

No.

IN THE SUPREME COURT OF THE UNITED STATES

DELON ADAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. Section 924(c)(1)(D)(ii) precludes a sentencing court from imposing a sentence for a Section 924(c) firearm offense partially concurrent with any other sentence?

PARTIES TO THE PROCEEDING

Parties to the proceeding include Delon Adams (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), Roger B. Handberg, Esquire (United States Attorney), Julia Kapusta (Assistant United States Attorney), Holly L. Gershow (Assistant United States Attorney), and Elizabeth B. Prelogar (Solicitor General of the United States of America).

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PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The decision of the Eleventh Circuit Court of Appeals *infra*, was not selected for publication. The decision can be found at *United States v. Adams*, No. 23-10190, 2023 WL 8812588 (11th Cir. Dec. 20, 2023), and is attached as Appendix A.

JURISDICTION

The Judgment of the Eleventh Circuit Court of Appeals, which had jurisdiction under Title 28 U.S.C. § 1291, was entered on December 20, 2023. However, a timely Petition for Rehearing was filed on December 29, 2023, which was not denied until January 12, 2024. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 924(c)(1) sets forth the following:

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

18 U.S.C. § 924(c)(1).

STATEMENT OF FACTS

On September 22, 2021, a federal grand jury in the Middle District of Florida, Tampa Division, returned an eleven-count Third Superseding Indictment naming Mr. Adams as the defendant. Counts One, Three, Five, and Seven, charged Mr. Adams with Robbery, in violation of 18 U.S.C. § 1951(a) and (b). Counts Two, Four, Six, and Eight, charged Mr. Adams with Using, Carrying, and Brandishing a Firearm During and in Relation to a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). Count Nine charged Mr. Adams with being a Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). *Id.* Count Ten charged Mr. Adams with Criminal Contempt, in violation of 18 U.S.C. § 401(3). Count Eleven charged Mr. Adams with Mailing a Threatening Communication, in violation of 18 U.S.C. § 876(d).

On September 1, 2022, a jury found Mr. Adams guilty of all counts. As to Counts Two, Four, Six, and Eight – the brandishing a firearm counts – the district court, over defense counsel’s objection, determined that a 25 year mandatory minimum sentence was applicable to each offense, with each 25 year sentence required to be run consecutive to one another and Mr. Adams’s other offenses under 18 U.S.C. § 924(c)(1). Mr. Adams was then sentenced to a total of 110 years and 1 month imprisonment, with the sentence consisting of a 121-month term as to Counts 1, 3, 5, 7, 9, and 11, as well as a 6-month term as to Count 10, all such terms to run concurrently, and a 300-month term as to Count 2, a 300-month term as to Count 4, a 300-month term as to Count 6, and a 300-month term as to Count 8, all

such terms to run consecutively to each other and to the sentence imposed in Counts 1, 3, 5, 7, 9, 10, and 11.

Mr. Adams then appealed to the Eleventh Circuit, and argued that the district court plainly procedurally erred by concluding Mr. Adams's convictions for using, carrying, and brandishing a firearm required sentences of 25 years imprisonment to be imposed consecutive to each other and any other sentence. The Eleventh Circuit disagreed, and under the authority of *United States v. Wright*, 33 F.3d 1349 (11th Cir. 1994) and *Dean v. United States*, 581 U.S. 62, 137 S. Ct. 1170, 197 L. Ed. 2d 490 (2017), concluded that the plain language of § 924(c)(1)(D)(ii) requires sentences for multiple § 924(c) firearm offenses to be run consecutively to each other. *Adams*, No. 23-10190, 2023 WL 8812588.

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT 18 U.S.C. § 924(c)(1)(D)(ii) DOES NOT PRECLUDE A SENTENCING COURT FROM IMPOSING A SENTENCE FOR A § 924(c) FIREARM OFFENSE PARTIALLY CONCURRENT WITH ANY OTHER SENTENCE.

At issue in this Petition is whether 18 U.S.C. Section 924(c)(1)(D)(ii) precludes a sentencing court from imposing a sentence for a Section 924(c) firearm offense partially concurrent with any other sentence. This Court should grant review to establish it does not.

