

19-7562

\*\*\*\*\*

No. 19A476

\*\*\*\*\*

IN THE  
SUPREME COURT OF THE UNITED STATES

\*\*\*\*\*

Dalton LaQuane Smith

Petitioner,

ORIGINAL

v.

United States of America,

FILED  
DEC 10 2019  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Respondent.

\*\*\*\*\*

PETITION FOR A WRIT OF CERTIORARI

\*\*\*\*\*

On Petition for Writ of Certiorari to  
The United States Court of Appeals  
for the Fourth Circuit

\*\*\*\*\*

Dalton LaQuane Smith  
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QUESTIONS PRESENTED

1.

Does the Fourth Circuit's non-traditional definition of the categorical approach permit an overbroad definition of "serious drug offenses" for career offender purposes? See **Shular v. United States**, 2019 S.Ct. No. 18-6662 (January 2019)

2.

Does South Carolina's controlled-substance statute, So. Cal. Stat. Ann. § 44-53-445 contain an alternative means of committing the same crime, such that the statutory interpretation requires an indivisibility analysis? **Mathis v. United States**, 136 S.Ct. 2243 (2016).

3.

Did this Court's intervening decision in **Rehaif v. United States**, 139 S.Ct. 2191 (2019) support Mr. Smith's actual-innocence challenge to his conviction for violating 18 U.S.C. § 922(g)(1), 924(e)(1), the Armed Career Criminal Act?

**LIST OF PARTIES**

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

**RELATED CASES**

This case was originally heard in the United States District Court for the District of South Carolina, Case No.: 3:15-cv-04225-JFA (D.S.C. 2018).

The case was appealed to the United States Court of Appeals for the Fourth Circuit, Case Number 18-7409 (4th Cir. 2019).

**CORPORATE DISCLOSURE STATEMENT**

There are no publicly traded companies that have an interest in the outcome of this case.

**OPINIONS BELOW**

The opinion of the United States Court of Appeals appears at Appendix A, and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition, and is unpublished.

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## STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals decided Mr. Smith's case was May 20, 2019. A timely petition for rehearing was denied by the United States Court of Appeals on July 23, 2010, and a copy of the order denying rehearing appears at Appendix A.

On October 31, 2019, Chief Justice Roberts granted an extension of time to file a petition for a writ of certiorari up to and including December 20, 2019. The application Number was 19A476.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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 any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

18 U.S.C. § 924(c)(2): "For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46."

U.S.S.G. § 4B1.1(a): "A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense."

## STATEMENT OF THE CASE

In 2013, a South Carolina federal grand jury indicted Dalton Smith for several controlled substance and firearm crimes. (App. B at 1). Ultimately, in 2014, Mr. Smith pleaded guilty to two counts: Count 5 and Count 6. (*Id.* at 2).

In 2014, the district court designated Mr. Smith a career offender and an armed career criminal as a result of four prior convictions for violating South Carolina's substance control laws (*Id.* at 2). The district court imposed the low end of the career offender guideline range: 262 months. (*Id.* at 2).

Mr. Smith did not appeal, but he did file a timely motion to vacate under 28 U.S.C. § 2255. (*Id.* at 2-3). In broad strokes, Mr. Smith alleged that his convictions and sentences were invalid, since his prior convictions did not qualify as career predicates since he did not understand either the true nature of the current crimes, particularly that his prior convictions were elements of the crime, and not just sentencing factors. (*Id.* at 5). Mr. Smith further claimed, in substance, that he did not understand the consequences of the guilty plea. (*Id.* at 4-6).

In sum, the crux of Mr. Smith's motion was that his prior South Carolina convictions did not qualify as factual predicates, either for the Armed Career Criminal Act conviction, or for the career offender sentencing enhancements. (*Id.* at 5).

The district court failed to address the voluntary nature of Mr. Smith's guilty plea. (*Id.* at 5). The district court did, however, note that Mr. Smith asserts that "he is actually innocent of the armed career criminal allegations", and that his "prior convictions did not" categorically qualify as a serious drug offense. (*Id.* at 5-6). The district court considered the "reply amendment", rather than dismissing the § 2255 petition. (*Id.* at 7).

