

DOCKET NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

TRAVIS RYAN SKAGGS, PETITIONER

Versus

UNITED STATES OF AMERICA, RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the District Court and the Fourth Circuit Court of Appeals erred by holding that Mr. Skaggs' conviction in Wise County, Virginia on July 27, 2015, qualified as a "serious drug felony" for purposes of a sentencing enhancement under 21 U.S.C. §841(b)(1)(A) when the sentence for this conviction ran concurrently with other sentences for property crimes.

The First Step Act of 2018 amended the law on enhanced sentences under certain statutes, including 21 U.S.C. § 841. See First Step Act, Pub. L. No. 115-391, 132 Stat. 5194, 5220. If a defendant is convicted for distribution of "500 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and "commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years." 21 U.S.C. § 841(b)(1)(A)(viii). A "serious drug felony" is a drug offense for which "the offender served a term of imprisonment of more than 12 months." 21 U.S.C. § 802(57)(A).

This Court has defined the phrase "term of imprisonment" to mean "the sentence that the judge imposes" or "the time that the prisoner actually serves," depending on the context. Barber v. Thomas, 560 U.S. 474, 484, 130 S. Ct. 2499

(2010). In this case, the Fourth Circuit interpreted the phrase "term of imprisonment of more than 12 months" under 21 U.S.C. § 802(57)(A), as the sentence imposed, not the time served. See also United States v. Corona-Verduzco, 963 F.3d 720, 724 (8th Cir. 2020).

This case provides the United States Supreme Court the opportunity to settle the definition of “a serious drug felony” and the 12-month term of imprisonment requirement for purposes of sentencing enhancements when the sentence for the prior drug offense runs concurrently with other offenses that are not “serious drug felon[ies].”

LIST OF PARTIES

All parties appear in the caption of the case on the cover page to this Petition.

LIST OF PRIOR PROCEEDINGS

United States District Court for the Western District of Virginia (Big Stone Gap)
Docket No.2;19-CR-00006
United States v. Travis Ryan Skaggs

United States Court of Appeals for the Fourth Circuit
Docket No. 20-4303
United States v. Travis Ryan Skaggs

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OPINIONS BELOW

The published Opinion and Judgment of the Fourth Circuit Court of Appeals dated January 18, 2022, appears at Appendix A to this Petition.

The unpublished Judgment of the United States District Court for the Western District of Virginia dated May 20, 2020, appears at Appendix B.

JURISDICTIONAL STATEMENT

The United States District Court for the Western District of Virginia had subject matter jurisdiction pursuant to 18 U.S.C. § 3231 on the grounds that the criminal indictments against Mr. Skaggs alleged violations of federal criminal law, specifically conspiracy to distribute a 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A).

The Fourth Circuit had appellate jurisdiction pursuant to 28 U.S.C. § 1291 on the grounds that Mr. Skaggs appealed a final judgment from the District Court for the Western District of Virginia.

By judgment order dated January 18, 2022, the United States Court of Appeals for the Fourth Circuit denied Mr. Skaggs's appeal and affirmed the District Court. Mr. Skaggs did not file a Petition for Rehearing. The Court has jurisdiction over this case pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STAUTORY PROVISIONS INVOLVED

Under 21 U.S.C. § 841(a), if a defendant is convicted for a violation involving "500 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and "commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years." 21 U.S.C. § 841(b)(1)(A)(viii).

Congress defined a "serious drug felony" as a "serious drug *offense*" for which "the offender served a term of imprisonment of more than 12 months." 21 U.S.C. § 802(57)(A).

Under 18 U.S.C §924(e)(2), a "serious drug offense" is:

- (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 [46 USCS §§ 70501 et seq.], for which a maximum term of imprisonment of ten years or more is prescribed by law; or
- (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law.

Mr. Skaggs does not dispute that his prior drug offense qualifies as a "serious drug offense" under 18 U.S.C §924(e)(2). Mr. Skaggs contends that his prior drug offense is not a "serious drug felony" under 21 U.S.C. 802(57)(A)

because he did not serve more than 12 months for that prior drug offense when the sentence ran concurrently with sentences for five other property crimes.

