
CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

vs.

RAJON JAMISON,

Defendant-Petitioner

PETITION FOR WRIT OF CERTIORARI

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

SANFORD A. SCHULMAN

Attorney for Petitioner

RAJON JAMISON

Guardian Building

500 Griswold Street, Suite 2340

Detroit, MI 48226

(313) 963-4740

Date: November 24, 2023

ISSUE PRESENTED

I. WHETHER THIS COURT SHOULD GRANT THIS APPLICATION FOR WRIT OF CERTIORARI AND ADDRESS TWO SENTENCING ERROR OF SIGNIFICANCE WHEN THE TRIAL COURT ERRED WHEN IT APPLIED A 26-POINT BASE LEVEL INSTEAD OF THE APPROPRIATE SENTENCING BASE LEVEL SHOULD HAVE BEEN 24 AND WHEN THE TRIAL COURT ERRONEOUSLY SENTENCED THE DEFENDANT/PETITIONER PURSUANT TO THE ARMED CAREER OFFENDER STATUTE BASED ON A CONVICTION ALMOST 30 YEARS AGO WHEN THE DEFENDANT/PETITIONER WAS MERELY 13 YEARS OLD?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Petition was the defendant in the case below, United States of America vs. Rajon Jamison, United States District Court for the Eastern District of Michigan, Case Number 19-cr-20798 and on appeal in the Sixth Circuit Court of Appeals Case No. 22-1840.

The United States of America was the plaintiff in the case below and is the Respondent herein.

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CASE NO.

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UNITED STATES OF AMERICA,

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vs.

RAJON JAMISON,

Defendant-Petitioner,

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

NOW COMES the Petitioner, RAJON JAMISON, by and through his assigned attorney, SANFORD A. SCHULMAN, and respectfully requests this Honorable Court grant this Petition for Writ of Certiorari and to review the Opinion and Order of the United States Court of Appeals for the Sixth Circuit Court, entered in the above-entitled proceeding on October 26, 2023 affirming the Trial Court's Sentence entered on September 16, 2022.

The Sixth Circuit Court of Appeals erroneously affirmed the trial court's Sentence and presents a significant issue as it relates to the issue of whether a trial court can and should be entitled to consider whether to utilize a juvenile conviction to enhance a federal adult sentence and in this case, the appellant's juvenile conviction, when he was thirteen years old, not only resulted in a substantial increase in his sentencing guidelines but also classified him as an armed career offender under the statute which required the trial court to impose a sentence of no less than 15 years.

OPINIONS BELOW

The defendant/appellant, Rajon Jamison, was charged on February 16, 2022 in a FIRST SUPERSEDING INDICTMENT with violation of COUNT ONE 18 U.S.C. §§ 922(g)(1) and 924(e) - Possession of Firearms and Ammunition by a Prohibited Person. (R. 65, SUPERSEDING INDICTMENT, PgID 434-437).

On March 17, 2022, Rajon pled guilty as charged to the Superseding Indictment without a Rule 11 Plea Agreement. (R. 91, TRANSCRIPT of 3/17/2022 PLEA HEARING, PgID 667-712). Prior to sentencing, the defense submitted a Sentencing Memorandum and objections to the base level used in the advisory sentencing guidelines as well as the classification of the defendant/appellant as an armed career offender based on his juvenile conviction nearly three decades ago when he was 13 years old. (Appendix A: R. 82, SENTENCING MEMORANDUM, PgID 636-552)

On September 16, 2022, the defendant/appellant appeared for sentencing. Appendix B: R. 90, TRANSCRIPT of 9/16/2022 SENTENCING HEARING PgID 599-666). The Court proceeded to sentence the defendant to be committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 188 months concurrent with the sentence imposed (12 months custody) on his supervised release violation. (Appendix C: R. 84, JUDGMENT, PgID 581-587).

The defendant filed a timely appeal (R. 85, NOTICE OF APPEAL PgID 588). The Sixth Circuit Court of Appeals issued a published opinion Appendix D: United States of America vs. Rajon Jamison (22-1840) 85 F.4th 796 (6th Cir. 2023) which found that the petitioner's 1994 juvenile convictions, including a conviction for felony firearm, qualified as a violent felony under the ACCA's elements clause.

