No. 20-6336

IN THE SUPREME COURT OF THE UNITED STATES

ERIC TROY SNELL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in affirming petitioner's sentence on harmless-error grounds based on its determination that asserted errors in the calculation of petitioner's advisory sentencing guidelines range did not affect the sentence imposed, where the district court was aware of the effect of the asserted errors on petitioner's total offense level under the guidelines, expressly stated that it would have imposed the same sentence regardless of the correct guidelines range, and explained that the sentence was sufficient, but not greater than necessary, in light of the circumstances of the case and the 18 U.S.C. 3553(a) sentencing factors.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Md.):

United States v. Snell, No. 17-cr-602 (May 1, 2019)

United States Court of Appeals (4th Cir.):

United States v. Snell, No. 19-4351 (July 27, 2020)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-4) is not published in the Federal Reporter but is reprinted at 813 Fed. Appx. 151.

JURISDICTION

The judgment of the court of appeals was entered on July 27, 2020. The petition for a writ of certiorari was filed on November 10, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Maryland, petitioner was convicted of conspiring to distribute and possess with intent to distribute heroin and cocaine, in violation of 21 U.S.C. 841. Pet. App. 11. The district court sentenced him to 108 months of imprisonment, to be followed by three years of supervised release. Id. at 12-13. The court of appeals affirmed. Id. at 1-4.

1. Petitioner was a police officer with the Baltimore Police Department until 2008. Presentence Investigation Report (PSR) ¶ 6. He later became a police officer with the Philadelphia Police Department. Ibid. While he was a Philadelphia police officer, petitioner conspired to sell illegal narcotics, including heroin and cocaine, that had been seized by Baltimore police officers. PSR ¶¶ 8-9. One of his coconspirators was Jemell Rayam, a Baltimore police detective. PSR ¶ 4. As part of the conspiracy, Rayam provided petitioner with cocaine and heroin, which petitioner then arranged for his brother to sell. PSR ¶¶ 4, 12-16. Petitioner deposited some of the proceeds from the drug sales in Rayam's bank account. PSR ¶¶ 19, 23.

A federal grand jury in the District of Maryland indicted petitioner on one count of conspiring to distribute and possess with intent to distribute heroin and cocaine, in violation of 21 U.S.C. 841. Indictment 1-6. Agents of the Federal Bureau of Investigation (FBI) arrested and transported petitioner to

Baltimore for his initial appearance. PSR ¶ 29. On the way to Baltimore, petitioner told FBI agents that the payments he had made to Rayam were repayments on a gambling loan. Ibid. During a search of petitioner's residence that same day, FBI agents found two handguns and two assault rifles, neither of which was lawfully registered. PSR ¶ 30. Inside a box in petitioner's basement, FBI agents also found ammunition for the two handguns, items containing cocaine residue, and razor blades for cutting and processing narcotics for distribution. Ibid.

Petitioner's case proceeded to a jury trial. On the fourth day of trial, petitioner pleaded guilty. C.A. App. 319-339; see Gov't C.A. Br. 1.

2. Applying the 2018 version of the Sentencing Guidelines, the Probation Office's presentence report assigned petitioner a total offense level of 34 and a criminal history category of I, corresponding to an advisory guidelines range of 151 to 188 months of imprisonment. PSR ¶¶ 38, 85. In calculating petitioner's total offense level, the Probation Office started with a base offense level of 24 and then applied five enhancements: a two-level enhancement under Sentencing Guidelines § 2D1.1(b)(1) for possessing a dangerous weapon; a two-level enhancement under Sentencing Guidelines § 2D1.1(b)(2) for making a credible threat to use violence; a two-level enhancement under Sentencing Guidelines § 2D1.1(b)(12) for maintaining a premises for the purpose of distributing a controlled substance; a two-level

enhancement under Sentencing Guidelines § 3B1.3 for abusing a position of public trust in a manner that significantly facilitated the commission or concealment of the offense; and a two-level enhancement under Sentencing Guidelines § 3C1.1 for obstructing or impeding, or attempting to obstruct or impede, the administration of justice. PSR ¶¶ 39-42, 44-45.