STATEMENT OF THE CASE

Procedural History

On November 1, 2019, Mr. Skaggs enter a guilty plea to one count of conspiracy to distribute and possess with intent to distribute five hundred grams or more of methamphetamine in violation of 21 U.S.C. §§846 and 841(b)(1)(A), one count of possessing with intent to distribute methamphetamine in violation of 21 U.S.C. §§841(a)(1) and (b)(1)(C). [Appendix D]. Mr. Skaggs entered this plea pursuant to a Plea Agreement which, *inter alia*, advised Mr. Skaggs of a fifteen-year mandatory minimum sentence on the conspiracy charge and a ten-year mandatory minimum on the possession with intent to distribute charge if the Court determined that Mr. Skaggs had a prior conviction for a “serious drug felony.” [Appendix C]. The Plea Agreement also reserves Mr. Skaggs’ right to argue and appeal an adverse ruling regarding whether Mr. Skaggs was subject to an enhanced sentenced for a “serious drug felony” based on his prior conviction in Wise County, Virginia on July 27, 2015. [Appendix C p. 4].

At the Sentencing Hearing held on May 20, 2020, the District Court overruled Mr. Skaggs’ objection to the sentencing enhancement based on is his

previous conviction in Wise County, Virginia on July 27, 2015, finding that such conviction qualified as a “serious drug felony” for purposes of imposing a mandatory minimum sentence of fifteen-years pursuant to U.S.C. §§841 and 851. As a result of the enhancement, Mr. Skaggs’ guidelines range was 180 months (the mandatory minimum) to 188 months. [Appendix E pp. 9-10].

Notwithstanding their dispute over the application of the sentencing enhancement for Mr. Skaggs’ prior conviction, Mr. Skaggs and the Government concurred that the mandatory minimum sentence of fifteen years was an appropriate sentence. Accordingly, the District Court sentenced Mr. Skaggs to 180 months on each count with the sentences for each count to run concurrently. [Appendix E p. 20].

The District Court entered its Final Judgement Order on May 20, 2020, [Appendix B] and Mr. Skaggs filed his Notice of Appeal in the District Court on June 1, 2020. On June 18, 2020, the Fourth Circuit appointed the undersigned counsel to represent Mr. Skaggs in his appeal. The Fourth Circuit affirmed the District Court with its published Opinion and Judgment Order dated January 18, 2022. [Appendix A].

STATEMENT OF FACTS

On July 27, 2015, the Circuit Court of Wise County, Virginia convicted Mr. Skaggs on one count of distribution of a Schedule III controlled substance, one count of conspiracy to violate the Drug Act, one count of breaking and entering,

one count of conspiracy to break and enter, one count of grand larceny, and one count of felony shoplifting. For each conviction, the Wise County Circuit Court sentenced Mr. Skaggs to a sentence of ten years in the penitentiary with seven years and ten months suspended, leaving an active term of two years and two months for each conviction, with all sentences to run concurrently for a total active sentence of two years and two months. [Appendix F].

Mr. Skaggs did not dispute the conviction and sentence in Wise County, Virginia on July 27, 2015, for distribution of a Schedule III substance in violation of Virginia Code §18.2-248 (the Wise County drug conviction). Mr. Skaggs further conceded that the Wise County drug conviction met the two criteria for a “serious drug offense” as defined under 18 U.S.C. §924(e)(2): that the conviction was for a controlled substance offense with a maximum term of more than ten years and that the Mr. Skaggs was released from the sentence within fifteen years of the commencement of the instant offense. [Appendix E p. 7]. Mr. Skaggs contends that the Wise County drug conviction does not qualify as a “serious drug felony” under 21 U.S.C. § 802(57)(A) because he did not serve a term of imprisonment of more than 12 months “for that conviction” as the sentence for the Wise County drug conviction ran concurrently with the sentences for five other property crime convictions. [Appendix E p. 8].