JURISDICTIONAL STATEMENT

On September 19, 2022 the trial court entered a Judgment (APPENDIX C: Judgment, R. 84, PgID 581-587). The defendant/petitioner filed a timely appeal (R. 85, NOTICE OF APPEAL PgID 588). The Sixth Circuit Court of Appeals issued a published opinion Appendix D: United States of America vs. Rajon Jamison (22-1840) 85 F.4th 796 (6th Cir. 2023) which found that the petitioner's 1994 juvenile convictions, including a conviction for felony firearm, qualified as a violent felony under the ACCA's elements clause

This Petition for Writ of Certiorari is timely filed within ninety (90) days of the October 26, 2023 order as required by Rule 13.1 of the United States Supreme Court Rules. This Court has jurisdiction to grant this Petition for Writ of Certiorari and address the issue of Jurisdiction is proper under the Supreme Court Rule 10(a) and 10(c) and 28 USC § 1254(1) and Article III, §2 of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS

US Constitution, 5th Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S.S.G. § 4B1.1 (1998).

The career offender classification requires, among other conditions, that the defendant have at least two prior felony convictions of either a crime of violence or a controlled substance offense. U.S.S.G. § 4B1.1 (1998). A "prior felony conviction" means a prior adult federal or state conviction" U.S.S.G. § 4B1.2, cmt. n.1 (1998) (emphasis added). Therefore, a juvenile conviction cannot be counted in determining whether a defendant is a career offender. In addition, not all adult convictions for violent crimes or drug offenses count towards career offender status. Before an adult conviction is counted, the Guidelines for computing criminal history must be consulted: "The provisions of § 4A1.2 (Definitions and Instructions for Computing Criminal History) are applicable to the counting of convictions under § 4B1.1." U.S.S.G. § 4B1.2, cmt. n.3 (1998).

Section 4A1.2(d)"Offenses Committed Prior to Age Eighteen" are to be included in the criminal history calculation:

(1) If the defendant was convicted as an [**8] adult and received a sentence of imprisonment exceeding one year and one month, add 3 points under § 4A1.1(a) for each such sentence.

(2) In any other case,

(A) add 2 points under § 4A1.1(b) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense;

(B) add 1 point under § 4A1.1(c) for each adult or juvenile sentence imposed within five years of the defendant's commencement of the instant offense not covered in (A).

The commentary to § 4A1.2 gives further instructions on how to count offenses committed prior to age eighteen:

Attempting to count every juvenile adjudication would have the potential for creating large disparities due to the differential availability of records. Therefore, for offenses committed prior to age eighteen, only those that resulted in adult sentences of imprisonment exceeding one year and one month, or resulted in imposition of an adult or juvenile sentence or release from confinement on that sentence within five years of the defendant's commencement of the instant offense are counted .

INTRODUCTION

This Petition requests this Court grant certiorari to address a split amongst veracious circuits of appeals including the Fourth and the Eleventh Circuits, to promote uniformity in sentencing. The conviction of a juvenile in adult criminal court that results in the imposition of a sentence to a juvenile facility should not count toward career offender status for four reason: 1) a sentence to a juvenile facility is either consistent with a juvenile sentence or actually is a juvenile sentence that is imposed by an adult criminal court and, therefore, should be treated as a juvenile sentence; 2) an individual with a prior conviction who was sentenced by an adult criminal court to a juvenile facility should not be treated

differently than an individual with a prior conviction who was sentenced by a juvenile court to a juvenile facility under the equal protection principles of the Fifth Amendment of the United States Constitution); 3) policy suggests that the convictions of juveniles should be treated differently, even if they are convicted in adult criminal court; 4) and the plain meaning of the Guidelines and the proper use of the commentary leads to this result

STATEMENT OF THE CASE

On October 29, 2019, Rajon Jamison was arrested and later charged with Possession of Firearms and Ammunition by a Prohibited Person in violation of 18 USC Sec. 922(g)(1) and 18 USC Sec. 924(e)(1). At the time of his arrest, Rajon had been on supervised release for a little over a year. The defendant/appellant, Rajon Jamison, was charged on February 16, 2022 in a FIRST SUPERSEDING INDICTMENT with violation of COUNT ONE 18 U.S.C. §§ 922(g)(1) and 924(e) - Possession of Firearms and Ammunition by a Prohibited Person. The Superseding Indictment specifically charged that on or about October 29, 2019, in the Eastern District of Michigan, defendant, RAJON JAMISON, knowing he had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, knowingly possessed, in and affecting interstate and foreign commerce, firearms, that is, a Ruger, model P90, .45 caliber, semiautomatic handgun; an Intratec, model AB-10, 9mm caliber, semiautomatic handgun; and a Hi-Point, model 4095, .40 caliber, semiautomatic rifle; and ammunition, that is, nine rounds of .45 caliber ammunition; 36 rounds of 9mm caliber ammunition; and seven rounds of .40

caliber ammunition. All in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e). (R. 65, SUPERSEDING INDICTMENT, PgID 434-437).

The case focuses on a search of the home Rajon shared with his family on October 29, 2019. It is important to note that Rajon was not charged with any criminal charges except for the offenses charged herein. The previous month there was apparently some information provided to Rajon's probation officer. However, Rajon was never charged with any type of assault or any other offense.

