No. 23-7371

IN THE SUPREME COURT OF THE UNITED STATES

LARON DARRELL CARTER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in declining to review petitioner's statute-of-limitations claim, which had been raised for the first time in his prior appeal, was rejected in that prior appeal on "waiver" grounds, and was not encompassed in the prior appeal's limited remand for resentencing.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2-5) is not published in the Federal Reporter but is reprinted at 2023 WL 8014357. The order of the district court (Pet. App. 33-39) is not published in the Federal Supplement. A prior opinion of the court of appeals (Pet. App. 11-32) is reported at 907 F.3d 1199. Another prior opinion of the court of appeals (Pet. App. 6-10) is not published in the Federal Reporter but is reprinted at 754 Fed. Appx. 534.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 2023. A petition for rehearing was denied on January 30, 2024 (Pet. App. 1). The petition for a writ of certiorari was filed on April 29, 2024. 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 California, petitioner was convicted on seven counts of sex trafficking of a child by force, fraud, or coercion, in violation of 18 U.S.C. 1591, and seven counts of transporting a child in interstate commerce to engage in prostitution, in violation of 18 U.S.C. 2423(a). D. Ct. Doc. 270, at 1 (July 25, 2016). The court sentenced him to 40 years of imprisonment, to be followed by a life term of supervised release. Id. at 2. The court of appeals affirmed petitioner's convictions on six of the sex-trafficking and six of the prostitution-transportation counts, vacated his convictions on one of the sex-trafficking and one of the prostitution-transportation counts, and remanded for resentencing. 907 F.3d 1199; 754 Fed. Appx. 534. This Court denied petitioner's petition for a writ of certiorari. 139 S. Ct. 2743. On remand, the district court denied a new motion to dismiss and resentenced petitioner to 40 years of imprisonment, to be followed by a life term of supervised release. Pet. App.

33-39; C.A. E.R. 4. The court of appeals affirmed. Pet. App. 2-5.

1. From June 2003 to May 2010, petitioner prostituted multiple underage girls, several of whom he was having sexual relations with himself. Presentence Investigation Report (PSR) ¶¶ 21-37. Petitioner induced the minor victims to engage in sex acts through methods that included threats and physical violence. See, e.g., PSR ¶¶ 23, 26, 34. On various occasions, petitioner hit his victims with his fists, belts, a curling iron, and a wrench. PSR ¶¶ 23, 24, 26, 34, 36. He also "discipline[d]" his victims by "forcing them to take ice baths," and he "dangle[d] one [victim] over a second story balcony by her ankles." PSR ¶¶ 24, 34. Petitioner induced one victim to engage in prostitution by threatening to kill her and threatening her family and her child. PSR ¶ 23. And petitioner had his alias, or symbols representing his alias, tattooed on several of the victims. PSR ¶¶ 22, 26, 27.

On March 30, 2016, a federal grand jury in the Central District of California returned a second superseding indictment charging petitioner with seven counts of sex trafficking of a child by force, fraud, or coercion, in violation of 18 U.S.C. 1591, and seven counts of transporting a child in interstate commerce to engage in prostitution, in violation of 18 U.S.C. 2423(a). C.A. E.R. 18–32. The conduct underlying five of the sex-trafficking counts and five of the prostitution-transportation counts (together, Counts 1-10) occurred between 2003 and 2005. Id. at

18-28. Before trial, petitioner filed a motion to dismiss the indictment. D. Ct. Doc. 206 (Apr. 7, 2016). Petitioner, however, did not allege that any counts in the indictment were barred by the statute of limitations, and petitioner did not raise the statute of limitations as an affirmative defense at trial. See Pet. App. 7-8; Pet. 3. The district court denied petitioner's motion to dismiss. D. Ct. Doc. 219 (Apr. 13, 2016).

A jury found petitioner guilty on all counts, and the district court sentenced him to 40 years of imprisonment, to be followed by a life term of supervised release. D. Ct. Doc. 270, at 2.

2. The court of appeals vacated two of petitioner's convictions, affirmed his remaining convictions, and remanded for resentencing. Pet. App. 6-32.

On appeal, petitioner argued for the first time that Counts 1-10 were barred by the statute of limitations. See Pet. App. 7. The court of appeals declined to "reach the merits of" that argument "because [petitioner] failed to raise the statute of limitations in the district court," and therefore could "'[]not successfully raise the statute-of-limitations defense . . . for the first time on appeal.'" Id. at 7-8. (quoting Musacchio v. United States, 577 U.S. 237, 248 (2016)).

