

No. 20-6745

IN THE SUPREME COURT OF THE UNITED STATES

DEMETRIUS ELISHAKIM JEFFERSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner principally contends (Pet. 9-27) that the district court erred in calculating his advisory Sentencing Guidelines range under the career-offender guideline, which applies if the defendant "has at least two prior felony convictions of either a crime of violence or a controlled substance offense." Sentencing Guidelines § 4B1.1(a). In particular, petitioner contends (Pet. 20) that his prior federal conviction for attempting to distribute marijuana and his prior Wisconsin conviction for possessing cocaine with intent to distribute are not "controlled substance offenses" and that Application Note 1 to the definition of "controlled substance offense" is invalid insofar as it interprets

that definition to include attempt offenses. See Sentencing Guidelines § 4B1.2, comment. (n.1) (“For purposes of [the career-offender] guideline * * * ‘[c]rime of violence’ and ‘controlled substance offense’ include the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.”) (emphasis omitted).

For the reasons stated at pages 9 to 27 of the government’s brief in opposition to the petition for a writ of certiorari in Tabb v. United States, No. 20-579, petitioner’s challenge to the validity of Application Note 1 does not warrant this Court’s review at this time.¹ Petitioner’s challenge is inconsistent with the text, context, and design of the career-offender guideline and its commentary, see Br. in Opp. at 9-13, Tabb, supra (No. 20-579); is not supported by this Court’s precedent, see id. at 13-17; and is based on an incorrect understanding of Application Note 1 and its history, see id. at 18-23. In any event, the United States Sentencing Commission has already begun the process of amending the Guidelines to address the recent disagreement in the courts of appeals (see Pet. 9-19) over the validity of Application Note 1. Br. in Opp. at 23-25, Tabb, supra (No. 20-579). No sound basis exists for this Court to depart from its usual practice of leaving to the Commission the task of resolving Guidelines issues. Cf. Longoria v. United States, No. 20-5715 (Mar. 22, 2021) (Sotomayor,

¹ We have served petitioner with a copy of the government’s brief in opposition in Tabb.

J., respecting the denial of certiorari), slip op. 2 (observing, with respect to another Guidelines dispute, that the "Commission should have the opportunity to address [the] issue in the first instance, once it regains a quorum of voting members") (citing Braxton v. United States, 500 U.S. 344, 348 (1991)).

In addition, this case would be an unsuitable vehicle in which to address the validity of Application Note 1 because that issue would make no difference to petitioner's career-offender status. The court of appeals determined that petitioner's Wisconsin conviction for the completed offense of possessing cocaine with intent to distribute is a "controlled substance offense" on grounds that did not rely on Application Note 1. Pet. App. 7a-8a. Petitioner also has a prior state conviction for the completed offense of robbery with use of force. Gov't C.A. Br. 25-26. Although the court of appeals declined to address that conviction, Pet. App. 7a, the district court found it to be a "crime of violence" for purposes of the career-offender guideline -- again without relying on Application Note 1. Sent. Tr. 6. A defendant need only have two qualifying prior convictions to trigger the career-offender enhancement. Sentencing Guidelines § 4B1.1(a).

The petition for a writ of certiorari should be denied.²

² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.

Respectfully submitted.

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