ARGUMENT

Standard of Review

In reviewing the propriety of a sentencing enhancement, appellate courts assess the lower court's findings of fact for clear error and its legal rulings *de novo*. United States v. Kellam, 568 F.3d 125, 143 (4th Cir. 2009) *citing* United States v. Osborne, 514 F.3d 377, 387 (4th Cir. 2008); United States v. Letterlough, 63 F.3d 332, 334 (4th Cir. 1995). In this case, there is no factual dispute; Mr. Skaggs challenges the District Court's legal ruling that the Wise County conviction resulting in a sentence served concurrently with other sentences qualifies as a "serious drug felony" for purposes of the statutory sentencing enhancement. Accordingly, this Court should review the lower courts' rulings *de novo*.

Because the sentence for the Wise County drug conviction ran concurrently with five other sentences, Mr. Skaggs only served a portion of the active two-year and two-month sentence. The portion served for the Wise County drug conviction was less than twelve months.

The First Step Act of 2018 amended the law on enhanced sentences under certain statutes, including 21 U.S.C. § 841. See First Step Act, Pub. L. No. 115-391, 132 Stat. 5194, 5220. If a defendant is convicted under 21 U.S.C. § 841(a) for a violation involving "500 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and "commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become

final, such person shall be sentenced to a term of imprisonment of not less than 15 years." 21 U.S.C. § 841(b)(1)(A)(viii). A "serious drug felony" is drug offense as defined under 18 U.S.C §924(e)(2) for which "the offender served a term of imprisonment of more than 12 months." 21 U.S.C. § 802(57)(A).²

The Supreme Court has said that the phrase "term of imprisonment" can mean "the sentence that the judge imposes" or "the time that the prisoner actually serves," depending on the context. Barber v. Thomas, 560 U.S. 474, 484, 130 S. Ct. 2499 (2010). The Eight Circuit has interpreted the phrase "the offender served a term of imprisonment of more than 12 months" under 21 U.S.C. § 802(57)(A), as the sentence imposed, not the time served. United States v. Corona-Verduzco, 963 F.3d 720, 724 (8th Cir. 2020).

However, the Eight Circuit's interpretation strains the plain language of the statute. If Congress wanted a "serious drug felony" defined in relation to the "sentence imposed," then it could have used that phrase. Instead, Congress specifically distinguished the amount of time *served* on a prior drug conviction from the actual *sentence imposed*. See e.g. Barber, 560 U.S. at 484 (distinguishing *time served* from *sentence imposed* when construing the good-time credit calculation formula under 18 U.S.C. §3624(b)(1)). A simple example shows the importance of distinguishing *time served* from *sentenced imposed*: a defendant

² Mr. Skaggs does not dispute that the Wise County conviction satisfies the criteria for a "serious drug offense" under 18 U.S.C. §924(e)(2).

who receives a 13-month sentence for a felony in Virginia would receive 58.5 days of good-time credit. Virginia Code §53.1-202.3. On a 13-month sentence, a defendant would serve less than 12 months. Operating under this obvious analysis, Congress defined “serious drug felony” in relation to *time served* and not *sentence imposed*.

After conflating *time served* and *sentence imposed*, the Eight Circuit then defines *concurrent sentences* as “multiple terms of imprisonment imposed at the same time.” Corona-Verduzco, 963 F.3d at 724 *citing* 18 U.S.C. § 3584(a) and 18 U.S.C. § 3584(c); United States v. Gray, 152 F.3d 816, 821-22 (8th Cir. 1998); United States v. Powell, 404 F.3d 678, 682 (2d Cir. 2005); United States v. Beckstrom, 647 F.3d 1012, 1017 (10th Cir. 2011). However, the Eight Circuit also recognizes that though concurrent sentences are separate and distinct *sentences*, a defendant serving concurrent sentences only serves “a portion of each sentence.” Corona-Verduzco, 963 F.3d at 724 *citing* Gerberding v. United States, 484 F.2d 1352, 1355 (8th Cir 1973).

