

No. 22-7728

IN THE SUPREME COURT OF THE UNITED STATES

WARREN LAVELL JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 18-32) that the court of appeals erred in treating a prior judicial finding of drug quantity as binding when it denied his motion for a sentence reduction pursuant to Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222. For the reasons set forth in the government's brief in opposition to the petition for a writ of certiorari in Harper v. United States, No. 23-27 (filed Nov. 9, 2023), the government agrees with petitioner that when authorizing district courts to "impose a reduced sentence," § 404(b), 132 Stat. 5222, Congress envisioned that courts would do so in a manner consistent with Apprendi v. New Jersey, 530 U.S. 466 (2000), which allows an

increase in a defendant's statutory sentencing range only when a jury has found the conditions for that increase (other than the fact of a prior conviction) beyond a reasonable doubt.¹

As further explained in that brief, however, that issue does not warrant this Court's review. See Harper Br. in Opp. at 12-14. Petitioner identifies no other court of appeals that has adopted the Eleventh Circuit's outlier interpretation; the circuit conflict on the question presented is lopsided and of limited practical significance; and the question presented is of declining prospective importance, in light of the diminishing set of potential Section 404 movants whose motions would implicate it. See ibid.

In any event, this case is an unsuitable vehicle in which to review the question presented, because petitioner's prison sentence was commuted, and he was released from prison in 2020 -- thus rendering this case moot. See D. Ct. Doc. 156, at 2 (July 15, 2019); Pet. App. A-1, at 3. "To qualify as a case fit for federal-court adjudication, 'an actual controversy must be extant at all stages of review.'" Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997) (citation omitted). A defendant's postconviction challenge to a conviction generally will satisfy that requirement even after completion of the term of imprisonment, because a criminal conviction typically has "continuing collateral

¹ The government has served petitioner with a copy of the government's brief in opposition in Harper.

consequences.” Spencer v. Kemna, 523 U.S. 1, 8, 12 (1998). “But when a defendant challenges only an expired sentence, no such presumption applies.” United States v. Juvenile Male, 564 U.S. 932, 936 (2011) (per curiam).

Instead, in that circumstance, a sentencing challenge is moot unless the challenger satisfies “the burden of identifying some ongoing ‘collateral consequence’ that is ‘traceable’ to the challenged portion of the sentence and ‘likely to be redressed by a favorable judicial decision.’” Juvenile Male, 564 U.S. at 936 (brackets and citation omitted); see Lane v. Williams, 455 U.S. 624, 631 (1982). Petitioner has not done so here. Petitioner’s Section 404 motion requested “a reduced sentence of time-served” and “immediate release” from prison. D. Ct. Doc. 167, at 1, 12 (July 15, 2019). Petitioner did not also request any modification to his ten-year term of supervised release. See D. Ct. Doc. 167; Judgment 3. And because petitioner has obtained all the relief he sought in his motion, his claim is now moot. Even if petitioner’s case were not formally moot, his release from prison at minimum deprives this case of the practical significance that might warrant reviewing the judgment below.

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

² The government waives any further response to the petition unless this Court requests otherwise.

Respectfully submitted.

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NOVEMBER 2023