When law enforcement arrived at the home, Rajon was cooperative and there is no indication he obstructed the investigation. The firearms that were recovered were not used in any other criminal activity. There were no drugs or any other illegal activity suspected in the home. The firearms were registered in Rajon's mother's name. Rajon's mother was a Flint City Police Officer.

Rajon's phone was seized as part of the investigation and the Government has maintained that there are photographs of these and additional firearms in the phone. In reality, the photos depict prop firearms that Rajon used in his job as a male dancer/entertainer.

Rajon was not assessed any offense level points because the firearms were stolen because they were not stolen. Or for firearms that were used in any other offense, because the firearms were otherwise legal and registered and secured under a couch cushion. The firearms were in the house for no other reason but protection. Rajon was concerned about the safety of his family and has since acknowledged that the presence of the firearms was a poor decision. (R. 82, SENTENCING MEMORANDUM, PgID 636-552)

On March 17, 2022, Rajon pled guilty as charged to the Superseding Indictment without a Rule 11 Plea Agreement. (R. 91, TRANSCRIPT of 3/17/2022 PLEA HEARING, PgID 667-712).

The defendant/appellant raised several objections, most noteworthy:

Objection No. 1: (Paragraph 18) Objection to the 26-point base level. The defendant maintains that the correct base level should be 24.

On March 17, 2022, the defendant pled guilty to the First Superseding Indictment without a Rule 11 Plea Agreement. The factual basis involved a statement by the defendant that on or about October 19, 2019, in the Eastern District of Michigan (Flint), he was residing in a home with other individuals and he knowingly possessed a Ruger, Model P90 .45 caliber handgun as well as a 9mm caliber semiautomatic handgun and a .40 caliber semiautomatic rifle as well as ammunition.

§ 2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition
(a) (2) 24, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense.

United States Probation Department's Responded: The defendant pled guilty to Count 1 of the Indictment, which includes an Intratec, Model AB-10, 9-millimeter handgun, which was loaded with a high-capacity magazine. As noted in paragraph 17 of the presentence report the firearm contained a magazine loaded with 17 rounds of ammunition. U.S.S.G. § 2K2.1 application note 2, describes a high-

capacity magazine as a magazine that can accept 15 rounds or more of ammunition. As noted in the objection, JAMISON pled guilty without a Rule 11 Plea Agreement. Therefore, the probation department declines to change the report and leaves the objection to the discretion of the Court. (R. 81, FINAL PRESENTENCE REPORT, PgID 532)

Objection Number 2: (Paragraph 23) Chapter Four enhancement: and Paragraph 34 qualification as an armed career criminal.

The Supreme Court directs lower courts to use the categorical approach to determine whether prior convictions "ha[ve] as an element the use, attempted use or threatened use of physical force against the person of another." *Descamps v. United States*, 570 U.S. 254, 260-61, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013) (citing *Taylor v. United States*, 495 U.S. 575, 600, 110 S. Ct. 2143, 109 L. Ed. 2d 607 (1990)). Although the categorical approach originated under the Armed Career Criminal Act, it also applies to the Sentencing Guidelines. See *United States v. Ford*, 560 F.3d 420, 421-22 (6th Cir. 2009).

Under the categorical approach, courts do not look at the particular facts of a prior conviction. Instead, they examine only the statutory elements of previous offenses. *Descamps*, 570 U.S. at 261; *Taylor*, 495 U.S. at 600. Under the categorical approach, courts determine whether every defendant convicted of the particular offense must have used, attempted to use, or threatened to use physical force against the person of another to have been convicted of that offense. *Burris*, 912 F.3d at 392. Courts do not examine whether the defendant actually used, attempted to use, or

threatened to use physical force against the person of another in the particular case giving rise to the prior conviction. *Id.*

Recently, the Supreme Court decided Borden v. United States, 141 S. Ct. 1817, 210 L. Ed. 2d 63 (2021), under the Armed Career Criminal Act. There, writing for a four-Justice plurality, Justice Kagan identified four states of mind that give rise to criminal liability, in descending order of culpability: purpose, knowledge, recklessness, and negligence. *Id.* at 1823. The plurality held that the definition of a violent felony requires purpose or knowledge, not recklessness or negligence. *Id.* at 1825. For this conclusion, the plurality located the mens rea requirement in the language of the force clause in the Armed Career Criminal Act, which requires force "against the person of another." *Id.* at 1833. This language "introduces that action's conscious object." *Id.*

Therefore, it excludes reckless conduct and actions not directed at another. *Id.* In so concluding, the plurality abrogated the Sixth Circuit's decision in *United States v. Verwiebe*, 874 F. 3d 258 (6th Cir. 2017), which held that reckless offenses qualified as violent felonies. See *Borden*, 141 S. Ct. at 1823. Relying on *Verwiebe*, the Sixth Circuit upheld *Borden*'s sentence as a career offender, *id.*, and the Supreme Court reversed, *id.* at 1834. "Offenses with a mens rea of recklessness do not qualify as violent felonies under ACCA." *Id.*

The defendant maintains that his prior convictions including his conviction for conspiracy to commit armed robbery and his conviction for murder when he was thirteen years old in 1994 do not qualify him as an armed career offender.

