No. 22-7750

IN THE SUPREME COURT OF THE UNITED STATES

JESSIE TRAYLOR, PETITIONER

v.

STEVIE KNIGHT, WARDEN, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner may maintain a collateral challenge to his judicially imposed life sentence after accepting a presidential commutation of that sentence to a term of 240 months of imprisonment.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (C.D. Ill.):

United States v. Traylor, 08-cr-20036 (Jan. 11, 2010)

Traylor v. United States, 12-cv-2001 (Oct. 5, 2012)

United States District Court (D.S.C.):

Traylor v. Knight, 21-cv-150 (Nov. 17, 2021)

United States Court of Appeals (7th Cir.):

United States v. Traylor, 10-1086 (Jan. 6, 2011)

United States v. Traylor, 22-2807 (Apr. 6, 2023)

United States Court of Appeals (4th Cir.):

Traylor v. Knight, 22-6647 (Jan. 23, 2023)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-2) is not published in the Federal Reporter but is available at 2023 WL 356035.[1] The order of the district court (Pet. App. 3-5) is unreported but is available at 2021 WL 5359281.

JURISDICTION

The judgment of the court of appeals was entered on January 23, 2023. The petition for a writ of certiorari was filed on March

[1] The appendix to the petition for a writ of certiorari is not consecutively paginated. This brief refers to the appendix as if it were consecutively paginated.

29, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Central District of Illinois, petitioner was convicted on one count of conspiring to distribute and to possess with intent to distribute five kilograms or more of a mixture or substance containing cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A), and 846; one count of possessing a mixture or substance containing cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C); and two counts of using a telephone in furtherance of a drug trafficking crime, in violation of 21 U.S.C. 843(b) and (d). 08-cr-20036 D. Ct. Doc. 88, at 1 (Jan. 11, 2010). He was sentenced to life imprisonment, id. at 2, to be followed by 10 years of supervised release "in the event the term of imprisonment shall be reduced," id. at 3. The court of appeals affirmed. 405 Fed. Appx. 73. Petitioner subsequently filed a petition for a writ of habeas corpus under 28 U.S.C. 2241 in the District of South Carolina, where he was confined. 21-cv-150 D. Ct. Doc. 1 (Jan. 14, 2021). The district court dismissed the petition. Pet. App. 3-5. The court of appeals affirmed. Id. at 1-2.

1. Beginning in August 2007, petitioner assisted coconspirators by transporting cocaine from Chicago to Decatur, Illinois. 405 Fed. Appx. at 74-75. In the first six months of

2008, petitioner's coconspirators purchased one to two kilograms of cocaine per week. Id. at 75. Petitioner transported most of those drugs. Ibid. A grand jury in the Central District of Illinois charged petitioner with one count of conspiring to distribute and to possess with intent to distribute five or more kilograms of a mixture or substance containing cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A), and 846; one count of possessing a mixture or substance containing cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C); and two counts of using a telephone in furtherance of a drug trafficking crime, in violation of 21 U.S.C. 843(b) and (d). 08-cr-20036 D. Ct. Doc. 26, at 1-2, 4-5 (Sept. 10, 2008).

Before trial, the government filed a notice under 21 U.S.C. 851 of its intent to seek enhanced penalties for the two Section 841 offenses based on petitioner's recidivism. See 08-cr-20036 D. Ct. Doc. 19, at 1 (July 2, 2008). At the time, Section 841(b)(1)(A) provided for a "mandatory term of life imprisonment" for any person who violated that provision "after two or more prior convictions for a felony drug offense have become final." 21 U.S.C. 841(b)(1)(A) (2006).[2] In addition, Section 841(b)(1)(C) provided for an enhanced penalty of "not more than 30 years" for

[2] Congress subsequently amended Section 841(b)(1)(A) to provide for a minimum penalty of 25 years of imprisonment, rather than life imprisonment, for a defendant who violates Section 841(b)(1)(A) "after 2 or more prior convictions for a serious drug felony or serious violent felony have become final." First Step Act of 2018, Pub. L. No. 115-391, § 401(a)(2)(A)(ii), 132 Stat. 5220 (21 U.S.C. 841(b)(1)(A)).

