

No. _____

In the
Supreme Court of the United States

GERALD SPRUELL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in concluding there was sufficient evidence to support the jury's verdict and drug quantities attributed to the conspiracy charge.
2. Whether the Court of Appeals erred in concluding that the district court's erroneous mandatory minimum and Guidelines application was harmless.

PARTIES

Gerald Spruell is the Petitioner; he was the defendant-appellant below. The United States of America is the Respondent; it was the plaintiff-appellee below.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings that are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gerald Spruell respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Third Circuit is captioned as *United States v. Clark*, No. 20-2876, 2023 WL 2400741 (3d Cir. Mar. 8, 2023) (unpublished), and is provided in the Appendix to the Petition. [Appx. A]. The Third Circuit's order denying petition for rehearing dated April 4, 2023, is provided in the Appendix to the Petition. [Appx. E].

JURISDICTIONAL STATEMENT

The instant petition is filed within 90 days of the Third Circuit's order denying rehearing, which was entered on April 4, 2023. *See* SUP. CT. R. 13.3. This Court's jurisdiction to grant certiorari is invoked under 28 U.S.C. § 1254(1).

FEDERAL STATUTES INVOLVED

21 U.S.C. § 802(57) provides:

The term "serious drug felony" means an offense described in section 924(e)(2) of title 18 for which— (A) the offender served a term of imprisonment of more than 12 months; and (B) the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense.

21 U.S.C. § 841 provides:

(a) Unlawful Acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;

...

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

...

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

...

such person shall be sentenced to a term of imprisonment which may not be less than

10 years or more than life If any person 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 and not more than life imprisonment If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years

21 U.S.C. § 846 provides:

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

21 U.S.C. § 851(a)(1) provides:

No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding the prior convictions could not with due

diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

STATEMENT OF THE CASE

I. The District Court Proceedings

On November 13, 2019, a federal grand jury returned a superseding indictment which charged Spruell with, *inter alia*, conspiracy to distribute 280 grams or more of a mixture or substance containing cocaine base, and 1,000 grams or more of a mixture or substance containing heroin.

On November 20, 2019, the United States filed a notice pursuant to 21 U.S.C. § 851(a)(1) alleging Spruell committed the prior offenses:

On or about July 7, 2008, in the Court of Common Pleas of Philadelphia County, Pennsylvania, the defendant was sentenced to a term of imprisonment of one to two years' imprisonment upon his conviction for manufacturing, delivering or possessing with intent to manufacture or deliver a controlled substance and conspiracy in violation of 35 Pa.C.S.A. § 780-113 (A30), a serious drug felony as defined in Title 21, United States Code, Section 802(57), for which the defendant served a term of more than 12 months, from which he was released within 15 years of commencement

of his involvement in the offense charged in the superseding indictment.

On or about September 30, 2010, in the Court of Common Pleas of Philadelphia County, Pennsylvania, the defendant was sentenced to a term of imprisonment of six to twenty four months imprisonment upon his conviction for manufacturing, delivering or possessing with intent to manufacture or deliver a controlled substance and conspiracy in violation of 35 Pa.C.S.A. § 780-113 (A30), a serious drug felony as defined in Title 21, United States Code, Section 802(57), for which the defendant served a term of imprisonment of more than 12 months, from which he was released within 15 years of commencement of his involvement in the offense charged in the superseding indictment.

Jury trial commenced on February 10, 2020, with the Honorable Gerald Pappert presiding. On February 27, 2020, the jury convicted Spruell on Counts 1, 2, 4, 16, 17–18, 23–24, 41, 47, 52, 62, and 63. Spruell filed a motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 on August 7, 2020. The district court denied Spruell's post-conviction motions on September 3, 2020.

The Presentence Investigation Report found that Spruell's mandatory minimum for the conspiracy charge was 25 years' imprisonment based on the two prior felony convictions alleged in the Government's 21 U.S.C. § 851 notice. The PSR also found Spruell to be a career offender pursuant to U.S.S.G. § 4B1.1. Spruell's Guidelines were determined to be a Total

Offense Level 38, Criminal History Category VI, and range of 360 months to life in prison.

On September 9, 2020, the district court sentenced Spruell to 312 months imprisonment. Spruell filed a timely notice of appeal to the United States Court of Appeals for the Third Circuit on September 14, 2020.

II. The Appellate Court Proceedings

On appeal before the Third Circuit, Spruell raised five claims of error: (1) there was insufficient evidence to convict Spruell of the conspiracy alleged in the superseding indictment; (2) the conviction and sentence violated the Fifth Amendment's due process clause because of prejudicial comments at trial; (3) the sentence was based on inaccurate information and assumptions related to drug quantity calculations and criminal history computation; (4) the sentence violated *Descamps v. United States*, 570 U.S. 254 (2013); and (5) the sentence violated *United States v. Nasir*, 982 F.3d 144 (3d Cir. 2020), because an inchoate offense does not qualify as a career offender predicate under the Guidelines.

