NO. _____

IN THE
Supreme Court of the United States

MICHAEL KENNETH YOUNG, a/k/a Mizzle,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Did the Fourth Circuit Court of Appeal err in reversing the decision of the District Court which had determined that Petitioner Michael Young was not subject to sentencing as an Armed Career Criminal because his prior convictions should not have been considered serious drug offenses?

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The undersigned counsel for Petitioner Michael Kenneth Young is not admitted to practice before the United States Supreme Court. However, he was appointed to represent the Petitioner in this case at trial pursuant to the Criminal Justice Act of 1964 (CJA) and was also appointed to represent Mr. Young on appeal to the Fourth Circuit Court of Appeals. By an unpublished opinion filed March 11, 2021, the Fourth Circuit Court of Appeals reversed the decision of the District Court and determined that Michael Young should be sentenced as an Armed Career Criminal even though Mr. Young has never been convicted of an offense involving a firearm. The Fourth Circuit Court of Appeals has remanded the case to the District Court for resentencing in accordance with its finding that Mr. Young is subject to sentencing pursuant to the Armed Career Criminal Act (ACCA). Mr. Young was sentenced by the District Court to ten years, the maximum sentence for the conviction of being a Felon in Possession of a Firearm. Mr. Young contends that the ACCA is not applicable to him and that he is therefore not subject to a sentence of more than the ten years which was imposed by the District Court. Mr. Young seeks review by this Court of the Fourth Circuit Court of Appeals' decision reversing the District Court's decision. Mr. Young has other issues to raise regarding his sentence in the District Court but on this direct appeal filed by the Government, Mr. Young seeks the ten-year sentence that was imposed by the District Court.

OPINION BELOW

The Fourth Circuit Court of Appeals issued an unpublished opinion on March 11, 2021 reversing the District Court's Amended Judgment which was filed on October 8, 2019. The Opinion and Amended Judgment are included in the Appendix submitted herewith.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the decision of the Fourth Circuit Court of Appeals pursuant to 28 United States Code Section 1254 (2). The Fourth Circuit's Opinion filed March 11, 2021 is included in the Appendix as referenced above.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provision involved is the Due Process Clause of the Fifth Amendment. Statutory provisions involved are the Armed Career Criminal Act (ACCA) and South Carolina Code Section 44-53-375 (B).

STATEMENT OF THE CASE

Petitioner Young was convicted by a jury on three Counts of Possession of a Weapon by a Felon. He was acquitted on three counts charging drug crimes. On Mr. Young's appeal in Docket #17-4124, his conviction on one count was reversed by the Fourth Circuit Court of Appeals. As noted above, on remand, Mr. Young

objected to being categorized as an Armed Career Criminal at his sentencing hearing. His objection was sustained and he was sentenced to 120 months in prison. The Government appealed, contending that Mr. Young was subject to the ACCA. The Fourth Circuit Court of Appeals reversed the District Court's decision. Mr. Young respectfully submits that the Fourth Circuit has erred in its finding that the ACCA applies to him and seeks the review of this Court to sustain the District Court's findings.

REASONS FOR GRANTING THE WRIT

MICHAEL YOUNG'S PRIOR RECORD SHOULD NOT SUBJECT HIM TO THE PROVISIONS OF THE ARMED CAREER CRIMINAL ACT.

The Government argued at sentencing that the ACCA should apply because the statutory penalty that was in place for the two drug offenses that Mr. Young plead guilty to in January 2005 exceeded ten years on the two offenses. However, that argument ignored the actual penalty that Mr. Young faced as he plead guilty in January 2005; the maximum sentence that Michael Young faced as he entered a guilty plea to the charges was ninety days on each charge. The Government misunderstands the use of negotiated sentences in South Carolina General Sessions Court. The Circuit Court in South Carolina is bound to impose the negotiated sentence and lacks discretion to exceed or go lower than the negotiated sentence. Mr. Young would have challenged the allegations against him at a trial absent the State's willingness to negotiate a sentence of ninety days (time already served) such that he walked into the Courtroom a free man on January 26, 2005 and walked out

of the Courtroom the same way—having received the sentence that was negotiated with the State prosecutor. Mr. Young and his undersigned counsel thoroughly argued his position in the District Court. After Mr. Young addressed the Court, the District Court continued the sentencing hearing on August 27, 2019 noting that the Government had the burden of establishing the prior convictions from January 2005 and expressing her concern with the erroneous sentencing sheets that were available.

