

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GEOFFRIE DILL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does “controlled substance offense”, as that term is used in U.S.S.G. §4B1.1 and defined by U.S.S.G. §4B1.2(b), refer only to those controlled substances that are prohibited by the Controlled Substance Act, 21 U.S.C. 801, *et seq.*?

PARTIES

The caption of the case contains the name of all the parties. The Petitioner is Geoffrie Dill and the Respondent is the United States of America. No party is a corporation.

RULE 14(b)(iii) STATEMENT

This case arises from the following proceedings in the United States District Court for the Southern District of Indiana, and the United States Court of Appeals for the Seventh Circuit:

United States v. Dill, No. 21-2672 (7th Cir. 2022)

United States v. Dill, No. 1:11-cr-00026-TWP-DML (S.D. Ind. Sept. 13, 2021)

Dill v. United States, No. 1:13-cr-01900-TWP-TAB (S.D. Ind. May 24, 2021)

There are no other directly related proceedings in state or federal courts, or in this Court.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Geoffrie Dill, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit whose judgment is sought to be reviewed is a nonprecedential disposition that is available at *United States v. Dill*, No. 21-2672 (7th Cir. 2022) (Dkt. #35) and may be found in the Appendix at 1a. The judgment of the Southern District of Indiana is unpublished and is available at 1:11-cr-00026-TWP-DML (S.D. Ind. 2021) (Dkt. #247) and may be found in the Appendix at 5a.

JURISDICTION

The Court of Appeals entered final judgment on June 17, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1) because this Petition is filed by Mr. Dill, a party in a criminal case, after the rendition of the Court of Appeals' rendition of judgment.

REGULATORY AND STATUTORY PROVISIONS INVOLVED

U.S.S.G. §4B1.1(a) Career Offender

- (a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instance offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

U.S.S.G. §4B1.2(b) Definitions of the Term “Controlled Substance Offense” Used in Section 4B1.1

- (b) The term “controlled substance offense” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

21 U.S.C. § 802(6) Definition of the Term “Controlled Substance”

- (6) The term “controlled substance” means a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV, or V, of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

STATEMENT OF THE CASE

On January 28, 2011, Geoffrie Dill was alleged via Criminal Complaint to have possessed with intent to distribute methamphetamine (Count 1) and possessed a firearm in furtherance of a drug trafficking crime (Count 2) in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 924(c)(1)(A). A three-count Indictment was filed on February 23, 2011, alleging that, in addition to Counts 1 and 2 of the Criminal Complaint, Mr. Dill was a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1) (Count 3). An Amended Information was filed on March 3, 2011. This time, the Government also alleged that Mr. Dill violated 21 U.S.C. § 841(a)(1) after having previously been convicted of a felony drug offense—dealing in methamphetamine—in the State of Indiana.

On December 6, 2011, Mr. Dill was found guilty by a jury for having violated all three charged offenses. He was sentenced to a total 420 months’ incarceration: 360 months on Count 1, 180 concurrent months on Count 3, and 60 consecutive months on Count 2.

Mr. Dill filed a Motion for Relief under 28 U.S.C. § 2255 on May 6, 2016, following this Court's *Welch v. United States*, 578 U.S. 120 (2016) opinion. Mr. Dill was granted relief after he and the Government jointly moved to lower his sentence on Count 1 to 240 months' incarceration and on Count 3 to 120 concurrent months. Count 2 remained unchanged.

On February 18, 2021, Mr. Dill moved for relief from judgment after noticing a clerical mistake in his Amended Judgment, which failed to reflect the reductions to Count 3. At his resentencing, Mr. Dill argued that he was not a career offender under Section 4B1.1 of the United States Sentencing Guidelines because his prior Indiana conviction for dealing in methamphetamine was categorically overbroad to qualify as a "controlled substance offense."

Finding that the Seventh Circuit's opinion in *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020) foreclosed his argument, the District Court rejected Mr. Dill's challenge to his career offender designation and instead resentenced him to 280 total months' incarceration: 220 months' incarceration on Count 1, 120 concurrent months' incarceration on Count 3, and 60 consecutive months on Count 3.