On March 8, 2023, the Third Circuit entered its opinion and judgment affirming Spruell's conviction and sentence. *United States v. Clark*, No. 20-2876, 2023 WL 2400741 (3d Cir. Mar. 8, 2023). The Third Circuit concluded that there was sufficient evidence to support Spruell's convictions. *Id.* at *2. In so holding, the Third Circuit noted:

The Government also properly aggregated drug weights to support Appellants' drug-related convictions. Along with conspiracy, Appellants

were charged and convicted under 21 U.S.C. § 841(b)(1)(A), which penalizes the manufacturing, distribution, or possession with intent to manufacture or distribute at least one kilogram of heroin and at least 280 grams of crack. Spruell and Robinson allege that the Government, to meet that threshold, improperly aggregated Appellants’ individual drug transactions in violation of our precedent. But the case on which they rely, *United States v. Rowe*, 919 F.3d 752 (3d Cir. 2019), does not apply Here, the Government also charged and established a conspiracy involving Spruell, Clark, and Robinson—a distinction we addressed in *United States v. Williams*, 974 F.3d 320 (3d Cir. 2020). There, we confirmed that drug quantities involved in 21 U.S.C. § 841(a) violations involving multiple conspirators “may be aggregated for determining the mandatory minimum of any one conspirator,” as long as the quantities were “reasonably foreseeable” to that conspirator. *Id.* at 366.

Id. at *2.

In addressing Spruell’s sentencing claims, the Third Circuit concluded that Spruell’s career offender enhancement was improperly based on a prior conspiracy conviction. *Id.* at *4. But the court found the error harmless because “Spruell’s *non-career* base offense level of 38 was greater than the incorrectly calculated career offender offense level of 37. So the latter was a nullity in the District Court’s sentencing decision.” *Id.*

The court addressed Spruell's applicable mandatory minimum under 21 U.S.C. §§ 841(b)(1)(A) and 851 in a footnote:

The Government acknowledges that Spruell's marijuana offense under 35 Pa. CC.S. § 780-113(a)(30) was not a serious drug felony because it carried a maximum term of imprisonment of less than ten years. *See* Pa. C.S. § 780-113(f)(1), (2); §§ 780-104(1)(iv), 780-102(b). That makes the enhancement in § 841(b)(1)(A) inapplicable. *See* 21 U.S.C. §§ 802(57), 841(b)(1)(A); 18 U.S.C. § 924(e)(2). As a result, Spruell's mandatory minimum of imprisonment was 15 years, not 25 years as calculated in the presentence report and adopted by the District Court at sentencing. But as we discuss below that error is harmless. The enhancements in § 841(b) did not alter Spruell's Guidelines range or his actual sentence because Spruell's controlling non-career offender offense level was higher than the career offender calculations.

Id. at *3, n. 8.

On March 21, 2023, Spruell petitioned the panel for rehearing. The Third Circuit denied Spruell's petition for panel rehearing on April 4, 2023.

REASON FOR GRANTING THE WRIT

The Court should grant certiorari to resolve the important federal question as to whether it is proper to aggregate drug quantities of coconspirators to establish a conviction's mandatory minimum sentence. In addition, the Court should grant certiorari to resolve

the important federal question as to whether resentencing is required where a defendant is sentenced using the incorrect statutory and Guideline range.

DISCUSSION

I. Insufficient Evidence to Establish Conspiracy

The Third Circuit erred in finding sufficient evidence to establish a conspiracy involving Spruell and, as a result, aggregating the drug quantities of multiple “coconspirators” to establish the mandatory minimum under 21 U.S.C. § 841(b)(1)(A).

To prove a conspiracy beyond a reasonable doubt, the Government must establish evidence of “an agreement contemplated bringing to pass a continuous result that will not continue without the continuous cooperation of the conspirators.” *United States v. Salmon*, 944 F.2d 1106, 1116 (3d Cir. 1991). “If the evidence viewed in the light most favorable to the prosecution gives ‘equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence,’ then ‘a reasonable jury must necessarily entertain a reasonable doubt.’” *United States v. Glenn*, 312 F.3d 58, 63 (2d Cir. 2002) (citing *United States v. Lopez*, 74 F.3d 575, 577 (5th Cir.) (internal quotation marks and emphasis removed), *cert. denied*, 517 U.S. 1228 (1996); *United States v. Andujar*, 49 F.3d 16, 20 (1st Cir. 1995); *United States v. Wright*, 835 F.2d 1245, 1249 (8th Cir. 1987); *Cosby v. Jones*, 682 F.2d 1373, 1383 (11th Cir. 1982).