any violation of that provision committed after a prior conviction for at least one "felony drug offense." 21 U.S. 841(b)(1)(C) (2006). The government maintained that petitioner had two prior felony drug convictions: a 1999 conviction for possessing narcotics near a school and a 2006 conviction for possessing a controlled substance with intent to deliver, both under Illinois law. 08-cr-20036 D. Ct. Doc. 19, at 1.

After trial, a jury found petitioner guilty on all four counts. 08-cr-20036 D. Ct. Doc. 88, at 1. At petitioner's 2010 sentencing, the district court determined that petitioner's prior convictions qualified as felony drug offenses. 08-cr-20036 D. Ct. Doc. 106, at 8 (June 7, 2010). The court sentenced petitioner to terms of life imprisonment on the conspiracy count, 30 years of imprisonment on the distribution count, and four years of imprisonment on each of the telephone counts, and ordered all terms to run concurrently. 08-cr-20036 D. Ct. Doc. 88, at 2-3. The court of appeals affirmed. 405 Fed. Appx. 73.

In 2012, Petitioner filed a motion for collateral relief under 28 U.S.C. 2255, which the district court denied. 12-cv-2001 D. Ct. Doc. 7, at 1-11 (Oct. 5, 2012).

2. On January 17, 2017, President Obama commuted petitioner's sentence to 240 months of imprisonment. See 08-cr-20036 D. Ct. Doc. 147, at 3 (Jan. 17, 2017). The President "condition[ed] the grant of commutation" on petitioner's enrolling in the Bureau of Prisons' Residential Drug Abuse Program. Ibid.

In 2021, petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. 2241 in the District of South Carolina, where he was then confined, arguing that his 2006 Illinois conviction no longer qualifies as a "felony drug offense" for purposes of the enhanced penalties "in light of the U.S. Supreme Court[']s new ruling of statutory interpretation in Mathis" v. United States, 579 U.S. 500 (2016). 21-cv-150 D. Ct. Doc. 1, at 9. Petitioner requested resentencing and asked that the court "vacate the 240 months that was given by the clemency." Id. at 7 (capitalization omitted).

The district court dismissed the petition. Pet. App. 3-5. The court explained that "the President's commutation renders moot Petitioner's claim that his original sentence is unlawful, and this Court lacks jurisdiction to consider Petitioner's claim." Id. at 5 (citing United States v. Surratt, 855 F.3d 218 (4th Cir.) (en banc), cert. denied, 583 U.S. 1040 (2017)).

The court of appeals affirmed in an unpublished per curiam order, Pet. App. 1-2, in which it explained that it "ha[d] reviewed the record and f[ou]nd no reversible error," id. at 2.

ARGUMENT

Petitioner contends (Pet. 9-10) that his acceptance of executive clemency does not preclude him from collaterally challenging the basis for his judicially imposed sentence. The court of appeals correctly found no error in the district court's determination that the acceptance of the commutation eliminated

the relevance of his challenge to his original judicial sentence, and the shallow circuit disagreement on that issue does not warrant this Court's review because the question presented affects only a narrow range of cases. In any event, this Court's recent decision in Jones v. Hendrix, 599 U.S. 465 (2023), precludes petitioner from raising his claim for statutory relief in a petition for a writ of habeas corpus under 18 U.S.C. 2241. This Court has denied a petition for a writ of certiorari presenting the same question, see Surratt v. United States, 583 U.S. 1040 (2017) (No. 17-5255), and should follow the same course here.