Mr. Dill appealed his sentence on December 1, 2021, arguing in part that the Seventh Circuit should revisit its *Ruth* decision and instead incorporate the Controlled Substances Act's "controlled substance" definition into its analysis of what prior convictions may classify as predicates for purpose of the Section 4B1.1 career offender enhancement. Standing by its *Ruth* decision, the Court of Appeals affirmed Mr. Dill's sentence on June 17, 2022. Following this decision, Mr. Dill decided to seek review from the Supreme Court of the United States, prompting the filing of this Petition for a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

This Court should resolve the Circuit split and decide whether the Controlled Substances Act’s “controlled substance” definition should be incorporated into analysis of what classifies a predicate “controlled substance offense” in U.S.S.G. §4B1.1.

A. A Circuit split exists that requires this Court’s involvement.

A principal purpose for which this Court uses its certiorari jurisdiction is to resolve conflicts among the Circuit courts of appeals and state courts concerning the meaning of provisions of federal law. *See Braxton v. United States*, 500 U.S. 344, 347 (1991); Sup. Ct. R. 10(a). More importantly, this Court will often grant certiorari “to resolve circuit splits that render the state of the law inconsistent and chaotic.” *Am. Axle & Mfg. v. Neapco Holdings*, 977 F.3d 1379, 1382 (Fed. Cir. 2020).

While this Court has held that circuit splits regarding the sentencing guidelines are best left to the Sentencing Commission to resolve through amendments to the guidelines, Mr. Dill’s case presents an issue on which the Circuits are split and, as the Tenth Circuit recently stated, one where the “Supreme Court should weigh in [on].” *United States v. Jones*, 32 F.4th 1290, 1297 (10th Cir. 2022) (Rossman, J., dissenting). Because the Circuits’ disagreement has led to the inconsistent application of a federal guideline to similarly situated defendants throughout the country, this Court should now step in and resolve the “inconsistent and chaotic” state of the law regarding the United States Sentencing Guidelines’ career offender designation.

The categorical approach test, developed by this Court in *Taylor v. United States*, requires sentencing courts to conduct a formal element-by-element comparison when determining whether a prior state conviction qualifies as a predicate at sentencing, “looking only to the fact of conviction and the statutory definition of the predicate offense, rather than to the particular underlying facts.” 495 U.S. 575, 576 (1990). Thus, for statutory sentencing enhancements, such as the Armed Career

Criminal Act (“ACCA”), a prior state conviction will qualify as a predicate “only if the statute’s elements are the same as, or narrower than, those of the generic offense.” *Descamps v. United States*, 570 U.S. 254, 257 (2013).

This Court introduced the categorical approach test with the goal of providing “a national definition of the elements of a crime ... so as to permit uniform application of federal law in determining the federal effect of prior convictions.” *United States v. Leal-Vega*, 680 F.3d 1160, 1165 (9th Cir. 2012). For federal recidivism statutes like those in the ACCA and the Controlled Substances Act—codified as 18 U.S.C. § 924 and 21 U.S.C. § 841, respectively—this Court has largely accomplished its goal of uniformity. Three decades after *Taylor*, the categorical approach has become each Federal Circuit’s main framework of analysis on any issue of whether a given state conviction qualifies as a predicate offense. *See e.g., Borden v. United States*, 141 S. Ct. 1817, 1822 (2021); *United States v. Elder*, 900 F.3d 491, 498 (7th Cir. 2018).

However, while the categorical approach is unanimously applied in “several statutory contexts,”¹ the same cannot be said as it pertains to the Sentencing Guidelines. Presently, an 8-to-4 split exists among the Circuit Courts of Appeals on whether to use the categorical approach to decide if a defendant’s prior state conviction is a “controlled substance offense” under the Guidelines’ career offender enhancement at U.S.S.G. §4B1.1.