United States Probation Department's Response: The probation department did not utilize the defendant's conviction for Conspiracy to Commit Armed Robbery as a qualifying offense for the defendant's status as an armed career offender. As stated in paragraph 12 of the presentence report, JAMISON was convicted by a jury of Second-Degree Murder and Felony Firearm on March 5, 1994; Assault With Intent to Commit Great Bodily Harm Less Than Murder and Felony Firearm at 7th Circuit Court in Flint, Michigan on June 25, 2011 and Possession with Intent to Distribute Controlled Substances at United States District Court in Flint, Michigan on April 9, 2012.

For sentencing guideline purposes, a person who violates 18 U.S.C § 922(g)(1) and has three previous convictions for a violent felony or a serious drug offense, or both, committed on occasions different from one another, is considered an Armed Career Criminal.

Therefore, the probation department declines to change the report and leaves the objection to the discretion of the Court. (R. 81, FINAL PRESENTENCE REPORT, PgID 532-533)

Prior to sentencing, the defense submitted a Sentencing Memorandum setting forth (R. 82, SENTENCING MEMORANDUM, PgID 636-552)

On September 16, 2022, the defendant/appellant appeared for sentencing. (R. 90, TRANSCRIPT of 9/16/2022 SENTENCING HEARING PgID 599-666). The Court addressed the various objections raised in the presentence investigation report as well as the defense sentencing memorandum

At the sentencing Hearing on September 16, 2022 the trial court addressed the defense objection to the classification as an Armed Career Offender which was based, in large part, on the juvenile conviction when the defendant was thirteen years ago.

The Court held as follows:

“[p]ursuant to the Armed Career Criminal Act, 18 United States Code Section 924(e), "A person who violates 18 United States Code Section 922(g) shall be imprisoned for a minimum of 15 years if that person has three or more previous convictions for a violent felony or serious drug offense." Under the elements clause, a violent felony is defined, in relevant part, as, "Any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult that has an element, the use, attempted use, or threatened use of physical force against the person of another." That's 18 United States Code Section 924(e)(2)(B). See, for example, *United States V Burris*, 912 F. 3rd 386 at 392 Sixth Circuit 2019.

To determine whether a state conviction falls within the elements clause, federal courts must apply the categorical approach. An offense does not qualify as a crime of violence unless the least serious conduct it covers falls within the elements clause. That's also *Borden versus United States* 141 Supreme Court 1817 at 1833, Justice Kagan, plurality concurrence.

As stated in Paragraph 12 of the presentence report, probation relied on Mr. Jamison's following convictions in concluding that he is subject to the sentencing

enhancement under the Armed Career Criminal Act: Second degree murder and felony firearm on March 5, 1994; assault with intent to commit great bodily harm less than murder; and felony firearm in the Seventh Circuit Court in Flint, Michigan on June 25, 2011; and possession with intent to distribute controlled substances in the United States District Court for the Eastern District of Michigan on April 9, 2012.

And so, as I previously indicated, the controlled substance offense is a qualifying offense. I explain that the assault with intent to commit great bodily harm less than murder and felony firearm also is a qualifying offense, and so that leaves the second-degree murder conviction. As we were discussing, juvenile offenses like Mr. Jamison's second-degree murder and felony firearm convictions from the same proceeding are included in the ACCA calculation, especially when they are procedurally sound. See, for example, 18 United States Code Section 924(e)(2)(B) and United States V Crowell 493 F. 3rd 744 Sixth Circuit 2007.

I've been given no reason to believe that this conviction was not procedurally sound, and I understand Mr. Schulman's argument. As Ms. Nee indicated, though, that is the present state of the law, and so the issue is whether second degree murder under Michigan law can be committed recklessly. The plurality in Borden concluded the phrase "Violent felony under the Armed Career Criminal Act does not include offenses criminalizing ordinary reckless conduct.

That's Borden at 1825 Note 4.

The Sixth Circuit has stated, "Squelching any inclination to presume that a second-degree murder conviction necessarily involves the use, attempted use, or

threatened use of physical force against the person of another, the Supreme Court recently held that an offense requiring a mens rea of simple recklessness does not qualify as a violent felony under the elements clause of the ACCA, a clause that is essentially identical to 924(c)(3)(A)."

