

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2020

MARTIN RACIOPPI,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for A Writ of Certiorari
To the United States Court of Appeals
For the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Third Circuit's approach, in *United States v. McCants*, 952 F.3d 416 (3d Cir. 2020), to determining that New Jersey's second-degree robbery statute is divisible, is contrary to *Mathis v. United States* when it ignores state law sources and relies on the layout of the statute and the fact that different subsections require different proof?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the court whose judgment is sought to be reviewed are as follows:

1. United States of America
2. Martin Racioppi

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Petitioner Martin Racioppi respectfully requests that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered on April 1, 2020 in the captioned matter.

OPINION BELOW

The decision of the United States Court of Appeals for the Third Circuit was memorialized in an unpublished opinion: *United States v. Racioppi*, Docket No. 19-2591 (3d Cir. 2019). The opinion is attached at Appendix 1-7 (“App.”)

JURISDICTION

The District Court had jurisdiction under 18 U.S.C. § 3231 and entered

judgment on June 28, 2019. The Third Circuit had jurisdiction under 18 U.S.C. § 3742 and 28 U.S.C. § 1291, and entered judgment on April 1, 2020. App. 1-7. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PARTIES TO THE PROCEEDINGS

The caption of the case in this Court contains the names of all parties to this proceeding, namely, Petitioner, Martin Racioppi, and respondent, the United States.

RELEVANT STATUTORY PROVISIONS

The New Jersey robbery statute provides:

a. Robbery defined. A person is guilty of robbery if, in the course of committing a theft, he:

- (1) Inflicts bodily injury or uses force upon another; or
- (2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
- (3) Commits or threatens immediately to commit any crime of the first or second degree.

....

b. Grading. Robbery is a crime of the second degree, except that it is a crime of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury, or is armed with, or uses or threatens the immediate use of a deadly weapon.

N.J.S.A. 2C:15-1.

STATEMENT OF THE CASE

Petitioner Martin Racioppi was charged with and plead guilty to a single count of bank robbery, in violation of 18 U.S.C. § 2113(a). His offense conduct produced a total Guidelines offense level of 19. With a criminal history category III, Racioppi would have faced a Guidelines range of 37 to 46 months for his offense. He

was, however, categorized as a Career Offender due to two prior convictions: (1) a New Jersey state robbery conviction under N.J.S.A. 2C:15-1(a)(2), and (2) a federal robbery conviction, under 18 U.S.C. § 2113(a). This raised his offense level to 29, his criminal history category to VI, and his Guidelines range to 151 to 188 months.

In his original sentencing submissions, Racioppi argued that he was improperly categorized as a Career Offender because his prior New Jersey robbery conviction did not constitute a crime of violence. Because this exact issue was pending before the Third Circuit in *United States v. McCants*, Appeal No. 17-3103, the district court stayed Racioppi's sentencing pending a decision in *McCants*. The *McCants* court ultimately determined that New Jersey's second degree robbery statute, N.J.S.A. 2C:15-1 was divisible and that a violation of N.J.S.A. 2C:15-1(a)(2) was categorically a crime of violence under both §4B1.2(a)'s elements and enumerated offenses clauses. *United States v. McCants*, 952 F.3d 416, 425-429 (3d Cir. 2020).

When his sentencing proceeding resumed, Racioppi conceded that his challenge to the Career Offender enhancement was foreclosed by *McCants*, but raised the issue to preserve it for further review. He also argued that a downward variance was appropriate to account for the harsh effects of the Career Offender enhancement, the significant mental health and substance abuse issues that motivated his commission of the instant offense, his family support, and his sincere remorse. The district court agreed that a downward variance was appropriate and sentenced Racioppi to 120 months imprisonment and three years supervised

release.

The district court imposed sentence on June 25, 2019, and entered its judgment on June 28, 2019. Racioppi's timely Notice of Appeal was filed on July 9, 2019. On April 1, 2020, the Third Circuit Court of Appeals held that its precedential opinion in *McCants* squarely foreclosed his argument on appeal. App. 4.

REASONS FOR GRANTING THE PETITION

Certiorari is warranted because the Third Circuit's approach, in *United States v. McCants*, 952 F.3d 416 (3d Cir. 2020), to determining that New Jersey's second-degree robbery statute is divisible is contrary to *Mathis v. United States*, 136 S.Ct. 2243 (2016).

This precise question is raised in Petitioner Ibrahim McCants' petition for a writ of certiorari, United States Supreme Court Docket No. 20-5338, filed August 7, 2020. App. 8-32. On August 20, 2020, Mr. McCants' petition was distributed for conference of September 29, 2020.

Mr. Racioppi's petition rests squarely on this Court's resolution of Mr. McCants' petition. If this Court grants Mr. McCants' petition, Mr. Racioppi's petition must also be granted because the Third Circuit's decision in Mr. Racioppi's case was governed by the prior precedential opinion in *United States v. McCants*, 952 F.3d 416, 425-429 (3d Cir. 2020). If this Court denies Mr. McCants' petition, Mr. Racioppi's petition must also be denied because *McCants* will remain controlling precedent in the Third Circuit. Mr. Racioppi respectfully requests that certiorari be granted in his for the exact reasons set forth in *Ibrahim McCants v. United States*, Docket No. 20-5338. App. 8-32. Because *McCants* controls the outcome of Mr.

Racioppi's case and Mr. McCants' petition for certiorari is presently pending before this Court, nothing further need be added.

CONCLUSION

For the foregoing reasons, Petitioner Martin Racioppi respectfully requests that the Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,

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Dated: August 28, 2020