

IN THE
Supreme Court of the United States

SEAN JUSTIN OWENS,
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

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SUPPLEMENTAL BRIEF OF PETITIONER

Petitioner Sean Owens 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. Question 3 of Mr. Owens' petition seeks 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, 12-18. This Court granted certiorari in *Wooden* after Mr. Owens 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 resolve whether Mr. Owens is eligible for the 15-year mandatory-minimum penalty under the ACCA. Mr. Owens' ACCA sentence is based on offenses charged in one charging document in one criminal prosecution in the State of Florida; the charging document alleged that Mr. Owens committed three drug offenses on March 13, 17, and 20, 2009. Pet. 4-5, 18. According to his federal presentence investigation report (PSR), the same undercover detectives with the Jacksonville Sheriff's Office purchased crack cocaine from Mr.

Owens three times within this eight-day period, and Mr. Owens received a concurrent sentence for these offenses. Doc. 39 (PSR) at ¶ 35.

Mr. Owens argued before the Eleventh Circuit that the dates alleged in the charging document are not elements under Florida law and, as a result, his convictions in the state proceeding may not have actually rested on the alleged dates. *See* Pet. 6. 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. 5a (citing *United States v. Longoria*, 874 F.3d 1278 (11th Cir. 2017)).

Mr. Owens has focused on the Sixth Amendment question presented by the Eleventh Circuit's non-elemental decision (Pet. 12-18), but this Court's statutory interpretation in *Wooden* could also resolve Mr. Owens' 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. Owens has maintained that he is ineligible for the ACCA sentence because he has, at most, one prior conviction for ACCA

purposes. Pet. 13, 18. Mr. Owens therefore respectfully requests that his petition be held pending this Court's decision in *Wooden*.

Respectfully submitted,

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