1. The court of appeals correctly affirmed the dismissal of the habeas petition in light of the President's commutation of petitioner's original sentence.

a. Under the Constitution, the President "shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." U.S. Const. Art. II, § 2, Cl. 1. That provision vests the President with "plenary authority * * * to reduce a penalty in terms of a specified number of years." Schick v. Reed, 419 U.S. 256, 266 (1974). When the President exercises that authority to commute a sentence, his act "affects the judgment imposing [the sentence]" and creates a new, "substituted punishment" that takes the place of the original sentence. Biddle v. Perovich, 274 U.S. 480, 486-487 (1927).

Petitioner's habeas petition challenged the original judgment of the district court, which included a sentence to a life term of

imprisonment, claiming that one of the predicate offenses for his sentence enhancement was invalid in light of subsequent legal developments. 21-cv-150 D. Ct. Doc. 1, at 2. Following his acceptance of the President's commutation, however, petitioner is no longer serving a judicially imposed sentence of life imprisonment. The 240-month sentence petitioner now serves is not the sentence imposed by the court, but instead reflects the President's exercise of his constitutional pardon power. Petitioner agreed to the commutation of his original sentence and its replacement with a shorter sentence whose length was determined by the President acting pursuant to his authority under the Constitution. See Pet. 8 (acknowledging that petitioner received clemency); 08-cr-20036 D. Ct. Doc. 147, at 3 (noting that clemency is conditional upon petitioner's agreement).

Under those circumstances, no other Branch may alter the effect of the commutation by modifying petitioner's sentence further. Just as Congress may not "infring[e] the constitutional power of the Executive" by "chang[ing] the effect of * * * a pardon," United States v. Klein, 80 U.S. (13 Wall.) 128, 147-148 (1872), a federal court has no power to alter a commuted sentence at the behest of a prisoner who has accepted such a commutation. See Ex parte Wells, 59 U.S. (18 How.) 307, 315 (1856) (a conditional pardon, "when accepted by the convict, is the substitution, by himself, of a lesser punishment than the law has

imposed upon him, and he cannot complain if the law executes the choice he has made").

This Court's decision in Schick v. Reed is illustrative. In that case, after Schick was tried before a court martial and sentenced to death under the Uniform Code of Military Justice (UCMJ), President Eisenhower commuted his sentence to a term of life imprisonment, subject to the condition that Schick would forever be ineligible for parole. 419 U.S. at 257-258. Schick later filed suit challenging the no-parole condition, arguing that this Court's decision in Furman v. Georgia, 408 U.S. 238 (1972) (per curiam), had invalidated the death penalty and "require[d] that he be resentenced to a simple life term, the alternative punishment for murder" under the UCMJ. Schick, 419 U.S. at 259.

This Court disagreed. It acknowledged that all death sentences pending when Furman was decided had been "set aside without conditions such as were attached" to Schick's commutation, thus allowing affected prisoners to become eligible for parole. Schick, 419 U.S. at 259, 267. The Court held, however, that Furman could not affect Schick's commuted sentence. The Court explained that "the President's action derived solely from his Art. II powers" and "did not depend upon * * * the UCMJ or any other statute fixing a death penalty for murder." Id. at 267. As a consequence, Schick's commuted sentence was not subject to judicial revision, and the subsequent decision in Furman therefore could not "alter[] [the] validity" of the conditional commutation.

Id. at 268. Notably, the Court declined to accept the dissent's argument that "the retroactive application of Furman to [Schick's] no-parole commutation [wa]s required because the imposition of the death sentence was the indispensable vehicle through which he became subject to his present sentence." Id. at 269 (Marshall, J., dissenting); see id. at 269-270 ("[T]he penal restriction of the commutation was a creature of Presidential clemency made possible only through the court-martial's imposition of the death sentence.").

b. Here, petitioner seeks the same relief that the Court rejected in Schick: replacement of a commuted sentence with one that reflects what, in his view, he should have received in the first instance in light of a subsequent decision from this Court. Just as Schick could not avoid the effect of the commutation and seek the sentence (life with the possibility of parole) that non-commuted prisoners had received, see Schick, 419 U.S. at 267-268, neither can petitioner avoid the 240-month term of imprisonment to which he agreed when accepting his commutation.[3]