The court of appeals also "decline[d] [petitioner's] request -- made for the first time in his reply brief -- that [it] consider his statute of limitations argument as a claim of ineffective assistance of counsel." Pet. App. 8. The court explained that

"'[a]rguments not raised by a party in its opening brief are deemed waived,'" and "in any event * * * s[aw] no reason to depart from [its] 'general rule' that '[it] do[es] not review challenges to the effectiveness of defense counsel on direct appeal.'" Ibid. (citations omitted).

After addressing other claims, the court of appeals vacated two of petitioner's convictions based on a Confrontation Clause violation, Pet. App. 17-31; affirmed his remaining convictions, id. at 10, 32; and "remand[ed] to the district court for resentencing," id. at 32. This Court denied petitioner's petition for a writ of certiorari. 139 S. Ct. 2743.

3. On remand, the district court granted the government's motion to dismiss the two counts that were implicated by the Confrontation Clause violation. D. Ct. Doc. 329 (Jan. 6, 2020). Before resentencing, petitioner moved to dismiss Counts 1–10 as barred by 18 U.S.C. 3282(a)'s default five-year statute of limitations. C.A. Supp. E.R. 5-13. The government opposed the motion, arguing that Counts 1-10 were brought within the statute of limitations under either 18 U.S.C. 3299 (which extends the statute of limitations for various listed offenses) or 18 U.S.C. 3283 (which similarly extends the statute of limitations for certain offenses involving minors). C.A. Supp. E.R. 18-26.

The district court denied petitioner's motion, agreeing with both of the government's arguments. Pet. App. 33-39. First, the court explained that the indictment was validly brought within the

limitations period in Section 3299, which provides that "[n]otwithstanding any other law, an indictment may be found * * * at any time without limitation for * * * any felony under chapter * * * 117" -- which includes Section 2423, the statute of conviction for petitioner's prostitution-transportation offenses -- and "section 1591," the statute of conviction for petitioner's sex-trafficking offenses, 18 U.S.C. 3299. See Pet. App. 35-37. The court observed that because Congress had adopted Section 3299 in 2006, after petitioner committed the crimes in Counts 1-10 but before the then-applicable five-year statute of limitations in Section 3282(a) had run, Section 3299 rendered the indictment timely. Ibid. Second, the court alternatively found that the sex-trafficking and prostitution-transportation crimes alleged in Counts 1-10 were timely under Section 3283, which provides that "offense[s] involving the sexual or physical abuse * * * of a child" can be brought "during the life of the child," 18 U.S.C. 3283. See Pet. App. 37-39.

The district court resentenced petitioner to 40 years of imprisonment, to be followed by a life term of supervised release. C.A. E.R. 4.

4. Petitioner appealed, arguing that the district court erred in denying his motion to dismiss. See Pet. App. 3-4. The government noted that the Ninth Circuit had previously concluded that a court of appeals' mandate limits a district court's authority on remand and is jurisdictional. Gov't C.A. Br. 11

(citing United States v. Luong, 627 F.3d 1306 (9th Cir. 2010), cert. denied, 565 U.S. 855 (2011), and United States v. Thrasher, 483 F.3d 977 (9th Cir. 2007), cert. denied, 553 U.S. 1007 (2008)). And the government maintained that, under that precedent, the district court had in fact lacked jurisdiction to consider petitioner's statute-of-limitations claim because it fell outside the court of appeals' previous resentencing mandate, and that the court of appeals accordingly lacked jurisdiction to review the claim in the second appeal. Id. at 9-13; see Gov't C.A. Mot. to Dismiss 6-9. The government also argued that, even if the court of appeals considered the merits of petitioner's statute-of-limitations argument, the court should affirm because the district court correctly found that the relevant charges were not time-barred. Gov't C.A. Br. 16-31.

The court of appeals affirmed in an unpublished memorandum opinion. Pet. App. 2-5. The court stated that "[w]hen an appellate court decides a case, 'whatever was before the court, and disposed of by its decree, is considered as finally settled" and that "[t]his 'rule of mandate' precludes a district court from considering issues the appellate court resolved." Id. at 3 (brackets and citations omitted). The court of appeals also stated that "[t]his rule is jurisdictional and cannot be waived." Ibid. (citing Luong, 627 F.3d at 1310). And it accordingly reasoned that the district court had lacked jurisdiction to consider petitioner's statute-of-limitations argument "because [the court

of appeals'] prior decision resolved that issue" when it determined that petitioner forfeited it by "not rais[ing] it in the district court." Ibid.

The court of appeals also found that petitioner had "waived" his argument that the district court had properly exercised jurisdiction over his statute-of-limitations claim by "treat[ing] [it] as an ineffective assistance of counsel claim" because petitioner had "not rais[ed]" that argument "in his opening brief." Pet. App. 4. The court of appeals concluded that, "[i]n any event, the record does not support [petitioner's] reading of the district court's decision." Ibid. And the court of appeals additionally observed that petitioner made no argument that supported "depart[ing] from [the] general rule" that prohibits the consideration of ineffective-assistance-of-counsel claims on direct appeal. Id. at 5.