Which the district court, analyzing the prior convictions' recidivist qualifications, both as career-sentencing factors and Armed Career Criminal Act elements. (*Id.* at 8, 11). The district court disqualified two of the prior convictions, since the penalties for those crimes involved no imprisonment (*Id.* at 9). Then, the district court elected to apply the modified categorical approach to the remaining two convictions. (*Id.* at 9)("[t]his leaves only two prior drug convictions that merit modified categorical approach inquiry...").

The district court launched into a fact-intensive, post hoc analysis of a hypothetical South Carolina violator's intent: "if a person convicted under § 445 actually received [a felony sentence] as Mr. Smith did [even though he did not serve a prison term], then the person could not be guilty of purchasing only." (*Id.* at 12).

Essentially, the district court adopted a fact-based (not a generic-based) analysis of Mr. Smith's circumstances in order to qualify the South Carolina § 445 convictions as career-offender predicates. (*Id.* at 12-13). On this basis, the district court denied the § 2255 motion, but the district court recognized the debatability of its resolution and granted a comprehensive certificate of appealability. (*Id.* at 14).

The Fourth Circuit expressly validated this approach when it affirmed the district court's denial of the § 2255 motion. (App. A at 1). Similarly, the Fourth Circuit upheld the district court's cursory analysis of the prior convictions as ACCA predicates. (App. B at 13)(App. A at 1).

**Reason 1. The Fourth Circuit qualifies serious-drug-crime convictions as career-offender predicates, using a categorical approach that conflicts with that of the other federal circuits as well as this Court's methodology. Hence, the Fourth Circuit ignores the disalignment between the elements of the South Carolina and its federal analogs.**

Because of his prior South Carolina controlled-substance convictions, the district court designated Mr. Smith a career-offender. (App. B at C). The Sentencing Guidelines recommend considerably harsher penalties for career offenders than for non-career offenders. See **Beckles v. United States**, 137 S.Ct. 886 (2017). The district court imposed a career-offender sentence of 262 months.

From the beginning, Mr. Smith objected to the criminal court's for qualifying his South Carolina convictions as serious drug offenses. In the § 2255 proceedings, Mr. Smith showed that under the broader definition, two are *per se* disqualifed. (*Id.* at 5-6). Mr. Smith went further, showing that the South Carolina Stat. Ann. § 44-53-335 convictions do not require the same level of scienter that the federal drug offenses required, and that the South Carolina statute lists alternative means for committing the crime. (*Id.* at 8-9). Nonetheless, the district court disregarded and qualified two of Mr. Smith's South Carolina § 44-53-445 conviction as career-offender predicates. (*Id.* at 11). Still, Mr. Smith argued that neither South Carolina conviction categorically met the federal definition of serious drug offense; the South Carolina criminal elements did not match any federally-controlled substance crime.

Plus, the latter conviction did not qualify under an circumstance, since the prison term resulted from a non-counseled probation revocation. (*Id.* at 9).

The district court and the Fourth Circuit, however, 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. 2011)(disclaiming any need to "search for the elements

of 'generic' definitions of 'serious drug offense"'); see, e.g., **Shular v. United States**, 736 Fed. Appx. 876 (11th Cir. 2018)(unpublished)(certiorari granted, briefing to complete in December 2019). The Fourth Circuit's departure from the ordinary construction of the categorical approach predetermined Mr. Scott's appeals. (*Id.* at 10, 12-13).

The Fourth 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 decision and that of other federal circuits. 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 Fourth Circuit's ruling, and remand the case with directions to the Fourth Circuit to grant a certificate of appealability on whether the district court erred by not applying the traditional categorical approach and determining whether S.C. Stat. Ann. § 44-53-445 constitutes a generic controlled-substance offense.

