

In The
Supreme Court of the United States

TIMOTHY TIJWAN DOCTOR

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR REHEARING OF ORDER DENYING
WRIT OF CERTIORARI

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Pursuant to Rule 44 of this Court, the Petitioner, through Counsel, respectfully petitions this Honorable Court for a rehearing of this Court's order denying a writ of certiorari dated February 22, 2021. This petition is made in light of the Court's grant of review in *Wooden v. United States*, No. 20-5279 on February 22, 2021.

1. This Court has not yet addressed the definition of the Armed Career Criminal Act's requirement that a defendant's three prior predicate offenses be "committed on occasions different from one another." 18 U.S.C. § 924(e)(1).
2. In *Wooden*, this Court will likely address the definition of "committed on occasions different from one another" as used in the Armed Career Criminal Act.
3. In Mr. Doctor's case, he litigated in the district court and before the Eleventh Circuit Court of Appeals whether two of his three predicate offenses were "committed on occasions different from one another."
4. The district court found that his three prior predicate felony drug convictions were for offenses committed on different occasions where two of the offenses were joined for trial in a single state charging document under a state

procedural rule providing that only offenses that are based on the same transaction, or are connected acts or transactions in an episodic sense, may be joined for trial. See Fla. R. Crim. P. 3.150. Mr. Doctor's charging document in the relevant state court case alleged that the two predicate offenses were committed a mere six days apart, though dates in Florida charging documents are non-elemental. The United States did not introduce any other documents from the state court cases, such as transcripts from plea colloquies or stipulations to factual bases, establishing the actual timing of these two predicate offenses. The district court found the evidence presented by the United States established that the predicate offenses were committed on different occasions for purposes of the Armed Career Criminal Act and sentenced Mr. Doctor as an armed career criminal to the mandatory minimum sentence of 180 months.

5. The Eleventh Circuit affirmed the district court's reliance on the non-elemental dates alleged in the charging documents alone, without any record ensuring that Mr. Doctor's convictions rested on those dates in state court, to affirm that Mr. Doctor's offenses were "committed on occasions different from one another." Pet. App. 4a–5a (following its published decision in *United States v. Longoria*, 874 F.3d 1278, 1281 (11th Cir. 2017)). In doing so, the court noted that its precedent required only that the prior offenses be committed "successive rather simultaneously." *Id.*
6. This Court's decision in *Wooden* may be favorable to Mr. Doctor. It may directly undermine the Eleventh Circuit's precedent regarding the meaning of "on occasions different from one another" applied to his case. It also may dictate error related to the sufficiency of the evidence used to find his predicate offenses were committed "on occasions different from one another." 18 U.S.C. § 924(e)(1).
7. If the Armed Career Criminal Act does not apply to Mr. Doctor, he is not subject to the statute's fifteen-year (180 month) mandatory minimum sentence and his guidelines should be 37–46 months (Offense Level 17, Criminal History Category IV). Thus, more than a decade in prison is at stake in Mr. Doctor's case.
8. Therefore, this Court should grant rehearing on Petitioner's Writ of Certiorari and grant review.

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For the foregoing reasons, the petition for rehearing should be granted.

Respectfully submitted,

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CERTIFICATION OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

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