The sentencing sheets that were provided to the Court were standard form documents used in South Carolina General Sessions Court. The South Carolina appellate court discussed the three options available on the standard Sentencing Sheet in State v. Rikard, 638 S.E.2d 72 (SC Ct. App. 2006). The appeals court found that Rikard's reliance on the sentencing sheet is unavailing. The sentencing sheet offers three alternatives to designate the nature or status of the plea. Those alternatives provide that the plea is: (1) without negotiations or recommendation; (2) a negotiated sentence; or (3) a recommendation by the State. In Rikard's case, the option of "without negotiations or recommendation" was selected by the solicitor, Rikard, and Rikard's counsel. It is axiomatic that the phrase "without negotiations or recommendation" means that the State and the defendant have not agreed on sentencing. Therefore, either party is free to request a favorable sentence. In Mr. Young's January 2005 case, it is likewise axiomatic that a negotiated sentence meant that the State and the Defendant have negotiated a particular sentence and that is the only sentence that can be imposed. The state court judge

did not have discretion to impose any sentence other than the ninety day sentences for the two charges that were presented to him. The Government argued repeatedly in its Brief that the sentencing judge in State Court could have sentenced Mr. Young to a qualifying term of imprisonment. That argument misconstrues a negotiated sentence in South Carolina. The maximum sentence on the two charges that Mr. Young faced at the time he entered his guilty pleas in January 2005 was ninety days and thus the convictions were not for serious drug offenses.

The District Court was unwilling to conclude that Mr. Young was an Armed Career Criminal without a transcript from the sentencing hearing. The two sentencing sheets were clear as to the fact that Mr. Young received a Negotiated sentence and further that the Negotiated sentence was for Ninety days (time served). The District Court's decision to desire a transcript is well reasoned and not in error considering the *Shepard* documents presented from the Lexington County Circuit Court. The negotiated sentence boxes were clearly marked on the sentencing sheets as noted above. However, the true copy of the Indictment that was submitted for Trafficking in Crack Cocaine (Docket # 2003-GS-32-2794) was replete with errors. It listed Defendant as "Michael Nathan Young" and had a handwritten notation on the front for PWID Cocaine 1st 44-53-370 (b)(1). That charge does not match the language of the Indictment or the sentencing sheet which does note that the negotiated sentence is for a lesser included offense. The second Indictment at issue (Docket # 2003-GS-32-3813) also has the Defendant's name incorrectly listed as "Michael Nathan Young". Considering the mistakes on the

Indictments, it was not error for the District Court to seek more clarity as to the charges plead to. The burden was on the Government to establish that Michael Young had three prior serious drug offenses to serve as predicates for the ACCA enhancement and the District Court ruled that the burden was not met. In its unpublished opinion, the Fourth Circuit Court of Appeals cited *United States v. Rumley*, 952 F.3d 538, 547 (4th Cir. 2020) for the proposition that the Government need only prove an ACCA enhancement by a preponderance of the evidence. However, the Government was unable to produce *Shepard* documents with even the correct name of Michael Kenneth Young. The Fourth Circuit excuses the mistakes on the sentencing sheets by referring to them as "clerical errors" which "reflect an uncomfortable reality about the often-hurried system of pleas which make up our criminal justice system". The opinion then states that the erroneous sheets do not carry as much weight as the District Court gave them (see page 7 of the Opinion). Surely, the Government can be required to produce somewhat accurate information when seeking to enhance a person's sentence by at least five (5) years. Mr. Young's sentencing turns on the "countability" of two drug offenses for which he was convicted in January 2005 for alleged conduct that occurred when he was twenty years old (in 2003). Those drug offenses which are deemed by the Fourth Circuit to be "serious" carried a maximum sentence of ninety days when Michael Young walked into Court two years after the alleged conduct and walked out of Court with a time served sentence.

The ramifications of reinstating the decision of the District Court in this case are not far-reaching. The negotiated sentence of ninety days (time served) clearly reflects the lack of serious nature of the specific charges against Mr. Young. Counsel realizes that this appellate court cannot go behind the State offenses beyond the *Shepard* approved documents. However, in Mr. Young's January 2005 cases, the sparse documents, consisting of two sentencing sheets, are sufficient to show that ninety days was the maximum sentence Mr. Young faced on his two pending drug charges and therefore the charges CANNOT serve as predicate offenses for ACCA purposes.

The Fourth Circuit Court of Appeals had previously recognized that the legislatively mandated structured sentencing in North Carolina would not allow the sentencing judge discretion to impose a sentence of more than one year in a particular defendant's case despite the statute providing for a greater than one year's punishment under certain recidivism findings and therefore the defendant was not subject to an enhanced sentence pursuant to the Controlled Substances Act. *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011). The negotiated sentence in Mr. Young's case is akin to the legislative mandate from North Carolina. The District Court correctly determined the facts in Mr. Young's case when it noted "the court could not have sentenced Mr. Young to more than 90 days unless they let him withdraw his plea and he went to trial". The Government had argued at sentencing that Young's case was similar to the Youthful Offender Act sentencing in South Carolina as described in *United States v. Sellers*, 806 F.3d 770 (4th Cir. 2015).

