

IN THE
Supreme Court of the United States

JERMAINE ISAAC ROSS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

SUPPLEMENTAL BRIEF OF PETITIONER

Alec F. Hall
Federal Defender

M. Allison Guagliardo, Counsel of Record
Assistant Federal Defender
Federal Defender's Office
400 N. Tampa Street, Suite 2700
Tampa, FL 33602
Telephone: (813) 228-2715
Facsimile: (813) 228-2562
E-mail: allison_guagliardo@fd.org

SUPPLEMENTAL BRIEF OF PETITONER

Petitioner Jermaine Ross respectfully requests that this Court hold his petition for a writ of certiorari pending the Court’s decision in *Wooden v. United States*, No. 20-5279. Questions 1 and 2 of Mr. Ross’ petition seek review of the Eleventh Circuit’s decision that he has three convictions for offenses “committed on occasions different from one another” as required by the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1). *See* Pet. i, 3-4, 9-16. This Court granted certiorari in *Wooden* after Mr. Ross filed his petition for a writ of certiorari. *See* Supreme Court Rule 15.8; *Wooden v. United States*, 141 S. Ct. 1370 (Feb. 22, 2021).

Wooden is the first case in which this Court will interpret the ACCA’s different-occasions provision. The petitioner in *Wooden* has contended that the appellate courts’ use of a simultaneity test—where “simultaneously” committed offenses are counted as one for ACCA purposes, but “successively” committed offenses are counted as different offenses—is atextual and creates anomalies and absurdities. Br. for Pet. 29-44, *Wooden v. United States*, No. 20-5279 (May 3, 2021) (“*Wooden* Pet. Br.”). One such anomaly is that the timing of the offenses “is normally not an element of the offense” in the prior proceeding and thus may go uncontested, but this detail ends up having “momentous consequences for a later federal sentence” under the circuits’ simultaneity test. *Id.* at 37-38 (citing *Mathis v. United States*, 136 S. Ct. 2243, 2253 (2016); *Wharton’s Criminal Procedure* § 511 (12th ed. 1975)).

This Court’s interpretation in *Wooden* could determine whether Mr. Ross is eligible for the 15-year mandatory-minimum penalty under the ACCA. Mr. Ross’ ACCA sentence is based on drug offenses resolved in two court proceedings in the State of Florida. Pet. 5-7. Mr. Ross argued before the district court and the Eleventh Circuit that the dates alleged in the charging documents are not elements under Florida law and, as a result, his convictions in the state proceedings may not have actually rested on the alleged dates. *Id.* The Eleventh Circuit rejected

that argument, maintaining that the court’s different-occasions determination may be based on such non-elemental facts taken from the documents approved in *Shepard v. United States*, 544 U.S. 13 (2005), and that the temporal distinction in the dates established that the offenses were committed on occasions different from one another. *Id.*; Pet. App. 4a-5a (citing *inter alia* *United States v. Longoria*, 874 F.3d 1278 (11th Cir. 2017)).

Mr. Ross has focused on the Sixth Amendment question presented by the Eleventh Circuit’s non-elemental decision (Pet. 9-16), but this Court’s statutory interpretation in *Wooden* could also resolve Mr. Ross’ question and whether he is eligible for an ACCA sentence. *See, e.g.*, *Iancu v. Brunetti*, 139 S. Ct. 2294, 2301 (2019) (“This Court, of course, may interpret ‘ambiguous statutory language’ to ‘avoid serious constitutional doubts.’”) (citation omitted). Indeed, the petitioner in *Wooden* has challenged the simultaneity test used by the appellate courts, including the Eleventh Circuit, and has presented the non-elemental argument in support of his statutory interpretation. *Wooden* Pet. Br. 35, 38, 44. Mr. Ross has maintained that he is ineligible for the ACCA sentence because he has, at most, two prior convictions for ACCA purposes. Pet. 10, 16. Mr. Ross therefore respectfully requests that his petition be held pending this Court’s decision in *Wooden*.

Respectfully submitted,

Alec F. Hall
Federal Defender

/s/ M. Allison Guagliardo
M. Allison Guagliardo, Counsel of Record
Assistant Federal Defender
Federal Defender’s Office
400 N. Tampa Street, Suite 2700
Tampa, FL 33602
Telephone: (813) 228-2715
Facsimile: (813) 228-2562
E-mail: allison_guagliardo@fd.org