Under 18 U.S.C. § 924(c)(1)(D)(ii), no term of imprisonment imposed on a person under Section 924(c) “shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed

for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.” 18 U.S.C. § 924(c)(1)(D)(ii). Accordingly, under a plain and ordinary reading of Section 924, the statute does not preclude a sentencing court from imposing a sentence for a Section 924(c) firearms offense partially concurrent with any other term of imprisonment imposed on the offender.

Criminal sentences may be imposed partially concurrent and partially consecutive to any other sentence. *See, e.g., United States v. Gallegos*, 613 F.3d 1211, 1217 (9th Cir. 2010)(Approving the imposition of partially concurrent and partially consecutive sentences). Section 924(c)(1)(D)(ii) precludes a sentencing court from imposing a sentence for a Section 924(c) firearm offense concurrently with any other sentence imposed upon the offender, but it simply does not by its plain terms preclude the imposition of partially concurrent sentences. To conclude that it did so would require the Court to draw meaning from silence, which this Court has explained is inappropriate. *See, Dean v. United States*, 581 U.S. 62, 70, 137 S. Ct. 1170, 1177, 197 L. Ed. 2d 490 (2017)(“[d]rawing meaning from silence is particularly inappropriate’ where ‘Congress has shown that it knows how to direct sentencing practices in express terms.’”) (quoting, *Kimbrough v. United States*, 552 U.S. 85, 103, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007)). This Court long ago observed “[o]ur duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operation.” *United States v. Temple*, 105 U.S. 97, 99, 26 L. Ed. 967 (1881) (citations omitted). “When the language is plain, we have no

right to insert words and phrases, so as to incorporate in the statute a new and distinct provision.” *Id.* Here, nothing in the statute precludes a sentencing court from imposing partially concurrent sentences on a Section 924(c) offender, nor directs that the sentence imposed upon a Section 924(c) offender must be imposed consecutively to any other sentence. To conclude that partially concurrent sentences are precluded and/or that consecutive sentences are required, a reviewing court would have to insert words into the statute, which it simply is not permitted to do. *See, Id.*

To reach the conclusion that consecutive sentences are required by the statute, the Eleventh Circuit simply cited to *United States v. Wright*, 33 F.3d 1349 (11th Cir. 1994), where the court concluded the statute requires that sentences for separate 924(c) offenses to be run consecutively to one another, and *Dean v. United States*, 581 U.S. 62, 137 S. Ct. 1170, 197 L. Ed. 2d 490 (2017), where this Court explained that sentences for 924(c) offenses must be imposed consecutively to their predicate offenses. However, neither *Wright* nor *Dean* examined whether Section 924(c)(1)(D)(ii) precludes a sentencing court from imposing a sentence for a Section 924(c) firearm offense *partially* concurrent with any other sentence imposed upon the offender, and because it is clear Section 924(c)(1)(D)(ii) does not preclude the imposition of partially concurrent sentences on a Section 924(c) offender, it is imperative that this Court grant review to clarify that the consecutive sentencing requirement it discussed in *Dean* requires the imposition of only partially consecutive sentences to avoid reading something – the preclusion of partially

concurrent sentences – into Section 924(c)(1)(D)(ii) that simply does not appear in the text of the statute.

Accordingly, this Court should grant review, establish that Section 924(c)(1)(D)(ii) does not preclude a sentencing court from imposing a sentence for a Section 924(c) firearm offense partially concurrent with any other sentence, and remand Mr. Adams's case for a new sentencing hearing.

CONCLUSION

For the reasons stated above, this Court should grant Mr. Adams's Petition for Writ of Certiorari and establish that Section 924(c)(1)(D)(ii) does not preclude a sentencing court from imposing a sentence for a Section 924(c) firearm offense partially concurrent with any other sentence, and remand Mr. Adams's case for a new sentencing hearing.

