23; Reply Brief 8—10. We do not address that argument. Not only does it fall outside the question presented, Pet. for Cert. i, Shular disclaimed it at the certiorari stage, Supp. Brief for Petitioner 3.

See Shular 589 U.S. n.3 (2020).

Contrary to the Solicitor General's response, Counsel was ineffective for failing to object and argue that the "strict liability" offense § 893.13

which carry severe penalties has never been upheld under federal law. Shelton I,:

"Intent" or *mens rea* is not explicitly required by Florida Statute § 893.13, but it is necessarily implied. The court reasoned that some strict liability offenses are permissible, but withstand constitutional scrutiny only if: 1) the penalty imposed is slight; 2) a conviction does not result in substantial stigma; and 3) the statute regulates inherently dangerous or deleterious conduct.² The court found that no strict-liability statute with penalties as severe as § 893.13 has ever been upheld under federal law, that the stigma and loss of civil rights that attaches to a conviction for drug dealing is tremendous, and that the statute is overly broad and regulates conduct that could have been intended to be harmless. For example, a case could be brought against a defendant who had not known that another person had stashed narcotics in his bag or vehicle, or who had picked up the wrong briefcase in a busy transportation terminal. In each instance, the defendant would have to prove lack of *mens rea* and would be presumed guilty of the purposeful criminal act.

Petitioner moves the United States Supreme Court to resolve this issue, or face protracted litigation that will "infect" federal courts to "NO-END,"

Not surprisingly, Florida stands alone in its .. express elimination of *mens rea* as an element of a - drug offense, the writ of certiorari should issue for the reasons stated above.

March 27, 2020



Johnny Dawson

² (citing Staples v. United States, 511 U.S. 600, 618-19 (1994)).