Petitioner objected to application of the five enhancements, asserting that the evidence was insufficient to support each one. C.A. App. 425-438. In response, the government maintained that the Probation Office had correctly applied each enhancement and had correctly calculated petitioner's advisory guidelines range. Id. at 455. The government argued that a sentence of 150 months of imprisonment -- slightly below that guidelines range -- would be appropriate in light of the factors set forth in 18 U.S.C. 3553(a). C.A. App. 455.

3. At the sentencing hearing, the district court overruled petitioner's objections to the two-level enhancement for possessing a dangerous weapon and the two-level enhancement for obstructing or impeding, or attempting to obstruct or impede, the administration of justice. Sent. Tr. 12, 19-20. With respect to the two-level enhancement for possessing a dangerous weapon, the court explained that the enhancement should be applied "if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense." Id. at 11. The court noted that numerous weapons had been found in petitioner's home and that

ammunition for two of the weapons had been found in the same box as cocaine residue and razor blades. Ibid. The court also noted the existence of text messages indicating that petitioner had been providing ammunition and guns to his brother, who was involved in dealing drugs. Id. at 12. The court therefore determined that one or more of the weapons found in petitioner's home was "connected with the drug trafficking sufficiently to warrant the two-level upward adjustment." Ibid.

With respect to the two-level enhancement for obstructing or impeding, or attempting to obstruct or impede, the administration of justice, the district court found that petitioner had made false statements to the FBI about "the source of the money that was being deposited into [Rayam's] bank accounts" and that the government had spent "significant" time trying to "verify or disprove" those statements. Sent. Tr. 19. The court therefore determined that petitioner had "significantly imped[ed]," or at least had "attempt[ed] to" significantly impede, "the official investigation or prosecution of the offense," ibid., and that application of the "two-level upward enhancement" was appropriate, id. at 20.

The district court sustained petitioner's objections to the remaining three enhancements. Sent. Tr. 25, 30, 36. The court determined, among other things, that a two-level enhancement for abusing a position of trust was not appropriate because, in the court's view, the evidence did not show that petitioner's abuse of his position as a police officer had "significantly facilitate[d]

the commission or concealment of the offense." Id. at 30. The court then assigned petitioner a base offense level of 24 and applied the two two-level enhancements that it had found appropriate. Id. at 36. Based on a total offense level of 28 and a criminal history category of I, the court calculated an advisory guidelines range of 78 to 97 months of imprisonment. Ibid.

After hearing further argument from the government and petitioner -- who argued for a sentence at the "bottom of the guideline range" calculated by the district court, Sent. Tr. 51 -- the court imposed a sentence outside the guidelines range of 108 months of imprisonment, Pet. App. 9. The court emphasized that petitioner had pleaded guilty to "a very serious offense." Id. at 6; see id. at 8. The court also found that, although petitioner's conduct did not "fit[] the technical criteria" for a two-level enhancement under Sentencing Guidelines § 3B1.3 for abusing a position of trust, petitioner had "betrayed" the oath that he had taken as a police officer "to uphold the law" "by engaging both in the illegal drug distribution and the possession of the weapons that he was not allowed to have." Pet. App. 7. In the court's view, the guidelines failed to "completely take into account [petitioner's] abuse of a position of trust as a police officer." Id. at 9. At the same time, however, the court did not believe that petitioner's conduct warranted a sentence of "12 and a half years," as "the Government had requested." Ibid. The court explained that petitioner's abuses of power were less "extensive"

than those of other police officers whom the court had sentenced. Id. at 8. The court also noted that petitioner had "tried to help his family," did "not have any other conviction[s]," and was "remorseful." Id. at 7-8.

The district court therefore determined that a sentence of 108 months was "appropriate under [18 U.S.C.] 3553(a)" and "sufficient without being greater than necessary." Pet. App. 9. The court made clear that it would impose the same sentence, "even if" it had made an error in applying the "guidelines." Ibid.; see ibid. (stating that, "even if I'm wrong on the guidelines, this is the sentence that I think is appropriate under 3553(a) and is sufficient without being greater than necessary"). The court emphasized that a sentence of "nine years" "sufficiently recognizes what [petitioner] has done" and "is sufficient" when viewed in light of the sentences that "other [police] officers" had received. Ibid.