Respectfully Submitted,



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APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10190

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DELON JOSEPH ADAMS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

D.C. Docket No. 8:20-cr-00326-VMC-MRM-1

Before NEWSOM, ANDERSON, and HULL, Circuit Judges

PER CURIAM:

In 2020, defendant Delon Adams robbed four different cell phone stores on four different days. During each robbery, Adams brandished a firearm at store employees.

A jury convicted Adams of eleven offenses, including four counts of Hobbs Act robbery and four counts (Counts 2, 4, 6, and 8) of brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). Because Adams had a prior § 924(c) firearm conviction in 2002, the mandatory minimum for each § 924(c) conviction was 25 years. *See* 18 U.S.C. § 924(c)(1)(C)(i).

At sentencing, the district court, over Adams's objection, concluded that § 924(c) required that Adams's four 25-year sentences be served consecutive to each other and to any other sentence. As a consequence, the district court imposed 121-month prison terms on Counts 1, 3, 5, 7, 9, and 11 and a 6-month term on Count 10, all to be served concurrently, followed by four consecutive 300-month (25 year) terms on Counts 2, 4, 6, and 8, for a total sentence of 110 years and one month.

On appeal, Adams does not challenge his eleven convictions. Adams also does not challenge his sentences on Counts 1, 3, 5, 7, 9, 10 and 11. Adams argues only that his 25-year consecutive sentences on Counts 2, 4, 6, and 8 are procedurally unreasonable.

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Specifically, Adams contends that the district court procedurally erred when it determined § 924(c) mandated consecutive sentences and that the text of § 924(c) permits partially concurrent sentences. And, because the statutory mandatory minimum sentence for his § 924(c) offenses governs his Guidelines sentence, Adams claims the district court also miscalculated his advisory guidelines range. After review, we find no merit to Adams's arguments and affirm his consecutive § 924(c) sentences on Counts 2, 4, 6, and 8.

I. GENERAL PRINCIPLES

When reviewing a sentence for reasonableness, we first must ensure the district court committed no significant procedural error, such as failing to properly calculate the advisory guidelines range. *Gall v. United States*, 552 U.S. 38, 51 (2007). “We normally review the procedural reasonableness of a sentence under an abuse-of-discretion standard.” *United States v. Waters*, 937 F.3d 1344, 1358 (11th Cir. 2019).¹ We review questions of statutory interpretation *de novo*. *United States v. Segarra*, 582 F.3d 1269, 1271 (11th Cir. 2009).

Under § 924(c), a defendant who previously was convicted of a § 924(c) firearm offense must “be sentenced to a term of

¹ The parties dispute whether Adams's objection to his consecutive sentences in the district court—that the four § 924(c) offenses were part of one criminal episode—preserved the issue he now raises on appeal and thus whether our review is for plain error. We need not resolve this question because the district court did not commit any procedural error, and therefore Adams cannot prevail under either standard of review.

imprisonment of not less than 25 years.” 18 U.S.C. § 924(c)(1)(C)(i). Additionally, “no term of imprisonment imposed on a person under [§ 924(c)] shall run concurrently with any other term of imprisonment imposed on the person” *Id.* § 924(c)(1)(D)(ii). In turn, under the Sentencing Guidelines, a § 924(c) defendant’s “guideline sentence is the minimum term of imprisonment required by statute.” U.S.S.G. § 2K2.4(b).

This Court has held that the plain language of § 924(c)(1)(D)(ii) requires sentences for multiple § 924(c) firearm offenses to be run consecutively to each other. *See United States v. Wright*, 33 F.3d 1349, 1350 (11th Cir. 1994). In *Wright*, the defendant was convicted of four counts of armed bank robbery and four counts of using a firearm during a crime of violence, in violation of § 924(c)(1). *Id.* at 1349. The sentencing court imposed concurrent 70-month sentences for Wright’s bank robbery convictions and four separate 240-month terms for his § 924(c) firearm convictions, to run consecutively to each other and to his concurrent 70-month sentences, for a total sentence of 1030 months, or about 86 years. *Id.* at 1349.