"Consequently, the question presents itself whether second degree murder, prohibited by 18 United States Code Section 1111, can be committed with mere recklessness such that it does not necessarily involve the application of force and violence against the person of another."

That was the case of Harris v United States 19 F.4th 863 at 871 Sixth Circuit 2021. That case was dealing with the federal offense.

Here, the issue is whether second degree murder under Michigan law can be committed with mere recklessness. Michigan law sets forth what constitutes first degree murder. MCL 750.316 and then MCL 750.317 says, "All other kind of murder shall be murder of the second degree."

This is further fleshed out in case law. The Sixth Circuit has explained, in citing Michigan case law, that Michigan law defines second degree murder as one, a death; two, caused by an act of the defendant; three, with malice; and, four, without justification or excuse.

The malice required to prove murder requires either an intent to kill, an intent to cause great bodily harm, or wanton and willful disregard that the natural tendency of the defendant's behavior is to cause death or great bodily harm.

As made clear in People v Nowak 462 Mich 392 Michigan 2000, "The offense of second-degree murder does not require an actual intent to harm or kill, only the

intent to do an act that is in obvious disregard of life-endangering consequences. Under Michigan law, jurors can properly infer malice from evidence that a defendant set in motion a force likely to cause death or great bodily harm."

And that's Keys v Booker 798 F. 3rd 442 at 450 to 451 Sixth Circuit 2015, citing Michigan case law.

Many cases analyzing second degree murder under the federal statute or a state statute with a similar malice requirement found it to be a crime of violence even after Borden because they require more than ordinary recklessness. See, for example, United States V Begay 33 F.4th. 1081 Ninth Circuit 2022 en banc. Tomlin versus United States 2021 U.S. Dist Lexis, 168607 Western District of North Carolina 2021, holding that post Borden, North Carolina's second-degree murder had a minimum mental state of extreme recklessness, which was greater than ordinary recklessness and qualified as a crime of violence. United States v Montgomery 2022 U.S. Dist Lexis 89876 Eastern District of Virginia 2022, finding that second degree murder in Virginia does not embrace volitional acts that are merely reckless.

The Government cites additional cases in its sentencing memo finding that second degree depraved heart murder, like Michigan's law of second-degree murder, remains a crime of violence after Borden. ECF number 83 at Page ID 564 to 567.

Thus, the Court concludes that Michigan malice murder requires a mens rea that exceeds ordinary recklessness and satisfies the fourth -- the force clause. Thus, Mr. Jamison does have three qualifying predicate offenses for the ACCA and that

objection will be overruled.” (Appendix B: R. 90, Sentencing Transcripts, PgID 613-619)

The Court proceeded to sentence the defendant to be committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 188 months concurrent (Appendix C, R. 84, JUDGMENT, PgID 581-587).

REASONS IN SUPPORT OF GRANTING WRIT OF CERTIORARI

A review of the petitioner’s criminal history reveals he was convicted by a jury of Second-Degree Murder and Felony Firearm on March 5, 1994. The case in 1994 occurred when Rajon was thirteen years old at a residence in Flint, Michigan with others, drinking and using drugs. He got into a disagreement and the other teenager was shot and killed. It is noted that court records indicate the defendant made a statement and advised the shooting appeared to be an accident, that he was not the shooter and he had been protecting an older gang member. On May 27, 1994, he was committed to the Department of Social Services, and was sent to M.J. Maxey Boys Training School in Michigan. (R. 81, FINAL PRESENTENCE REPORT, PgID 532-533)

For sentencing guideline purposes, a person who violates 18 U.S.C § 922(g)(1) and has three previous convictions for a violent felony or a serious drug offense, or both, committed on occasions different from one another, is considered an Armed Career Criminal. (R. 81, FINAL PRESENTENCE REPORT, PgID 510)

At the time of sentencing, defense counsel argued that the age and maturity of the defendant when he was merely 13 years old should be considered in

classification as a juvenile and imposing the mandatory enhancement in the pending case nearly 30 years later. Defense argued:

MR. SCHULMAN: I know that's one of the issues is it's tough to explain that, you know, if someone's a juvenile, you haven't fully developed. I mean we have a lot of arguments about what is juvenile adjudications. I mean there are people convicted of first-degree murder and come back in the state system, and the Supreme Court says people who are juveniles don't have the same development. They're not the same, and they haven't matured, and, yet, yeah, that triggers it, and I've read the case law.