Six of the twelve regional Circuit Courts of Appeals agree that because the term “controlled substance” in Section 4B1.1 refers to the Controlled Substances Act’s definition at 21 U.S.C. § 802(6), then this Court’s categorical-approach analysis framework applies. The Circuits are also in accordance that application of the categorical approach serves to “reinforce the idea that imposing a federal sentencing enhancement under the Guidelines requires something more than a

¹ *Ibid.*

conviction based on a state’s determination that a given substance should be controlled.” *United States v. Townsend*, 897 F.3d 66, 71 (2d Cir. 2018); *See e.g., United States v. Brown*, 765 F.3d 185, 189 (3d Cir. 2014); *United States v. Gomez-Alvarez*, 781 F.3d 787, 793 (5th Cir. 2015); *United States v. Williams*, 762 Fed. Appx. 278, 281 (6th Cir. 2019); *United States v. Sanchez-Garcia*, 642 F.3d 658, 661-662 (8th Cir. 2011); *United States v. Leal-Vega*, 680 F.3d 1160, 1166-1167 (9th Cir. 2012).

These Circuits, herein referred to as “the majority,” have taken this position for various reasons. First, the majority draws its position from this Court’s desire bring uniformity align with the uniform application of federal law that has been developed in the line of cases subsequent to *Taylor*. By treating the career-offender enhancement the same as the Controlled Substances Act’s, the majority has provided consistency where the Circuits apply the same analysis to the federal recidivism statutes, thereby providing an added layer of protection of due process and furthering the sentencing goal of avoiding unwarranted sentencing disparities throughout the country. In addition to the six Circuits in the majority, the First Circuit has not yet decided the issue, but it has “indicated agreement with [the majority’s] approach.” *Townsend*, 897 F.3d at 68 (citing *United States v. Crocco*, 15 F.4th 20, 23-25 (Pt. Cir. 2021)).

The minority approach on this issue is made up by the Fourth, Seventh, Tenth, and Eleventh Circuit Courts of Appeals. In contrast to the majority’s categorical approach, where courts will look at the career-offender guideline within the context of the CSA, courts like the Seventh Circuit look at the commentary in U.S.S.G. §4B1.2 and gives the “controlled substance offense” definition its natural meaning. *United States v. Ruth*, 966 F.3d 642, 652 (7th Cir. 2020). Thus, in Circuits holding this position, “the career-offender guideline defines the term controlled substance offense broadly, and the definition is most plainly read to “include state-law offenses related to controlled

or counterfeit substances punishable by imprisonment for a term exceeding one year.” *Id.* at 654. Moreover, a controlled substance will generally be understood to be “any of a category of behavior-altering or addictive drugs, as heroin or cocaine, whose possession and use are restricted by law.” *Id.* See also *United States v. Ward*, 972 F.3d 364 (4th Cir. 2020); *United States v. Jones*, 15 F.4th 1288 (10th Cir. 2021); *United States v. Smith*, 775 F.3d 1262 (11th Cir. 2021).

The implications of this circuit split cannot be understated. This Court’s intervention would provide needed guidance on an issue that is leading to the inconsistent application of federal law.

B. The career-offender guideline was drafted to mirror the Controlled Substances Act’s enhancement at 21 U.S.C. § 841.

This Court’s intervention is necessary to resolve the circuit split no matter which way it rules because the present incongruities are leading to many unwarranted sentencing disparities among similarly situated defendants throughout the country.

Nevertheless, because the Sentencing Guidelines “draw their definitions from the Controlled Substances Act,” this Court should grant this petition and rule that the Controlled Substances Act’s terms and definitions are necessary to ensure the uniform application of the Sentencing Guidelines under federal law, as opposed to their own specialized context. See *United States v. Jackson*, 995 F.3d 476, 480 (6th Cir. 2021). As the Sixth Circuit noted in *Jackson*, the federal statute that directed the implementation of the career-offender enhancement is 28 U.S.C. § 994(h). *Id.* Notably, Section 994(h)(2)(B) mandates the Commission to “assure that the guideline specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and ... has previously been convicted of two or more prior felonies, each of which is ... an offense described in section 401 of the Controlled Substances Act (21 U.S.C. § 841).”

