

No. _____

IN THE
Supreme Court of the United States

CHRISTOPHER STACY,
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 a defendant who pleaded guilty to possessing a firearm as a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a), is automatically entitled to plain error relief if the district court did not advise him that one element of that offense is knowledge of his status as a felon, regardless of whether he can show that the district court's error affected the outcome of the proceedings.¹

¹ This question is also presented in several other pending petitions, including *United States v. Gary*, Sup. Ct. No. 20-444 (pet. filed Oct. 5, 2020).

PARTIES TO THE PROCEEDINGS

The caption contains the names of all of the parties to the proceedings.

RELATED CASES

United States v. Stacy, No. 17-13229 (11th Cir. Aug. 5, 2020)

United States v. Stacy, No. 16-cr-20956 (S.D. Fla. July 14, 2017)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review a judgment of the U.S. Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit’s opinion is reported at 842 F. App’x 1008 and is reproduced as Appendix (“App.”) A. App. 1a–7a. The district court did not issue a written opinion.

JURISDICTION

The Eleventh Circuit issued its decision on August 5, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

LEGAL PROVISIONS INVOLVED

Section 922(g)(1) of Title 18 of the U.S. Code provides that “[i]t shall be unlawful for any person . . . who has been convicted” of a felony to possess a firearm. Section 924(a)(2) provides that “[w]hoever knowingly violates subsection . . . (g) . . . of section 922 shall be . . . imprisoned not more than 10 years.”

Rule 52(b) of the Federal Rules of Criminal Procedure provides: “A plain error that affects substantial rights may be considered even though it was not brought to the court’s attention.”

STATEMENT

A federal grand jury in the Southern District of Florida charged Petitioner with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), and an offense that was subsequently dismissed. The § 922(g) count alleged that Petitioner, “having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm and ammunition in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).” App. 17a. Notably, the indictment alleged only that Petitioner knowingly possessed a firearm and ammunition. But it did not allege that he knew of his status as a felon.

Consistent with the indictment, the district court advised Petitioner at the plea hearing that this count “charges you with being in possession of a firearm and ammunition after having previously been convicted of a felony.” App. 26a–27a. The government also proffered facts that it would have proved at trial, which showed that Petitioner knowingly possessed a firearm and ammunition, and that Petitioner “was a convicted felon” at that time. App. 31a–33a. But it did not proffer any facts showing that Petitioner knew he was a felon at the time of the possession.

At sentencing, Petitioner was subject to the Armed Career Criminal Act (“ACCA”), which transformed the 10-year statutory maximum into a 15-year mandatory minimum, which he ultimately received. App. 35a–36a. Petitioner challenged the ACCA enhancement at sentencing and on appeal, but binding circuit precedent foreclosed his arguments. App 8a–16a; 771 F. App’x 956 (11th Cir. 2019).

Less than two months after the court of appeals affirmed Petitioner’s conviction and sentence, this Court decided *Rehaif v. United States*, 139 S. Ct. 2191 (2019), which held that, to prove a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), the government “must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.” *Id.* at 2191. Petitioner sought certiorari, arguing, *inter alia*, that his guilty plea was constitutionally invalid in light of *Rehaif*. This Court granted his petition, vacated the Eleventh Circuit’s judgment, and remanded for further reconsideration in light of *Rehaif*. 140 S. Ct. 375 (2019) (No. 19-5383).

On remand, Petitioner reiterated his argument that his plea was constitutionally invalid in light of *Rehaif*. *See* Pet. C.A. Supp. Br. 15–20 (Dec. 13, 2019). For support, he relied on the Fourth Circuit’s intervening decision in *United States v. Gary*, 954 F.3d 194 (4th Cir. 2020), *reh’g en banc denied* 963 F.3d 420 (4th Cir. 2020), *pet. for cert. filed* (U.S. No. 20-444), which held that a defendant’s pre-*Rehaif* guilty plea was constitutionally invalid, and it vacated the conviction under plain error review. *See* Pet. C.A. Rule 28(j) Ltr. (Mar. 26, 2020).