THE COURT: So there's something akin to a Miller argument –

SCHULMAN; Yes (R. 90, TRANSCRIPT of 9/16/2022 SENTENCING HEARING, PgID 606)

The appellant acknowledges that offenses that typically qualify under the residual clause are "roughly similar, in kind as well as in degree of risk posed" to the enumerated felonies. Begay v. United States, 553 U.S. 137, 143 (2008). The statute's specifically identified offenses involve "purposeful, violent, and aggressive conduct." *Id.* at 144-45. Thus, crimes with "a stringent mens rea requirement" typically qualify if, "as a categorical matter, [they present] a serious potential risk of physical injury to another" in a way "comparable to that posed by its closest analog among the [ACCA's] enumerated offenses." Sykes v. United States, 131 S.Ct. 2267, 2273, 2275, 180 L. Ed. 2d 60 (2011) (quoting James v. United States, 550 U.S. 192, 203, 127 S. Ct. 1586, 167 L. Ed. 2d 532 (2007)). A crime committed by a juvenile (an act of juvenile delinquency) can also constitute a violent felony, but only if, in addition to meeting the qualifications for an adult predicate offense, it also "involv[es] the use or carrying of a firearm, knife, or destructive device." 18 U.S.C. §924(e)(2)(B). United States v. Davis, 533 F. App'x 575, 582-83 (6th Cir. 2013).

In the case at bar, the trial court made no finding that the offense and the defendant's role in that offense when he was a juvenile met the qualifications for an adult predicate offense and his role involved the use of a firearm as he was not charged with a firearm charge in the juvenile case.

As presented in the article: Inequality Within the United States Sentencing Guidelines: The Use of Sentences Given to Juveniles by Adult Criminal Court as Predicate Offenses for the Career Offender Provision, Rogers Williams University Law Review, Volume 8, Issue 1, Article 7 there are several compelling reasons to grant this petition for certiorari and to reverse the opinion of the trial court and the Sixth Circuit Court of Appeals most notably: 1) a sentence to a juvenile facility is either consistent with a juvenile sentence or actually is a juvenile sentence that is imposed by an adult criminal court and, therefore, should be treated as a juvenile sentence; 2) an individual with a prior conviction who was sentenced by an adult criminal court to a juvenile facility should not be treated differently than an individual with a prior conviction who was sentenced by a juvenile court to a juvenile facility under the equal protection principles of the Fifth Amendment of the United States Constitution. 79. Id. at 559-60 (citing Stinton v. United States, 508 U.S. 36, 37 (1993)). 80. Id. at 560. 81. Id. at 561-62. 82. Id. 83. Id. 84. See United States v. Pinion, 4 F.3d 941 (11th Cir. 1993). 85. See United States v. Mason, 284 F.3d 555, 561-62 (4th Cir. 2002); 3) policy suggests that the convictions of juveniles should be treated differently, even if they are convicted in adult criminal court; 4) and the plain meaning of the Guidelines and the proper use of the commentary leads to this result

ARGUMENT

Chapter Four Enhancement: The offense of conviction is a violation of 18 U.S.C. § 922(g), and the defendant has at least three prior convictions (see paragraph 12) for a violent felony or serious drug offense, or both, which were committed on different occasions. Therefore, the defendant is an armed career criminal and subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e). The offense level for an armed career criminal is the greatest of §§4B1.4(b)(1), (b)(2) or (b)(3). In this case, the offense level of 33 is greatest and applicable offense level. USSG §4B1.4(b)(3)(B). A presentence report was prepared. (R. 81, FINAL PRESENTENCE REPORT, PgID 517)

The defense objected to the application of a 26-point base offense level because the court reasoned the defendant had committed the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense. USSG Sec. 2K21.1(a)(1).

In addition, the trial court erroneously found that the offense was in violation of 18 USC Sec. 922(g), and the defendant/appellant had at least three prior convictions for a violent felony or serious drug offenses, or both, which were committed on different occasion. The court used the defendant/appellant's 1994 juvenile conviction for second-degree murder in applying the enhancement as an armed career criminal.

Despite the defendant/appellant receiving zero points for the 1994 case, his base level guidelines were significantly increased and, perhaps far more importantly, he was classified as an armed career offender which resulted in the

judge having no discretion but to sentence the defendant/appellant to 15 years in prison for a case which involved several firearm found in the family residence under a couch. There being no other offenses associated with this case except for the possession of the firearms.

I. THE TRIAL COURT ERRED WHEN IT APPLIED A 26-POINT BASE LEVEL WHEN THE APPROPRIATE SENTENCING BASE LEVEL SHOULD HAVE BEEN 24.

§ 2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition (a) (2) 24, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

The Supreme Court directs lower courts to use the categorical approach to determine whether prior convictions "ha[ve] as an element the use, attempted use or threatened use of physical force against the person of another." *Descamps v. United States*, 570 U.S. 254, 260-61, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013) (citing *Taylor v. United States*, 495 U.S. 575, 600, 110 S. Ct. 2143, 109 L. Ed. 2d 607 (1990)).