In this case, the Fourth Circuit, like the Eight Circuit, conflates “time served” with “sentence imposed.” Relying on 18 U.S.C. §3584(a), the Fourth Circuit correctly defines concurrent sentences as multiple terms of imprisonment imposed at the same time. [Appendix A, p. 6]. However, there is no dispute that the Wise County Circuit Court sentenced Mr. Skaggs to six 26-month sentences to run

concurrently. But 21 U.S.C. §802(57)(A) does not consider the sentence a defendant received; the code section considers the length of the time a defendant served for the drug offense. Mr. Skaggs served 26 months for six felonies, only one of which was a drug offense for purposes of a sentencing enhancement under 21 U.S.C. §841. The Fourth Circuit's reliance on United States v. Ford, 88 F.3d 1350 (4th Cir. 1996) and United States v. Powell, 404 F.3d 678 (2d. Cir. 2005) is misplaced as each construed prior convictions for purposes of sentencing enhancements, not prior sentences served.

On July 27, 2015, the Wise County Circuit court convicted Mr. Skaggs for six separate charges and ordered that Mr. Skaggs served six identical sentences for each charge: ten years with seven years and ten months suspended, leaving an active term of two years and two months for each conviction. Because all the sentences ran concurrently, and consistent with the logic of the Eighth Circuit, Mr. Skaggs only *served* a portion of his sentence for distributing a Schedule III substance. The single *term of imprisonment* for all six conviction was two years and two months, or 790 days, and the portion of that *term of imprisonment* attributable to the drug distribution charge would be 131.67 days. Because Mr. Skaggs only *served* 131.67 days as the *term of imprisonment* for the drug

distribution conviction in Wise County,³ that Wise County drug distribution term of imprisonment cannot be used to enhance his sentence as a “serious drug felony” under 21 U.S.C. § 841(b)(1)(A)(viii) and 21 U.S.C. § 802(57)(A).

One purpose of the First Step Act of 2018 was to reduce and restrict the application of enhanced mandatory minimum sentences for certain drug offenders. First Step Act of 2018, *Pub. L. No. 115-391*, §401 (a), 132 Stat. 5194, 5220. The Act specifically narrowed the application of enhanced sentences by focusing on the time served for the prior drug offense rather than the nature of the charge or the sentence imposed which the previous enhancement statutes had considered. In 2015, the Wise County Circuit Court bundled Mr. Skaggs drug offense with five other serious property crimes and determined that 26 months was an appropriate sentence for all six convictions. As is common for administrative convenience, the Wise County Circuit Court simply handed down identical sentences for each of the six convictions and ran the sentences concurrently. Mr. Skaggs certainly served a term of imprisonment of more than 12 months for all six convictions, but we cannot say that he served more than 12 months for the drug offense alone. Congress intended to narrow application of enhanced sentences to those defendants who have prior “serious drug felonies” and “serious drug felonies” are specifically determined based on the length of the sentence for the “serious drug felony”- not

³ This calculation does not include good-time credit under Virginia Code section 53.1-202.3.

the length of the sentence for unrelated property crimes bundled with the drug offense for administrative convenience in the state court.

CONCLUSION

For the foregoing reasons, Mr. Skaggs respectfully requests that the Court grant a Writ of Certiorari to the Fourth Circuit Court of Appeals so that this Court may consider whether Mr. Skaggs has a qualifying prior conviction for a “serious drug felony” that implicates the mandatory minimum sentence of fifteen years under 21 U.S.C. § 841(b)(1)(A)(viii). Mr. Skaggs respectfully submits that this case provides the United States Supreme Court the opportunity to settle the definition of “a serious drug felony” for purposes of sentencing enhancements under the 21 U.S.C. § 841(b)(1)(A)(viii) when the sentence for the prior drug felony ran concurrently with the sentences for non-qualifying convictions.

Respectfully submitted,

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