No.

IN THE SUPREME COURT OF THE UNITED STATES

DEMETRIUS MORANCY,

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the special assessment required by 18 U.S.C. Section 3013 for "an offense against the United States" is required to be imposed for all offenses, or only for offenses "against the United States?"

PARTIES TO THE PROCEEDING

Parties to the proceeding include Demetrius Morancy (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), Maria Chapa Lopez, Esquire (United States Attorney), Todd B. Gandy (Assistant United States Attorney), Yvette Rhodes (Assistant United States Attorney), and Noel Francisco, Esquire (Solicitor General of the United States of America).

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The decision of the Eleventh Circuit Court of Appeals *infra*, was not selected for publication. The decision can be found at *United States v. Morancy,* No. 19-15137, (11th Cir. Aug. 17, 2020), and is attached as Appendix A.

JURISDICTION

The Judgment of the Eleventh Circuit Court of Appeals, which had jurisdiction under Title 28 U.S.C. § 1291, was entered on August 17, 2020. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

§ 3013. Special assessment on convicted persons

(a) The court shall assess on any person convicted of an offense against the United States—

(1) in the case of an infraction or a misdemeanor—

(A) if the defendant is an individual—

(i) the amount of $5 in the case of an infraction or a class C misdemeanor;

(ii) the amount of $10 in the case of a class B misdemeanor; and

(iii) the amount of $25 in the case of a class A misdemeanor; and

(B) if the defendant is a person other than an individual—

(i) the amount of $25 in the case of an infraction or a class C misdemeanor;

(ii) the amount of $50 in the case of a class B misdemeanor; and

(iii) the amount of $125 in the case of a class A misdemeanor;

(2) in the case of a felony—

(A) the amount of $100 if the defendant is an individual; and

(B) the amount of $400 if the defendant is a person other than an individual.

(b) Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.

(c) The obligation to pay an assessment ceases five years after the date of the judgment. This subsection shall apply to all assessments irrespective of the date of imposition.

(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.

Title 18 U.S.C. § 3013.

STATEMENT OF FACTS

On September 25, 2018, a federal grand jury in the Middle District of Florida, Tampa Division, returned a Superseding Indictment naming Mr. Morancy and others as the defendants. Mr. Morancy ultimately pled guilty to nine separate drug offenses, none of which were charged as having been committed against the United States. Nonetheless, during sentencing a $100 special assessment was assessed for each count of conviction for a total of $900.

Mr. Morancy appealed the imposition of the special assessments to the 11th

Circuit Court of Appeal, which concluded that the district court had not plainly erred by imposing the special assessments because 18 U.S.C. § 3013 by its terms did not preclude its application to Mr. Morancy's offenses.

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT THE SPECIAL ASSESMENT PROVIDED FOR BY TITLE 18 U.S.C. SECTION 3013 PLAINLY APPLIES ONLY TO OFFENSES AGAINST THE UNITED STATES.

At issue in this Petition is whether under a plain and ordinary reading of Title 18 U.S.C. § 3013, a special assessment may only be imposed for an offense committed against the United States. This Court should grant review because this issue impacts literally every federal conviction in the United States each year, because the misapplication of the statute leads to millions of dollars in erroneous assessments each year, and to correct a misstatement made by this Court in dicta which has resulted in the erroneous application of the statute.

"[S]ection 3013 literally mandates that its assessments shall be imposed 'on any person convicted of an offense against the United States.'" *United States v. King*, 824 F.2d 313, 316 (4th Cir. 1987) (emphasis added). "Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Engine Mfrs. Assn. v. South Coast Air Quality Management Dist.*, 541 U.S. 246, 252, 124 S.Ct. 1756, 158 L.Ed.2d 529 (2004) (internal quotation marks omitted).

The first definition of the word "against" provided by the Merriam-Webster Dictionary is "in opposition or hostility to." *See*, https://www.merriam-webster.com/dictionary/against. Read naturally, it is clear this is likewise the definition intended by congress, *i.e.*, section 3013 mandates that its assessments

shall be imposed on any person convicted of an offense in opposition or hostility to the United States. Further belying this point is that a contrary reading would impermissibly render multiple portions of the statute superfluous. *See, TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S. Ct. 441, 449, 151 L. Ed. 2d 339 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.")(quotations and citations omitted). First, "against the United States" as used in subsection (a) which reads "The court shall assess on any person convicted of an offense ***against the United States***" would be superfluous, as the subsection could have simply read "The court shall assess on any person convicted of an offense." Furthermore, subsection (d), which reads "(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States" could be eliminated entirely, as if the statute truly covered all offenses it would make little sense to single out offenses falling within the gambit of the statute. Simply put, to give effect to every word and subsection of § 3013 this Court must read the statute as applying only to the offenses to which it plainly states it does; offenses against the United States. *See, Alabama*, 778 F.3d at 938.

Despite the clear terms of Section 3013, this Court in *Rutledge v. United States*, 517 U.S. 292, 116 S. Ct. 1241, 134 L. Ed. 2d 419 (1996) mistakenly stated in dicta that the statute applies to all convictions. More specifically, in *Rutledge*, this Court determined that the defendant's convictions and sentences for two separate

offenses constituted a double jeopardy violation in part because two separate special assessments had been imposed upon him for the same conduct, and stated "We begin by noting that 18 U.S.C. § 3013 requires a federal district court to impose a $50 special assessment for every conviction, and that such an assessment was imposed on both convictions in this case." *Rutledge*, 517 U.S. at 301, 116 S. Ct. at 1247. However, this Court's statement that a special assessment for every conviction is dicta because it was not necessary to the Court's ultimate holding. *See, e.g., Cent. Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 363, 126 S. Ct. 990, 996, 163 L. Ed. 2d 945 (2006) ("we are not bound to follow our dicta in a prior case in which the point now at issue was not fully debated.")(citations omitted), and, for the reasons explained above, is at odds with a plain and ordinary reading of the statute. Nonetheless, the lower courts have consistently relied upon it to uphold the imposition of a special assessment for all offenses, regardless of whether they were committed against the United States, and this Court's intervention is therefore necessary to insure the correct and consistent application of Section 3013. *See, United States v. Puello-Pantoja*, 772 F. App'x 878, 879 (11th Cir. 2019) (Special Assessment under Section 3013 is mandatory in all cases under *Rutledge*); *Cazy v. United States*, 717 F. App'x 954, 955 (11th Cir. 2017) (accord).