Although the categorical approach originated under the Armed Career Criminal Act, it also applies to the Sentencing Guidelines. See *United States v. Ford*, 560 F.3d 420, 421-22 (6th Cir. 2009). Under the categorical approach, courts do not look at the particular facts of a prior conviction. Instead, they examine only the statutory elements of previous offenses. *Descamps*, 570 U.S. at 261; *Taylor*, 495 U.S. at 600.

Under the categorical approach, courts determine whether every defendant convicted of the particular offense must have used, attempted to use, or threatened to

use physical force against the person of another to have been convicted of that offense. *USA vs. Burris*, 912 F. 3d 386 at 392 (2019). Courts do not examine whether the defendant actually used, attempted to use, or threatened to use physical force against the person of another in the particular case giving rise to the prior conviction. *Id.* The Supreme Court decided *Borden v. United States*, 141 S. Ct. 1817, 210 L. Ed. 2d 63 (2021), under the Armed Career Criminal Act. There, writing for a four-Justice plurality, Justice Kagan identified four states of mind that give rise to criminal liability, in descending order of culpability: purpose, knowledge, recklessness, and negligence. *Id.* at 1823. The plurality held that the definition of a violent felony requires purpose or knowledge, not recklessness or negligence. *Id.* at 1825.

For this conclusion, the plurality located the mens rea requirement in the language of the force clause in the Armed Career Criminal Act, which requires force "against the person of another." *Id.* at 1833. This language "introduces that action's conscious object." *Id.* Therefore, it excludes reckless conduct and actions not directed at another. *Id.*

In so concluding, the plurality abrogated the Sixth Circuit's decision in *United States v. Verwiebe*, 874 F. 3d 258 (6th Cir. 2017), which held that reckless offenses qualified as violent felonies. See *Borden*, 141 S. Ct. at 1823. Relying on *Verwiebe*, the Sixth Circuit upheld *Borden*'s sentence as a career offender, *id.*, and the Supreme Court reversed, *id.* at 1834. "Offenses with a mens rea of recklessness do not qualify as violent felonies under ACCA." *Id.*

The petitioner maintains that his prior convictions including his conviction for conspiracy to commit armed robbery do not qualify him as an armed career offender

II. THE TRIAL COURT ERRONEOUSLY SENTENCED THE DEFENDANT/PETITIONER PURSUANT TO THE ARMED CAREER OFFENDER STATUTE BASED ON A CONVICTION ALMOST 30 YEARS AGO WHEN THE DEFENDANT/APPELLANT WAS MERELY 13 YEARS OLD

18 U.S.C. § 922(g) provides: It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Normally, a defendant who violates § 922(g) may be imprisoned for no more than ten years. Id. § 924(a)(2). However, a defendant who violates § 922(g) and has three prior convictions for "violent felonies" must be sentenced to a minimum of fifteen years' imprisonment. Id. § 924(e)(1).

The ACCA defines "violent felony" as: Any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is burglary, arson, or extortion, involves the use of explosives or otherwise involves conduct that presents a serious potential risk

of physical injury to another. *Id.* § 924(e)(2)(B)(i)—(ii). Subsection (i) is known as the "elements clause" or "use-of-physical-force clause." See *United States v. Smith*, 881 F.3d 954, 956 (6th Cir. 2018).

Subsection (ii) includes the "enumerated-offense clause" ("is burglary, arson, or extortion, involves the use of explosives") and the "residual clause" ("or otherwise involves conduct that presents a serious potential risk of physical injury to another"). See *id.* at 956-57. In *Johnson v. United States*, 576 U.S. 591, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015) [hereinafter *Johnson II*], the Supreme Court held that the residual clause is unconstitutionally vague. *Id.* at 2563 ("imposing an increased sentence under the residual clause of the Armed Career Criminal Act violates the Constitution's guarantee of due process"). Therefore, for a sentence to be constitutionally enhanced under § 924(e)(1), it must be based on prior convictions that qualify as violent felonies under the enumerated-offense clause or the use-of-physical-force clause. *United States v. Brooks*, No. 1:19-cr-92, 2020 U.S. Dist. LEXIS 186634, at *1-3 (E.D. Tenn. Oct. 8, 2020)

This Comment discusses the rationale for adopting an interpretation of the Guidelines, which provides that a sentence to a juvenile facility imposed on a juvenile by an adult criminal court should not be used as a predicate offense for the career offender provision.

Juvenile adjudications and the armed career criminal act have been the focus of a great deal of litigation and scholarly analysis. This Court should consider the following articles: Juvenile Adjudications and the Armed Career Criminal Act, by Jennifer Searingsen, 206 Duke Forum for Law & Social Change Vol. 3:205 2011 which struggles with the issue of whether juvenile adjudications qualify as prior convictions even though there is no constitutional right to a jury trial in juvenile court.