The career-offender guideline was created to mirror Section 841’s enhancement at a time when the Guidelines were intended to be mandatory. While their authority and definitions came from the U.S. Code, the Guidelines were intended to combine the federal statutes and a new point-based system that encompassed every aspect of sentencing. Therefore, it cannot be said that the career-offender guideline was drafted without regard to the statutes that granted them their authority and overall framework. As the Sentencing Commission states in its commentary, the career-offender guideline was drafted pursuant “in large part” to the CSA’s Section 841 enhancement criteria. U.S.S.G. §4B1.1, cmt.

C. Application of the categorical approach to career-offender inquiries promotes uniformity and avoids unwarranted sentencing disparities throughout the Circuits.

At this time, two similarly situated defendants with the same criminal history, prior state convictions, and instant offense characteristics, can face very different sentences depending on the Circuit they are prosecuted in and how that Circuit approaches the career-offender predicate analysis.

For example, Mr. Dill’s sentence could have been very different had he committed the instant offense one hundred miles east in Dayton, Ohio, or one hundred miles south in Louisville, Kentucky. As mentioned above, because the Seventh Circuit chose against looking at the Controlled Substances Act, and instead interpreted the career-offender guideline to be a wide-ranging term “includ[ing] state-law offenses related to controlled or counterfeit substances punishable by imprisonment for a term exceeding one year,”² the District Court for the Southern District of Indiana sentenced Mr. Dill as a career offender under Section 4B1.1 of the Guidelines. This designation ultimately resulted in a 200-month difference in Mr. Dill’s sentencing range.

² *United States v. Ruth*, 966 F.3d 642, 653 (7th Cir. 2020).

Mr. Dill's guideline range at re-sentencing was 420 months-to-life imprisonment. Dkt. #234, para. 111. This was due to a criminal history score of 18 and a total offense level of 37, enhanced pursuant to the career-offender guideline. *Id.* Without the career-offender designation, Mr. Dill's sentencing range would have been 200-to-235 months' incarceration since his total offense level was 28 before being adjusted.³

A successful challenge to Mr. Dill's career-offender designation is not only a hypothetical. It is likely that a district court in the Sixth Circuit, upon a challenge for overbreadth, would conduct a categorical analysis and find that Mr. Dill's prior Indiana convictions for dealing in methamphetamine do not qualify as career-offender predicates because Indiana's methamphetamine definition includes optical, positional, and geometric isomers instead of just optical isomers, as is contained in the Controlled Substances Act. *See* Ind. Code § 35-48-1-17.4; 21 U.S.C. § 802(14). Thus, while the Sixth Circuit has never considered the issue in Mr. Dill's case, his argument is at-minimum generally persuasive, as noted by the District Court for the Eastern District of Michigan in *United States v. Lofton*, 2021 U.S. Dist. LEXIS 225461 (E.D. Mich. 2021).

Mr. Dill could have been sentenced under a much lower sentencing range in line with most of the other Circuits and federal criminal law in general. But because he was in a Circuit that chose against the uniform application of federal law in accordance with *Taylor*'s extensive line of cases, he was sentenced to a range whose minimum was 185 months greater than what it otherwise would have been. Such territorial discrepancies among the federal Circuits should not exist in a legal world as technologically well-versed and equipped, or as closely interconnected as it has ever been.

³ The corresponding sentencing range for Category VI and total offense level of 28 is 140-to-175 months. However, Mr. Dill's sentencing range would have been 60 months greater because of the 60-month mandatory minimum sentence that he had to serve consecutively under Count 2.

Based on the foregoing, this Court should grant this Petition and prevent further sentencing disparities among the Circuits' similarly situated defendants, as intended by Congress in 18 U.S.C. § 3553(a)(6).

CONCLUSION

Based on the foregoing, this Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

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APPENDIX