

No. 22-7894

IN THE SUPREME COURT OF THE UNITED STATES

FRANKIE SHEARRY, 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

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Petitioner contends (Pet. 7-9) that his four prior cocaine convictions under Georgia law, Pet. App. 2, do not qualify as "serious drug offense[s]" under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(A). Specifically, petitioner argues (Pet. 7-9) that the classification of his prior state convictions as "serious drug offense[s]" under the ACCA should depend on the federal controlled-substance schedules in effect at the time of his federal offense conduct, rather than at the time of his prior state crimes.

This Court has granted certiorari in Brown v. United States, 143 S. Ct. 2458 (2023) (No. 22-6389), and Jackson v. United States, 143 S. Ct. 2457 (2023) (No. 22-6640), to consider whether the classification of a prior state conviction as a “serious drug offense” under the ACCA depends on the federal controlled-substance schedules in effect at (1) the time of the defendant’s prior state crime; (2) the time of the federal offense for which he is being sentenced; or (3) the time of his federal sentencing. The petition for a writ of certiorari here should accordingly be held pending the Court’s decision in Brown and Jackson and then disposed of as appropriate.*

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

AUGUST 2023

* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.