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[3] In dismissing the habeas petition, the district court stated that the presidential commutation of petitioner's sentence had rendered his claim "moot." Pet. App. 5. That description is best understood as reflecting the principle that "[a] case becomes moot * * * 'when it is impossible for a court to grant any effectual relief whatever.'" Campbell-Ewald Co. v. Gomez, 136 S. Ct. 663, 669 (2016) (quoting Knox v. Service Employees International Union, 567 U.S. 298, 307 (2012)). As explained above, in light of the President's exercise of the constitutional power to commute petitioner's sentence, no court may alter the commuted sentence or otherwise grant the relief that petitioner

Petitioner argues that "the president has no constitutional role in defining crimes or fixing penalties," Pet. 10 (capitalization omitted), but he does not account for the President's pardon power, and the case he cites -- United States v. Evans, 333 U.S. 483 (1948) -- discusses the judicial function of statutory interpretation, and not the presidential power to pardon, see id. at 486-495. Petitioner also argues that "commutation is not a newly imposed presidential sentence, but a modification of one previously imposed by a court," Pet. 10 (capitalization omitted), but he does not address the contrary implications of Schick.

2. In Dennis v. Terris, 927 F.3d 955 (2019), cert. denied, 140 S. Ct. 2571 (2020), the Sixth Circuit stated that a defendant who challenged a life sentence that had been commuted "still serves a judicial life sentence, the execution of which the President's act of grace has softened." Id. at 960. Although that conclusion was incorrect for the reasons stated above, this Court's review of that shallow and recent disagreement would be premature.

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requests. Whether the district court -- or the court of appeals' decision in United States v. Surratt, 855 F.3d 218 (4th Cir.) (en banc), cert. denied, 583 U.S. 1040 (2017), on which the district court relied -- correctly characterized that conclusion in terms of the doctrine of mootness, or should instead have described its ruling as reflecting the court's lack of "power to inject [itself] into the lawful act of a coordinate branch of government," id. at 219 (Wilkinson, J., concurring), the decision was nevertheless correct.

First, any disagreement is shallow and limited, involving only Dennis and the Fourth Circuit's prior decision in United States v. Surratt, 855 F.3d 218 (en banc), cert. denied, 583 U.S. 1040 (2017), on which the district court here relied. The Tenth and Eleventh Circuits have relied on Dennis, but not in decisions addressing the question presented here. See Lorance v. Commandant, U.S. Disciplinary Barracks, 13 F.4th 1150, 1164 (10th Cir. 2021) (addressing whether an unconditional pardon moots a defendant's habeas challenge to his conviction, rather than his sentence); Andrews v. Warden, 958 F.3d 1072, 1076-1080 (11th Cir. 2020) (addressing the scope of a commutation, rather than the question presented here, and affirming the denial of relief).

Second, the question presented is narrow and does not recur frequently. It affects only a federal prisoner who accepts a conditional commutation from the President where the prisoner maintains or subsequently brings a challenge to his sentence and where the commuted sentence does not give the prisoner the full measure of relief he seeks.

3. In any event, petitioner would not be entitled to relief even if the question presented were resolved in his favor. Petitioner relies on Section 2241 to assert an underlying claim based on an intervening change in the interpretation of a criminal statute. See 21-cv-150 D. Ct. Doc. 1, at 8-9 (relying on Mathis v. United States, 579 U.S. 500 (2016), and United States v. De La Torre, 940 F.3d 938 (7th Cir. 2019)). Since the court of appeals

rendered its decision, however, this Court has made clear that a prisoner may not rely on Section 2241 to seek relief based on an intervening change in statutory interpretation if his claim otherwise would be barred by the limitations on second or successive motions in 28 U.S.C. 2255(h). Jones v. Hendrix, 599 U.S. 465, 477-478 (2023). Petitioner's claim is barred by Jones, making this an unsuitable vehicle in which to address the question presented. See Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant discretionary review to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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