4. The court of appeals affirmed in an unpublished, nonprecedential decision. Pet. App. 1-4. On appeal, petitioner contended that the district court erred in applying the two-level enhancement for possessing a dangerous weapon and the two-level enhancement for obstructing or impeding, or attempting to obstruct or impede, the administration of justice. Id. at 2.[1] The court

[1] In addition, petitioner contended for the first time on appeal that he was entitled to a downward adjustment under Sentencing Guidelines § 3E1.1 for acceptance of responsibility. Pet. App. 2; see Gov't C.A. Br. 30-31. Petitioner does not renew that contention in his petition for a writ of certiorari.

of appeals found it unnecessary to address those contentions because it determined that "any error by the district court in calculating the Guidelines range" was "harmless." Id. at 3.

The court of appeals explained that an error in calculating the applicable guidelines range can be considered harmless if the record shows that "(1) the district court would have reached the same result even if it had decided the Guidelines issue the other way, and (2) the sentence would be reasonable even if the Guidelines issue had been decided in the defendant's favor." Pet. App. 3 (brackets and citation omitted). The court of appeals observed that the district court in this case "expressly stated that even if it had incorrectly calculated the Guidelines range, it would have imposed the same 108-month sentence," which the court of appeals found to be "substantively reasonable." Ibid. And the court therefore determined that "any error in the Guidelines calculation" was "harmless." Id. at 4.

The court of appeals found that the district court had "provided a thorough explanation for the sentence it imposed, grounded in the relevant § 3553(a) factors." Pet. App. 3. The court of appeals noted that the district court had "acknowledged [petitioner]'s mitigating arguments, including his remorse, his lack of criminal history, his family's support, and his role as a provider for his family." Ibid. The court of appeals further noted that, in "var[ying] upward and impos[ing] the chosen 108-month sentence," the district court had "rel[ied] largely on the

seriousness of the offense and the violation of the public trust that occurs when police officers engage in an illegal drug conspiracy." Ibid. The court of appeals found that those "compelling considerations support[ed] the sentence [petitioner] received." Id. at 3-4.

ARGUMENT

Petitioner contends (Pet. 11-24) that the court of appeals erred in affirming on harmless-error grounds based on its determination that asserted errors in the calculation of his advisory guidelines range did not affect the sentence imposed. That contention lacks merit, and the court's decision does not conflict with any decision of this Court or another court of appeals. This Court has repeatedly denied petitions for writs of certiorari that have raised similar issues. See Thomas v. United States, No. 20-5090 (Jan. 11, 2021); Torres v. United States, 140 S. Ct. 1133 (2020) (No. 19-6086); Elijah v. United States, 139 S. Ct. 785 (2019) (No. 18-16); Monroy v. United States, 138 S. Ct. 1986 (2018) (No. 17-7024); Shrader v. United States, 568 U.S. 1049 (2012) (No. 12-5614); Savillon-Matute v. United States, 565 U.S. 964 (2011) (No. 11-5393); Effron v. United States, 565 U.S. 835 (2011) (No. 10-10397); Rea-Herrera v. United States, 557 U.S. 938 (2009) (No. 08-9181); Mendez-Garcia v. United States, 556 U.S. 1131 (2009) (No. 08-7726); Bonilla v. United States,

555 U.S. 1105 (2009) (No. 08-6668).[2] The same result is warranted here.

1. The court of appeals correctly applied the principles of harmless-error review in determining that any error in the district court's calculation of petitioner's advisory guidelines range was harmless. Pet. App. 2-4.

a. In Gall v. United States, 552 U.S. 38 (2007), this Court stated that under the advisory Sentencing Guidelines, an appellate court reviewing a sentence, within or outside the guidelines range, must make sure that the sentencing court made no significant procedural error, such as by failing to calculate or incorrectly calculating the guidelines range, treating the Guidelines as mandatory, failing to consider the sentencing factors set forth in 18 U.S.C. 3553(a), making clearly erroneous factual findings, or failing to explain the sentence. 552 U.S. at 51. The courts of appeals have consistently recognized that errors of the sort described in Gall do not automatically require a remand for resentencing, and that ordinary appellate principles of harmless-error review apply. As the Seventh Circuit has explained:

> [a] finding of harmless error is only appropriate when the government has proved that the district court's sentencing error did not affect the defendant's substantial rights (here -- liberty). To prove harmless error, the government must be able to show that the Guidelines error "did not affect the district court's selection of the sentence imposed." [United

[2] Other pending petitions for writs of certiorari raise similar issues. See Brown v. United States, No. 20-6374 (filed Oct. 13, 2020); Perez Rangel v. United States, No. 20-6409 (filed Nov. 18, 2020).