However, in *Sellers*, the State Court judge could have sentenced the defendant to more than ten years in prison. Here, the District Court recognized that the State Court judge did not have such discretion and correctly stated that "this judge could not have sentenced him to more than the negotiated sentence".

The Fourth Circuit spends substantial time reiterating its decision in *United States v. Furlow*, 928 F.3d 311 (4th Cir. 2019), *vacated on other grounds by Furlow v. United States*, 140 S. Ct. 2824 (2020) (Mem) that a conviction under South Carolina Code Section 44-53-375(B) qualifies as a predicate offense for ACCA purposes. However, appropriate *Shepard* documents are required. Furlow's distribution of crack cocaine plea occurred in Lexington County in 2016 and a transcript from that plea hearing was part of the record before the Fourth Circuit. As Mr. Young's plea to a negotiated sentence occurred more than fifteen years ago, no transcript is available. Mr. Young does not contend that a transcript is always required but in the event of ambiguities in Indictments and sentencing sheets, it is not error for the District Court to conclude that the Government has failed to meet its burden of establishing the predicate offenses for ACCA purposes without a transcript.

The idea that Michael Young is an armed career criminal is not credible. He is not a violent person so it is not surprising that there are no "violent felony" convictions that would support an ACCA enhancement. This Court has clarified the ACCA enhancement's residual clause to make it applicable to conduct that "presents a serious potential risk of injury to another". *Johnson v. United States*, 576 U.S. 591 (2015). To apply the ACCA enhancement to Michael Young for its two

remaining Federal Court convictions, the Government is left with two questionable drug offenses from over sixteen years ago. In its ultimate decision, the Fourth Circuit relies on its prior ruling in *United States v. Valdovinos*, 760 F.3d 322 (4th Cir. 2014). The *Valdovinos* Court examined the North Carolina Structured Sentencing Act and found that its legislatively mandated sentence structure (which is based on the offense class, the offender's prior record level, and the applicability of the aggravated sentencing range) provided for a maximum sentence of over one year and the Defendant was subject to an enhancement due to the prior felony conviction in North Carolina. No such legislatively mandated structured sentence system exists in South Carolina. Mr. Young's situation is more akin to this Court's ruling in *Carachuri–Rosendo v. Holder*, 560 U.S. 563, 130 S.Ct. 2577, 177 L.Ed.2d 68 (2010). The Court held in *Carachuri* that, for purposes of the Immigration and Nationality Act, a prior conviction constitutes an "aggravated felony"—i.e., a crime for which the maximum term of imprisonment exceeds one year—only if the defendant was "actually convicted of a crime that is itself punishable as a felony under federal law." *Id.* at 582, 130 S.Ct. 2577. The Court explained that whether the defendant's conduct underlying his prior conviction hypothetically could have received felony treatment is irrelevant. See *id.* at 576–81, 130 S.Ct. 2577. The critical question is simply whether he was convicted of an offense punishable by more than one year in prison. Michael Young was convicted in January 2005 of an offense that carried ninety days jail time which he had served two years before in

the County jail. Those two minor convictions should not severely impact his circumstances more than a decade later.

The dissent in *Valdovinos,* 760 F.3d 322, 330-334, raises important policy questions which strongly support Michael Young's Petition and request that the ten-year sentence be preserved. Senior Judge Davis carefully cites statistics that show that America is over-incarcerating its black men. Sentences are too long and the expense of incarcerating non-violent black men is much too high. Mr. Young will be thirty-nine (39) years old in a month. He got in trouble with the criminal justice system as a seventeen-year-old young black man but learned from his mistakes. Mr. Young has a wife, was earning a college degree and was providing for his children. He has been incarcerated (including pretrial) since February 2015. The District Court imposed a ten year sentence which counsel contends is longer than necessary but it is much more reasonable than the minimum sentence of fifteen years which would come with an ACCA enhancement. It is time for Michael Young to be released.

CONCLUSION

Michael Young was sentenced to the maximum statutory sentence of ten years by the District Court in October 2019. The District Court determined that the Government did not prove that he was subject to an ACCA enhancement by a preponderance of the evidence. The Fourth Circuit Court of Appeals reversed that decision and decided that the ACCA enhancement should apply based on two convictions from January 2005. Mr. Young and his counsel urge this Court to grant

certiorari and reinstate the District Court's correct determination that the ACCA enhancement does not apply to him.

Respectfully Submitted,
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August 9, 2021