In the article Inequality Within the United States Sentencing Guidelines: The Use of Sentences Given to Juveniles by Adult Criminal Court as Predicate Offenses for the Career Offender Provision by Cassandra S. Shaffer, Roger Williams University School of Law, Vol 8: Iss. 1, Article 7, the writer argues as is applicable in the case at bar:

“The interpretation of section 4A1.2(d) and comment seven, the portion of the criminal history provision dealing with offenses committed under age eighteen, in relation to section 4B1.1, the career offender provision, that best conforms to the text and purpose of the Guidelines is one that takes into account the type of proceedings at which the offender was convicted, the sentence the offender received and the actual sentence served. By looking at these factors, sentences that are adult in nature will count toward career offender status, while those sentences that are juvenile in nature will not be used as predicate offenses for the career offender provision. This interpretation gives deference to the sentencing

judge's determination of what sentence was appropriate, while taking into account the juvenile's maturity and the seriousness of the offense committed. It also creates a uniform federal standard rather than relying on state statutes, which vary greatly on the issue of when the transfer of a juvenile to adult criminal court is appropriate, in addition to recognizing that blended sentences are currently allowed in a number of states.

Just as the Guidelines have a federal standard requiring that any conviction for an offense committed over age eighteen is an adult conviction even if a state has its own definition, there should be a federal standard requiring that sentences that are juvenile in nature, should not be used as predicate offenses for the career offender provision, even if a state treats sentences imposed on juveniles by the adult criminal court differently. This interpretation allows state variation in transfer provisions and sentencing guidelines, but will promote the uniform application of the career offender provision of the United States Sentencing Guidelines.”

(Citations omitted).

CONCLUSION

WHEREFORE, the Petitioner, RAJON JAMISON, by and through his assigned attorney, SANFORD A. SCHULMAN, respectfully requests this most Honorable Court grant this Petition for Writ of Certiorari and reverse the Opinion and Order of the United States Court of Appeals for the Sixth Circuit Court, entered in the above-entitled proceeding on October 26, 2023 because the Sixth Circuit Court of Appeals erroneously affirmed the trial court's sentence in the pending case.

Respectfully submitted,

Sanford A. Schulman
SANFORD A. SCHULMAN
Counsel for Petitioner
RAJON JAMISON
500 Griswold Street, Suite 2340
Detroit, Michigan 48226
313-963-4740
Email: saschulman@comast.net

Date: November 24, 2023

CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

vs.

RAJON JAMISON,

Defendant-Petitioner

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of US Supreme Court Rule 33.1(h), because it contains 6,494 words, excluding the parts of the brief exempted by Supreme Court Rule 33.1(d). This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Century Schoolbook, 12.

Respectfully submitted,

/s/ Sanford A. Schulman
SANFORD A. SCHULMAN P-43230
Attorney for Defendant/Appellant
RAJON JAMISON
500 Griswold Street, Suite 2340
Detroit, Michigan 48226
(313) 963-4740
Email: saschulman@comcast.net

Date: November 24, 2023

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Defendant-Petitioner

CERTIFICATE OF SERVICE

NOW COMES the Undersigned, SANFORD A. SCHULMAN, appointed pursuant to the Criminal Justice Act (CJA) for the Defendant/Petitioner, RAJON JAMISON, and certifies as follows:

1. I was appointed to represent RAJON JAMINSON on appeal pursuant to the Criminal Justice Act, 18 U.S.C. Sec. 3006A.
2. On this 24th Day of November, 2023, paper copies of the foregoing Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certioari along with the Appendix were mailed by depositing them with the United States Postal Service, first-class postage prepared, for delivery to the following:

The Honorable Elizabeth Barchas Prelogar
Solicitor General of the United States
Room 5614
950 Pennsylvania Ave
NW Washington DC 20530-0001

Ann Nee
Assistant US Attorney
United States Attorney's Office
600 Church Street
Suite 210
Flint MI 48502

3. Electronic version of the same were transmitted to the following: The Honorable Elizabeth Barchas Prelogar, Solicitor General of the United States at SupremeCtBriefs@usdoj.gov and Assistant US Attorney, Ann Nee at Ann.nee@usdoj.gov.

4. All parties required to be served have been served.

Respectfully submitted,

/s/ Sanford A. Schulman
SANFORD A. SCHULMAN
Attorney for Defendant/Petitioner
RAJON JAMISON
500 Griswold Street, Suite 2340
Detroit, Michigan 48226
(313) 963-4740
Email: saschulman@comcast.net

Date: November 24, 2023