> States v. Anderson, 517 F.3d 953, 965 (7th Cir. 2008)] (quoting Williams v. United States, 503 U.S. 193, 203 (1992) (applying harmless error pre-Gall)).

United States v. Abbas, 560 F.3d 660, 667 (2009); see Fed. R. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.").

A sentencing court may confront a dispute over the application of the Sentencing Guidelines. When the court resolves that issue and imposes a sentence, it may also explain that, had it resolved the disputed issue differently and arrived at a different advisory guidelines range, it would nonetheless have imposed the same sentence in light of the factors enumerated in 18 U.S.C. 3553(a). Under proper circumstances, that permits the reviewing court to affirm the sentence under harmless-error principles even if it disagrees with the sentencing court's resolution of the disputed guidelines issue. This Court in Molina-Martinez v. United States, 136 S. Ct. 1338 (2016), analogously recognized that when the "record" in a case shows that "the district court thought the sentence it chose was appropriate irrespective of the Guidelines range," the reviewing court may determine that "a reasonable probability of prejudice does not exist" for purposes of plain-error review, "despite application of an erroneous Guidelines range." Id. at 1346; see id. at 1348 (indicating that a "full remand" for resentencing may be unnecessary when a reviewing court is able to determine that the sentencing court would have imposed the same sentence "absent the error"). Although Molina-Martinez

concerned the requirements of plain-error review under Federal Rule of Criminal Procedure 52(b), the principle it recognized applies with equal force in the context of harmless-error review under Rule 52(a).

b. Applying ordinary principles of harmless-error review to the circumstances of this case, the court of appeals correctly determined that any error in calculating petitioner's advisory guidelines range did not affect the district court's determination of the appropriate sentence. Pet. App. 2-4. The district court expressly stated that, "even if [it were] wrong on the guidelines," a 108-month sentence was "the sentence that [it thought] appropriate under 3553(a)" and "sufficient without being greater than necessary." Id. at 9. And to the extent that harmless-error review entails asking whether the court was aware of the effect that the asserted errors had on its guidelines calculations, the record here satisfied that inquiry. At sentencing, the court noted that each of the challenged enhancements -- for possessing a dangerous weapon under Sentencing Guidelines § 2D1.1(b)(1), and for obstructing or impeding, or attempting to obstruct or impede, the administration of justice under Sentencing Guidelines § 3C1.1 -- resulted in a "two-level upward" adjustment to petitioner's offense level. Sent. Tr. 12, 20; see id. at 36. The court further noted that the two enhancements together increased petitioner's offense level from "24" to "28." Id. at 36; see PSR ¶¶ 39-40, 45. The record thus demonstrates that the court was well aware that

petitioner's total offense level would have been 24 -- i.e., four levels lower -- if the court had not applied the two enhancements.

Petitioner asserts (Pet. 14, 17-18, 21) that the district court did not adequately explain the basis for a 108-month sentence if the two challenged enhancements did not apply. But as the court of appeals found, "[t]he district court provided a thorough explanation for the sentence it imposed, grounded in the relevant § 3553(a) factors." Pet. App. 3. The district court emphasized, for example, that petitioner had pleaded guilty to "a very serious offense." Id. at 6; see id. at 8 ("Again, the conduct is very serious for the reasons that I've explained."). And it explained that it did not believe that the guidelines had sufficiently accounted for petitioner's "abuse of a position of trust as a police officer." Id. at 9. The court therefore "varied upward and imposed the chosen 108-month sentence, relying largely on the seriousness of the offense and the violation of the public trust that occurs when police officers engage in an illegal drug conspiracy." Id. at 3. Thus, to the extent that the adequacy of the district court's explanation of its chosen sentence is part of the harmless-error inquiry, its "thorough" and "compelling" explanation of its 108-month sentence here supports the court of appeals' harmless-error determination. Ibid.

c. Petitioner contends (Pet. 11, 18) that the court of appeals' approach to harmless-error review "improperly removes the Guidelines from any consideration" and allows "Guidelines analyses

[to] be shielded from appellate review." But the court's approach does not alter the principle that "the Guidelines should be the starting point" for a district court's determination of the appropriate sentence. Gall, 552 U.S. at 49. "It merely removes the pointless step of returning to the district court when [the court of appeals is] convinced that the sentence the judge imposes will be identical" regardless of the correct guidelines range. Abbas, 560 F.3d at 667. And far from undermining appellate review, "[a]n explicit statement that the district court would have imposed the same sentence under two different ranges can help to improve the clarity of the record, promote efficient sentencing, and obviate questionable appeals." United States v. Zabielski, 711 F.3d 381, 389 (3d Cir. 2013).