The Eleventh Circuit affirmed. Reviewing Petitioner’s constitutional claim for plain error, the court acknowledged that, because “the plea colloquy did not establish that Stacy knew he had been convicted of” a felony, “the error was plain under *Rehaif*.” App. 4a–5a. But the court concluded that he could not show that his substantial rights were affected, because the record reflected that he knew he was a felon, and thus he still would have pled guilty but for the *Rehaif* error. App. 5a–7a.

REASONS FOR GRANTING THE PETITION

The circuits are divided on the question presented. Like Petitioner, the defendant in *Gary* argued, for the first time on appeal, that his guilty plea was constitutionally involuntary in light of *Rehaif*, because he was not informed about the essential elements and nature of the offense. The Fourth Circuit applied plain error, found all four prongs satisfied, and vacated the conviction.

The government conceded, and the court of appeals agreed, that there was error under *Rehaif*, and this error was “plain.” The Fourth Circuit explained that the district court erred by failing to advise the defendant at the plea hearing that the government was required to prove that he knew he was a felon. And *Rehaif* rendered that error plain. *Gary*, 954 F.3d at 201–02.

The Fourth Circuit next concluded that this error affected the defendant’s substantial rights. Although the government argued that there was overwhelming evidence that the defendant knew he was a felon, the Fourth Circuit concluded that the failure to advise him about the nature of the charge rendered his plea “constitutionally invalid.” And, under this Court’s precedents, a constitutionally invalid plea could not be saved even by overwhelming evidence that the defendant would have pled guilty anyway. *Id.* at 202–03. The Fourth Circuit also concluded this amounted to a “structural error” because it deprived the defendant of the right to make an informed decision, its effect was too difficult to assess, and it resulted in fundamental unfairness. *Id.* at 203–07.

Finally, the Fourth Circuit found that the fourth prong of plain error was satisfied. It reasoned that “the structural integrity of the judicial process is . . .

undermined when we permit convictions based on constitutionally invalid guilty pleas to stand,” “particularly where a defendant who did not receive notice of the true nature of an offense might unknowingly forgo the opportunity to raise an available defense.” *Id.* at 207–08.

In contrast to the Fourth Circuit, every other circuit to address the issue has held a defendant cannot satisfy plain error review where the record reflects that he knew he was a felon and, therefore, would have still pled guilty notwithstanding the *Rehaif* error. *Gary*, 963 F.3d 420, 420 n.* (4th Cir. 2020) (Wilkinson, concurring in the denial of rehearing en banc); see *United States v. Burghardt*, 939 F.3d 397, 403–05 (1st Cir. 2019); *United States v. Balde*, 943 F.3d 73, 97 (2d Cir. 2019); *United States v. Lavalais*, 960 F.3d 180, 187–88 (5th Cir. 2020), *cert. pending*, No. 20-5489 (filed Aug. 20, 2020); *United States v. Hobbs*, 953 F.3d 853, 857–58 (6th Cir. 2020), *cert. pending*, No. 20-171 (filed Aug. 13, 2020); *United States v. Williams*, 946 F.3d 968, 973–75 (7th Cir. 2020); *United States v. Coleman*, 961 F.3d 1024, 1029 n.3 (8th Cir. 2020); *United States v. Trujillo*, 960 F.3d 1196, 1205–07 (10th Cir. 2020); App. 5a–6a (citing *United States v. Bates*, 960 F.3d 1278, 1296 (11th Cir. 2020)).

This Court should grant review to resolve the circuit conflict. Petitioner is identically-situated to the defendant in *Gary* and thus would have obtained relief had he been convicted in the Fourth Circuit. Like Mr. Gary, he pled guilty before *Rehaif* without being advised that the government had to prove that he knew he was a felon. And, after *Rehaif*, Petitioner argued on direct appeal that his guilty plea was constitutionally invalid, citing the Fourth Circuit’s decision in *Gary*.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

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