On appeal, Wright argued that § 924(c) required his sentences to run consecutively to his bank robbery sentences but did not require them to run consecutively to each other. *Id.* at 1349-50. Wright specifically argued that the word “other” in § 924(c)(1) meant “that the term of imprisonment cannot run concurrently with any term of imprisonment ‘other than’ a term of imprisonment under section 924(c).” *Id.* at 1350. This Court

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rejected Wright’s argument, stating, “The plain language of the statute expressly states that a *term* of imprisonment imposed under section 924(c) cannot run concurrently with any *other term* of imprisonment, period. No exceptions are provided.” *Id.* (emphasis in original). This Court affirmed Wright’s total sentence “[b]ecause the plain language of [§ 924(c)] *requires* consecutive sentences.” *Id.* at 1350-51 (emphasis added).

II. ADAMS’S CONSECUTIVE SENTENCES

Here, Adams argues that the text of § 924(c)(1)(D)(ii) does not require § 924(c) sentences to run consecutively and its prohibition against concurrent sentences does not extend to partially concurrent sentences. Adams’s argument that the plain language of § 924(c)(1)(D)(ii) does not require consecutive sentences is foreclosed by our *Wright* precedent. Although the Court in *Wright* was focused on the meaning of the word “other” in § 924(c) to determine whether the statute required multiple sentences under § 924(c) to run consecutively to each other, our Court ultimately concluded that “the plain language of the statute requires consecutive sentences.” *Id.* at 1350. The Court’s reasoning and holding in *Wright* indicate that § 924(c)’s bar on imposing concurrent § 924(c) sentences also means those sentences must run consecutively. *See id.*

Adams cites *Dean v. United States*, 581 U.S. 62 (2017), but *Dean* has no bearing on the consecutive-sentence issue raised here. In *Dean*, the defendant was sentenced for two § 924(c) convictions and two robbery convictions that also served as predicates for the

§ 924(c) counts. 581 U.S. at 65. The issue in *Dean* was “whether, in calculating the sentence for the *predicate* [robbery] offense, a judge must ignore the fact that the defendant will serve the mandatory minimums imposed under § 924(c).” *Id.* at 64 (emphasis added). The Supreme Court concluded that nothing in §924(c) or 18 U.S.C. § 3553(a) prevented the sentencing court from considering the lengthy mandatory minimum sentence required by § 924(c) “when calculating a just sentence for the *predicate* count.” *Id.* at 67-71 (emphasis added).

In short, *Dean* was concerned with the district court’s discretion in imposing sentences for robbery counts *other than* the § 924(c) firearm counts. Nothing in *Dean* suggests a district court can impose partially concurrent sentences for multiple § 924(c) convictions. To the contrary, the Supreme Court acknowledged in *Dean* that the defendant faced a 30-year mandatory minimum sentence for his two § 924(c) counts—five years for the first count and 25 years for the second count—because “[a] sentence imposed under § 924(c) must run consecutively to ‘any other term of imprisonment imposed on the person.’” *Id.* at 65 (quoting 18 U.S.C. § 924(c)(1)(D)(ii)). The Supreme Court also agreed with the government that § 924(c)(1)(D)(ii)’s “requirement of consecutive sentences removes the discretion to run sentences concurrently that district courts exercise under [18 U.S.C. §] 3584.” *Id.* at 70.

As to Counts 2, 4, 6, and 8, Adams has not shown procedural error in the district court’s calculation of his Guidelines sentence under U.S.S.G. § 2K2.4(b) or in its imposition of four 25-year

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sentences, to be served consecutively to each other and to his sentences on Counts 1, 3, 5, 7, 9, 10 and 11, as required by 18 U.S.C. § 924(c)(1)(D)(ii). Accordingly, Adams's sentences on Counts 2, 4, 6, and 8 are not procedurally unreasonable.

AFFIRMED.

APPENDIX B

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10190

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DELON JOSEPH ADAMS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:20-cr-00326-VMC-MRM-1

Before NEWSOM, ANDERSON, and HULL, Circuit Judges.

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Order of the Court

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PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant is
DENIED.