2. The court of appeals' decision does not conflict with any decision of another court of appeals. To the extent that some formal differences exist in the articulated requirements for harmless-error review when a district court has offered an alternative sentencing determination, those differences in approach do not reflect any meaningful substantive disagreement about when an alternative sentence can render a guidelines-calculation error harmless. Petitioner has failed to identify any court of appeals that would have reached a different result in the circumstances of this case.

Petitioner errs in contending (Pet. 14) that the court of appeals' decision conflicts with the Third Circuit's decision in

United States v. Langford, 516 F.3d 205 (2008). In Langford, the Third Circuit declined to find a guidelines-calculation error harmless where "[t]here [wa]s absolutely nothing in the record to indicate that the District Court would have imposed the same sentence under a lower Guidelines range." Id. at 219. Here, in contrast, the district court "expressly stated that even if it had incorrectly calculated the Guidelines range, it would have imposed the same 108-month sentence." Pet. App. 3; see id. at 9. Thus, unlike in Langford, the record shows that "the district court would have reached the same result even if it had decided the Guidelines issue[s] the other way." Id. at 3 (brackets and citation omitted).

Petitioner also errs in contending (Pet. 14-15) that the court of appeals' decision conflicts with the Sixth Circuit's decision in United States v. Lanesky, 494 F.3d 558 (2007). In Lanesky, the district court "did not resolve [the defendant's] objections [to the presentence report] expressly," id. at 560, or "calculate an applicable guideline range at all," id. at 562. The Sixth Circuit declined to find those errors harmless. Ibid. Here, unlike in Lanesky, the district court did resolve petitioner's objections to the presentence report expressly and calculate an applicable guidelines range, Sent. Tr. 12, 19-20, 36, and the only error asserted on appeal was that the court erred in its calculations, Pet. App. 2. Because the asserted error here differs from the more drastic errors in Lanesky, petitioner's reliance on Lanesky is misplaced.

Petitioner is likewise mistaken (Pet. 15) in asserting a conflict between the decision below and the Eighth Circuit's decision in United States v. Bah, 439 F.3d 423 (2006). In Bah, the Eighth Circuit declined to find a guidelines-calculation error harmless where the district court pronounced a "blanket" "identical alternative sentence, not based on any alternative guidelines calculation but instead intended to cover any and all potential guidelines calculation errors," regardless of whether they resulted in a "'higher'" or "'lower'" guidelines range. Id. at 431. The circumstances in Bah thus differ from those here, where the district court "provided a thorough explanation for the sentence it imposed," Pet. App. 3, well aware of the specific guidelines-calculation errors that petitioner had asserted and the alternative lower offense level that he had advocated, see pp. 12-13, supra. In any event, Bah was decided before Gall, and since then the Eighth Circuit has found guidelines-calculation errors harmless in circumstances similar to those here. See, e.g., United States v. Sanchez-Martinez, 633 F.3d 658, 659-661 (2011) (finding a guidelines-calculation error harmless where the district court was aware of the potential effect of the error on the defendant's offense level and stated that it would impose the same sentence even if it "set the Guidelines aside"); United States v. Jackson, 594 F.3d 1027, 1029-1030 (2010) (finding a guidelines-calculation error harmless where the district court "explained in detail why it believed" its sentence was "appropriate" and

"provided comments leaving no doubt that it would apply the same sentence regardless of whether the career-offender provisions applied").

Petitioner also errs in asserting (Pet. 15-17) a conflict between the decision below and the Ninth Circuit's decision in United States v. Munoz-Camarena, 631 F.3d 1028 (2011) (per curiam). In Munoz-Camarena, the Ninth Circuit declined to find a guidelines-calculation error harmless where "the district court's explanation" of its sentence was "insufficient to explain the extent of the variance from the correct Guidelines range." Id. at 1031. Here, in contrast, "[t]he district court provided a thorough explanation for the sentence it imposed, grounded in the relevant § 3553(a) factors." Pet. App. 3. And the court of appeals found the "considerations" that the district court had identified in its explanation sufficiently "compelling" to "support the sentence [petitioner] received." Id. at 3-4. No sound basis exists to conclude that the Ninth Circuit would have reached a different conclusion.

