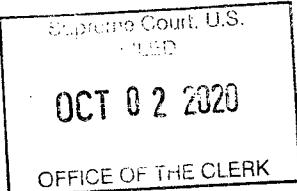


20-6027

No. new case

ORIGINAL
MOTION FOR REHEARING

IN THE
SUPREME COURT OF THE UNITED STATES



MICHAEL MOORE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

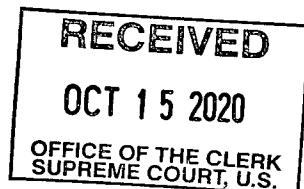
PETITION FOR WRIT OF CERTIORARI

MICHAEL MOORE #69242-018
(Your Name)

FCI COLEMAN PO. BOX. 1032
(Address)

COLEMAN, FLORIDA 33521
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1. Petitioner questions whether even if §924(e)(2)(A)(ii) does not call for a generic-offense-matching analysis, does it require knowledge of the substance's illicit nature?
2. Whether GVR is warranted in Petitioner's case in light of *Rehaif v. United States*, 588 U.S. ____ (2019)?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT OP/ORDER

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APPENDIX F

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5/13/2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Petitioner received a 188 month sentence under the ACCA Armed Career Criminal Act after being convicted by a jury trial in the United States District Court, Middle District of Florida. Petitioner filed a direct appeal to the United States Court of Appeals in the Eleventh Circuit, which was denied on May 13, 2020. This writ is therefore timely within the 150 day deadline.

REASONS FOR GRANTING THE PETITION

Michael Moore appealed his below-guidelines 188-month sentence for being a felon in possession of a firearm. Moore asserts the district court erred in denying him an acceptance-of-responsibility reduction and that the district court erroneously believed it lacked the authority to give a reduction. Additionally, Moore contends his prior convictions under Fla. Stat. § 893.13 do not qualify as serious drug offenses under the Armed Career Criminal Act (ACCA). After review, we affirm Moore's sentence.

The Eleventh Circuit denied Petitioner's direct appeal questioning whether a conviction qualifies as a serious drug offense under the ACCA. *United States v. White*, 837 F.3d 1225, 1228 (11th Cir. 2016), stating:

Convictions under Fla. Stat. § 893.13 qualify as a "serious drug offense" under the ACCA. *United States v. Smith*, 775 F.3d 1262, 1268 (11th Cir. 2014). In *Smith*, we also analyzed and rejected the necessity of a mens rea element in the underlying crime to qualify as a serious drug offense under the ACCA. *Id.* Moore's arguments his prior convictions under § 893.13 were not serious drug offenses are foreclosed by *Smith*. While Moore claims that *Smith* was wrongly decided, this Court is bound to follow it until it is overruled by the Supreme Court or this Court en banc. See *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008). Accordingly, we are bound by our holding in *Smith* and affirm the district court's determination that Moore's prior convictions under Fla. Stat. § 893.13 were serious drug offenses under the ACCA.

ARGUMENT

The U.S. Supreme Court failed to resolve whether Fla. Stat. 893.13 can survive a due process violation under the Fifth Amendment, specifically:

Shular argues in the alternative that even if §924(e)(2)(A)(ii) does not call for a generic-offense-matching analysis, it requires knowledge of the substance's illicit nature. See Brief for Petitioner 23; Reply Brief 8–10. We do not address that argument. Not only does it fall outside the question presented, Pet. for Cert. i, Shular disclaimed it at the certiorari stage, Supp. Brief for Petitioner 3. See n.3. *Shular v. United States*, 589 U.S. ____ (2020).

In *Shelton*, a judge of the United States District Court for the Middle District of Florida found section 893.13 to be unconstitutional on substantive due process grounds. *Shelton*, 2011 WL 3236040 at *4-*5.

The opinion concluded that section 893.101 removed all mens rea as an element from section 893.13, thereby creating a strict liability offense.

Id. As a strict liability offense, the court declared section 893.13 unconstitutional because its penalties are too severe.

Not surprisingly, Florida stands alone in its express elimination of mens rea as an element of a drug offense. Other states have rejected such a draconian and unreasonable construction of the law that would criminalize the "unknowing" possession of a controlled substance. See e.g., *State v. Bell*, 649 N.W. 2d 243, 252 (N.D. 2002)..... *State v. Brown*, 389 So.2d 48, 51 (La. 1980) (concluding drug possession cannot be a strict liability crime because it would impermissibly criminalize unknowing possession of a controlled substance and permit a person to be convicted "without ever being aware of the nature of the substance he was given."). In stark contrast, under Florida's statute, a person is guilty of a drug offense if he delivers a controlled substance without regard to whether he does so ,,,

purposefully, knowingly, recklessly, or negligently. Thus in the absence of a mens rea requirement, delivery of cocaine is a strict liability crime under Florida Law. See FLA. STAT. 893.101, 893.13. Shelton, Exhibit 3 at page 4. The fundamental principle of criminal liability is that there must be a wrongful act- actus reus combined with a wrongful intention. In criminal law, mens rea is a technical term, generally taken to mean some blameworthy mental condition, the absence of which on any particular occasion negates the condition of crime. It is one of the essential ingredients of criminal liability. Actus non facit reum nisi mens sit rea, "the act itself does not make a man guilty unless his intentions were so" is a doctrine as old as criminal itself. But there are certain offences where a defendant can be convicted notwithstanding that he did not have any mens rea. These offences are generally referred to as offences of strict liability. J. Herring gives a very simple definition of strict liability offence as follows:

"A defendant is guilty of a strict liability offence if by a voluntary act he causes the prohibited result or state of affairs and in this case, there is no need to prove that the defendant had a particular state of mind."

A strict-liability doctrine is a rule of criminal responsibility that authorizes the conviction of a morally innocent person for violation of an offence, even though the crime, by definition, requires proof of a mens rea. An example is the rule that a person who is ignorant of, or who misunderstands the meaning of a criminal law may be punished for violating it, even if her ignorance or mistake of law was reasonable. Controversy
The classification of strict liability has not been without controversy. Some scholars oppose the concept for reasons commonly related to the unfairness of a defendant being held liable for something unrelated to the defendant's intentions (or lack thereof). Others support the classification, with some reasoning that the more lenient punishments which accompany strict liability offenses mitigate the potential unfairness related to the classification.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted

Verified by PDFFiller
08/04/2020

Michael Moore

Date: 08/04/2020