**Reason 2. Supervening and intervening changes in the substantive law occurred during the pendency of the § 2255 proceedings: Davis v. United States, 139 S.Ct. 2319 (2019); Rehaif v. United States, 139 S.Ct. 2191 (2019). The appeals court did not consider the retroactively applicable decisions. This Court should grant the writ, vacate the Fourth Circuit's opinion, and remand the cause to permit the Fourth Circuit to consider the case in the light of the current law.**

The Constitution prohibits the government from declaring an individual as a criminal and depriving that person of liberty or life, unless the government provides the individual with fair notice of the charges through an indictment, and then either proves every factual element of the crime beyond a reasonable doubt to a unanimous jury, or the accused intelligently, knowingly, and voluntarily admits the elemental facts in a guilty plea. See **United States v. Gaudin**, 515 U.S. 502, 522-26 (1995).

The Supreme Court's statutory-interpretation of 18 U.S.C. § 922(g)(1), et seq., announced a new substantive rule of law. The Court overturned prior precedent: holding that every non-jurisdictional element of 922(g) required an elevated degree of scienter equal to the common law's definition of knowing. **Rehaif v. United States**, 139 S.Ct. 2191 (2019).

Here, in the indictment, the government did not properly identify the factual elements of either 18 U.S.C. §§ 922(g)(1), 924(a)(2); or 18 U.S.C. §§ 922(g)(1), 924(e)(1)(Armed Career Criminal Act). Consequently, Mr. Smith did not receive fair notice of the charges against him, which in turn renders the guilty plea invalid. (*Id.*) In turn, the guilty plea based-conviction violates the Constitution and is invalid. See, e.g., **Lee v. United States**, 137 S.Ct. 1958 (2017); **Brady v. United States**, 397 U.S. 742 (1970).

Magnifying the notice error, neither the plea agreement nor Rule 11 hearing establishes that the factual elements necessary for guilt happened. Hence, Mr. Smith's conviction equates to a miscarriage of justice, that is, the conviction of an actually innocent person. Cf, e.g., **Harrington v. Ormond**, 900 F.3d 246 (6th Cir. 2018)(identifying failure to prove an element equals actual innocence); **Duhart v. United States**, 2016 U.S. Dist. LEXIS 122220 (S.D. Fla. 2018)(elimination of a predicate fact for a 924(c) charge equates to actual innocence).

Moreover, the Constitution requires this and every court to presume Mr. Smith innocent until such time as a properly instructed jury finds Mr. Smith guilty. Here, no jury found the essential elements necessary for guilt, thus this Court's duty is to ensure Mr. Smith is safely freed. This Court should grant the writ, vacate the Fourth Circuit order, and remand the cause with instructions to vacate the ACCA conviction and remand for de novo sentencing.

## CONCLUSION

Dalton Smith did not violate the Armed Career Criminal Act—he had neither the requisite intent nor the requisite qualifying predicate convictions. Similarly, Mr. Smith did not violate 18 U.S.C. § 924(c)—his companion offense did not qualify as a categorical predicate, and to the extent it does, then his guilty plea resulted in a misapprehension of the 924(c) law. Further, the district court's career-offender sentence relies upon an incorrect approach for qualifying the South Carolina § 445 convictions as "serious drug offenses". Ultimately, the upheavals in the law have distorted Mr. Smith's right to habeas corpus to such a degree that it evaporates.

In sum, Mr. Smith did not violate 18 U.S.C. § 922(g) or 924(c). He is not an Armed Career Criminal, and he is not a career offender.

This Court should remand to the Fourth Circuit for a de novo review in the light of this Court's decision in *Rehaif*; and in anticipation of this Court's ruling in *Shular and Mojica v. United States*, S.Ct. No. 19-35 (July 2, 2019)

Prepared with the assistance of Frank L. Amodeo and respectfully submitted by Dalton LaQuan Smith on this 10th day of December, 2019.



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**VERIFICATION**

Under penalty of perjury pursuant to 28 U.S.C. § 1746, I hereby swear that the factual allegations and factual statements contained in this motion are true and correct to the best of my knowledge.



Dalton LaQuane Smith

Appendix "A"

Fourth Circuit Opinion Denying Appeal  
of Order Denying § 2255 Motion