Furthermore, Mr. Morancy's case is the ideal vehicle for establishing that under a plain an ordinary reading of Section 3013 it applies only to offenses committed against the United States, as he was not convicted of a crime "against the United States" as that phrase is commonly understood. Instead, Mr. Morancy

was convicted of drug offenses in the United States, which is conduct not covered by section 3013. Accordingly, Mr. Morancy's case provides the perfect factual scenario for establishing that not all offenses are covered by the statute; only those committed against the United States are.

Consequently, this Court should grant review, and established that under a plain and ordinary reading of Title 18 U.S.C. Section 3013, it applies only to offenses "against the United States," quash the decision below, and grant Mr. Morancy relief accordingly.

CONCLUSION

For the reasons stated above, this Court should grant Mr. Morancy's Petition for Writ of Certiorari and establish that 18 U.S.C. § 3013 plainly applies only to offenses committed against the United States.

Respectfully Submitted,

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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-15137
Non-Argument Calendar

D.C. Docket No. 8:18-cr-00327-SCB-AEP-8

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DEMETRIUS CHERILUS MORANCY, a.k.a. Pearl,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(August 17, 2020)

Before BRANCH, LUCK, and FAY, Circuit Judges.

PER CURIAM:

Demetrius Morancy pleaded guilty to one count of conspiring to possess with the intent to distribute heroin and fentanyl and eight counts of possessing with the intent to distribute heroin and fentanyl. Morancy was sentenced to 120 months' imprisonment followed by five years of supervised release; the district court also imposed $900 in special assessments—$100 for each count of conviction. Morancy argues for the first time on appeal that the district court plainly erred in imposing the special assessments under 18 U.S.C. section 3013 because the drug offenses for which he was convicted were not committed "against the United States" within the meaning of the statute. We affirm.

On October 25, 2018, a grand jury charged Morancy with: one count of conspiring to distribute, possess with intent to distribute, manufacture, and possess with intent to manufacture various controlled substances the use of which resulted in the death of a person, in violation of 21 U.S.C. section 846; and eight counts of distributing and possessing with the intent to distribute various controlled substances, in violation of 21 U.S.C. section 841(a)(1). At his plea hearing, Morancy pleaded guilty without a plea agreement to all nine counts as charged. Morancy acknowledged the penalties he faced, including the imposition of a $100 special assessment for each count.

Morancy's presentence investigation report recommended a total guideline range of 120 to 135 months' imprisonment. It also noted that a special assessment of $100 was required for each of the nine counts pursuant to 18 U.S.C. section 3013. Morancy did not object to the presentence investigation report.

The district court held a sentence hearing on July 16, 2019. Morancy and the government both requested a 120-month total sentence, which the district court imposed. The district court also imposed a $100 special assessment for each of the nine counts. The court gave the parties a final opportunity to object to the sentence, but neither party did.

We ordinarily review de novo a defendant's challenge to his sentence on legal grounds. United States v. Proctor, 127 F.3d 1311, 1312 (11th Cir. 1997). However, where a defendant fails to object at sentencing, we review for plain error. See United States v. Vandergrift, 754 F.3d 1303, 1307 (11th Cir. 2014). To prevail under plain-error review, a defendant must show: (1) an error; (2) that the error was plain; and (3) that the error affected his substantial rights. Id. If all three conditions are met, we may reverse only if the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. See id.

Morancy argues that the district court plainly erred in imposing the special assessments under section 3013 because none of his drug offenses were committed "against the United States" as required by the plain text of the statute. We affirm

because, even if the district court erred in imposing the special assessments, its error was not plain. "An error is not plain unless it is contrary to explicit statutory provisions or to on-point precedent in this Court or the Supreme Court." United States v. Schultz, 565 F.3d 1353, 1357 (11th Cir. 2009).

By its terms, section 3013 applies to offenses "against the United States," but it doesn't define what those offenses are. As such, the text of section 3013 does not explicitly preclude its application to Morancy's drug offenses. Cf. United States v. Fontenont, 611 F.3d 734, 737 (11th Cir. 2010) (finding no plain error where the statutory text did "not compel [the defendant's] desired interpretation" and it was "at least plausible" to read the statute otherwise). Nor does any decision of this court or the Supreme Court provide that section 3013 does not apply to Morancy's drug offenses. In fact, Morancy recognizes that the Supreme Court said section 3013 "requires a federal district court to impose a . . . special assessment for every conviction." Rutledge v. United States, 517 U.S. 292, 301 (1996). Morancy argues that part of Rutledge was dicta, but "there is dicta and then there is dicta, and then there is Supreme Court dicta." Schwab v. Crosby, 451 F.3d 1308, 1325 (11th Cir. 2006). "[D]icta from the Supreme Court is not something to be lightly cast aside." Id. (citation omitted). We don't, and therefore, we do not find the district court's reading of section 3013 plainly erroneous.

AFFIRMED.