The Third Circuit concluded that there was sufficient evidence to support a conspiracy conviction

because the evidence at trial showed: “that for over two years Appellants shared a phone to service a joint customer base for narcotics, working around the clock, with Spruell even describing himself as the ‘night man.’ Recording of conversations from the 4400 phone confirmed as much, revealing that Appellants arranged shift changes to cover phone orders, facilitated drug sales as a group, and warned one another of law enforcement detection.” *Clark*, at *2.

Spruell contests the finding that he was a participant in a single conspiracy. The evidence below indicates that Spruell was an independent contractor acting on his own. While there was evidence of a shared phone, Spruell also used different numbers to arrange transactions. Further, Spruell had his own vehicle, residence, packaging material, and source of supply. There was no evidence that Spruell and the charged codefendants obtained heroin or cocaine from a common source, nor that they shared in the proceeds of any drug sales.

Spruell respectfully submits that this evidence was insufficient to support the jury’s finding of a conspiracy to distribute controlled substances. As such, it was error to aggregate the drug quantities of multiple transactions alleged in the indictment to establish the mandatory minimum provided under 21 U.S.C. § 841(b)(1)(A).

Because there was insufficient evidence to support the jury’s finding of a conspiracy conviction, judgment of the Court of Appeals should be reversed and remanded.

II. Spruell Was Prejudiced by Sentencing Errors

The Third Circuit found two errors pertaining to Spruell's sentencing, but it declined to correct these errors under the premise that they were harmless. First, the district court erroneously believed Spruell's mandatory minimum sentence was 25 years pursuant to 21 U.S.C. §§ 841(b)(1)(A) and 851. In fact, Spruell's mandatory minimum was only 15 years as one of his alleged prior convictions was not a serious drug felony. Second, the district court erred in finding Spruell was a career offender under U.S.S.G. § 4B1.1.

Nonetheless, the Third Circuit affirmed the district court's judgment because "the error[s] played no role in the District Court's computation of Spruell's sentence . . . Spruell's *non-career* base offense level of 38 was greater than the incorrectly calculated career offender offense level of 37." *Clark*, at *4 (emphasis in original). Accordingly, the Third Circuit found the error "a nullity in the District Court's sentencing decision."

The error was not harmless, and the Third Circuit erred in failing to remand for resentencing *de novo* where the district court erroneously believed Spruell was subject to a mandatory minimum of 25 years and enhanced under the career offender guidelines.

This Court's decision in *Molina-Martinez v. United States*, 578 U.S. 189 (2016) is controlling. As set forth in *Molina-Martinez*:

At the outset of the sentencing proceedings, the district court must determine the applicable Guidelines range. To do so, the court considers the presentence report as well as any objections

the parties might have. The court then entertains the parties' arguments regarding an appropriate sentence including whether the sentence should be within the Guidelines range or not. Although the district court has discretion to depart from the Guidelines, the court "must consult those Guidelines and take them into account when sentencing." *United States v. Booker*, 543 U.S. 220, 264, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005).

Molina-Martinez, 578 at 193. This Court reaffirmed that the Sentencing Guidelines are the "starting point and ... initial benchmark" of a district court's imposition of sentence. *Id.* at 198 (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). As such, the Court held that the "Guidelines' central role in sentencing means that an error related to the Guidelines can be particularly serious." *Id.* at 199. This is true even where the incorrect and correct Guidelines range overlap. *Id.* at 198 ("When a defendant is sentenced under an incorrect Guidelines range—whether or not the defendant's ultimate sentence falls within the correct range—the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.")

Here, the district court was operating off two incorrect findings when it sentenced him: that Spruell's mandatory minimum was 25 years imprisonment, and that Spruell was a career offender under the Guidelines. While Spruell's base offense level was higher than the offense level called for under U.S.S.G.

§ 4B1.1(b)(1), the application of the erroneous enhancement still created a stigma that could have affected the district court's sentencing determination. The same is true of the district court's belief that it was required by law to sentence Spruell to 25 years or more, instead of the correct mandatory minimum of 15 years.

Further, misapplication of the career offender enhancement and mandatory minimum could have affected the district court's sentencing determination based on the factors under 18 U.S.C. § 3553(a), particularly in respect to the nature and circumstances of the offense, the history of the defendant, the need for the sentence imposed, and the kind of sentence and the sentencing range established. *See* 18 U.S.C. §§ 3553(a)(1), (a)(2), and (a)(4).

Where "the record is silent as to what the district court might have done had it considered the correct Guidelines range, the court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights." *Molina-Martinez*, at 201. Such is Spruell's case. The record is silent on how the district court would have sentenced Spruell had it been aware that Spruell's correct mandatory minimum was 15 years and he was not a career offender. As such, Spruell can demonstrate that his substantial rights were affected, and the Third Circuit erred in concluding that the error was harmless.

Judgment of the Third Circuit should be vacated and the case remanded.

CONCLUSION

For these reasons, Petitioner asks that this Honorable Court grant a writ of certiorari.

Respectfully submitted this 27th day of June, 2023.

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