Finally, petitioner's reliance (Pet. 15-16) on the Eleventh Circuit's nonprecedential opinion in United States v. Dunkley, 812 Fed. Appx. 820 (2020) (per curiam), is misplaced. In Dunkley, the Eleventh Circuit affirmed the defendant's sentence on plain-error review. Id. at 826-828. Its decision thus does not conflict with the decision below. And even if it did, a conflict between

two nonprecedential decisions would not warrant this Court's review.

3. In any event, this case would be an unsuitable vehicle for resolving the question presented, because the district court did not err in applying the challenged enhancements in the first place. The district court correctly applied a two-level enhancement for possessing a dangerous weapon under Sentencing Guidelines § 2D1.1(b)(1). Sent. Tr. 11-12. As the commentary to Section 2D1.1 explains, "[t]he enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense." Sentencing Guidelines § 2D1.1, comment. (n.11(A)). Here, numerous firearms that belonged to petitioner were found in his home. PSR ¶ 30; C.A. App. 449; Sent. Tr. 11. And it was not clearly improbable that those firearms were connected with the drug-trafficking conspiracy, which the evidence directly linked to his home. Sent. Tr. 11-12. As the court explained, "[f]irearms have many potential uses in connection with drug distribution, including protection of drugs that are on the premises"; ammunition for two of petitioner's firearms was found in the same box as "cocaine residue and razor blades, which are indicative of the use and possibly packaging and distribution of cocaine"; and text messages between petitioner and his brother "corroborate[d] the fact that the weapons * * * [we]re connected with the drug trafficking." Ibid.; see PSR ¶ 30; C.A. App. 341-369.

The district court also correctly applied a two-level enhancement under Sentencing Guidelines § 3C1.1 for obstructing or impeding, or attempting to obstruct or impede, the administration of justice. Sent. Tr. 19-20. Petitioner told FBI agents that he had deposited money in Rayam's bank account as repayment for a gambling loan. PSR ¶ 29. It is uncontested that those statements were false; in fact, the money was Rayam's portion of the proceeds from drug sales. Sent. Tr. 19; PSR ¶ 29. And the record shows that petitioner consciously made the statements with the purpose of obstructing justice and that the government spent "significant" resources "to verify or disprove" his statements. Sent. Tr. 19; see Gov't C.A. Br. 24-28. The court therefore did not err in finding that petitioner had willfully obstructed or impeded -- or at least had attempted to obstruct or impede -- the administration of justice with respect to the investigation or prosecution of the offense. Sent. Tr. 19. Because no guidelines-calculation error in fact occurred, any decision in petitioner's favor on the harmless-error question would not affect the outcome.

4. Petitioner's request (Pet. 20-23) that this Court summarily vacate and "remand for the Fourth Circuit to determine whether any Guidelines-calculation error truly was harmless" lacks merit. As explained above, see pp. 10-14, supra, the court of appeals correctly applied the principles of harmless-error review in determining that any error in the district court's calculation of petitioner's advisory guidelines range was harmless. Pet. App.

2-4. And petitioner errs in contending that the "Fourth Circuit misapplied its own 'assumed error harmlessness' standard." Pet. 20 (citation omitted). In any event, any misapplication of circuit precedent would not be grounds for summary disposition. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

Petitioner also contends (Pet. 22) that even if his "ultimate sentence stands, the error in the Guidelines calculation was not harmless for him." Petitioner asserts (ibid.) that the district court's application of a two-level enhancement for possessing a dangerous weapon "will prevent [him] from obtaining a one-year sentence reduction" if he were to complete the Bureau of Prison's Residential Drug Abuse Treatment Program, "for which the district court recommended him and for which he will become eligible in 2022." But petitioner did not raise that issue in the lower courts, and the court of appeals did not address it. Petitioner has therefore forfeited the argument. See United States v. Jones, 565 U.S. 400, 413 (2012); see United States v. Williams, 504 U.S. 36, 41 (1992) (explaining that the Court's "traditional rule * * * precludes a grant of certiorari * * * when 'the question presented was not pressed or passed upon below'") (citation omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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