ARGUMENT

Petitioner contends (Pet. 10-18) that the court of appeals erred in applying the mandate rule as a "jurisdictional" bar to consideration of his statute-of-limitations claim. But although courts of appeals have differed in their use of a "jurisdictional" label when discussing the mandate rule, petitioner has not identified any court of appeals that would have allowed for the possibility for remand to encompass relief on a statute-of-

limitations claim that was never raised during the original trial -- a type of relief that this Court's precedent directly precludes. There is accordingly no disagreement among the courts of appeals that would warrant this Court's review in this case. This case would also be an exceptionally poor vehicle for further review because the charges petitioner contests were clearly timely. The petition for a writ of certiorari should be denied.

1. This Court has stated that, when it issues its mandate, a lower court "cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it upon any matter decided on appeal for error apparent; or intermeddle with it, further than to settle so much as has been remanded." Sibbald v. United States, 37 U.S. (12 Pet.) 488, 492 (1838); see Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 168 (1939) (noting that a lower court is "bound to carry the mandate of [an] upper court into execution and could not consider the questions which the mandate laid at rest"). While a higher court may in certain exceptional circumstances recall or amend its mandate, see Calderon v. Thompson, 523 U.S. 538, 558 (1998), the Court has stated that "an inferior court has no power or authority to deviate from the mandate issued by an appellate court," Briggs v. Pennsylvania R.R., 334 U.S. 304, 306 (1948).

Petitioner does not meaningfully dispute that his statute-of-limitations claim was subject to the mandate rule. Although he

suggests (Pet. 4-5) that the parties viewed the remand as more open-ended, the first appeal resulted in a decision that remanded the case to the district court only "for resentencing." Pet. App. 10. Petitioner does not directly argue that the court of appeals erred in interpreting that mandate not to include consideration of his statute-of-limitations claim.[1] To the contrary, his question presented presupposes that the court of appeals correctly identified the statute-of-limitations claim as outside the mandate -- a necessary antecedent to the question of whether the mandate rule is "jurisdictional."

And, contrary to petitioner's assertion (Pet. 18), the government did not engage in "sandbagging" by both defending the district court's statute-of-limitations decision on the merits and alternatively arguing that the mandate rule barred the court from reaching that issue at all. Gov't C.A. Br. 9-13, 16-31. Under ordinary principles of appellate review, "[a]n appellee * * * may defend the judgment below on a ground not earlier aired."

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[1] Petitioner briefly asserts that the mandate rule did not "prohibit the district court from considering the merits" of his statute-of-limitations argument "in the context of an ineffective-assistance claim on remand." Pet. 18; see Pet. 14-15. But, as the court of appeals recognized, Pet. App. 4, the district court did not address petitioner's statute-of-limitations argument as part of an ineffective-assistance-of-counsel claim, see id. at 33-39. And if it had done so, that would have violated the mandate rule because the court of appeals in petitioner's initial appeal expressly found forfeited and therefore "decline[d]" to "consider [petitioner's] statute of limitations argument as a claim of ineffective assistance of counsel." Id. at 8.

Greenlaw v. United States, 554 U.S. 237, 250 n.5 (2008); see Schweiker v. Hogan, 457 U.S. 569, 585 & n.24 (1982) ("[A]n appellee may rely upon any matter appearing in the record in support of the judgment below.") (citation omitted). That is all that the government did here.

2. Decisions from the Third, Ninth, and Eleventh Circuits have treated the mandate rule as jurisdictional. See Pet. App. 3-4; Seese v. Volkswagenwerk, A.G., 679 F.2d 336, 337 (3d Cir. 1982) (per curiam); United States v. Tamayo, 80 F.3d 1514, 1520 (11th Cir. 1996). Decisions from the First, Second, Fourth, Fifth, Seventh, Tenth, Federal, and D.C. Circuits appear to treat the mandate rule as non-jurisdictional. See United States v. Bell, 988 F.2d 247, 250-251 (1st Cir. 1993); United States v. Aquart, 92 F.4th 77, 87 (2d Cir. 2024); Babb v. U.S. Drug Enforcement Agency, 146 Fed. Appx. 614, 621 (4th Cir. 2005) (per curiam); United States v. Matthews, 312 F.3d 652, 657 (5th Cir. 2002), cert. denied, 538 U.S. 938 (2003); Carmody v. Boad of Trustees of Univ. of Illinois, 893 F.3d 397, 407-408 (7th Cir. 2018), cert. denied, 139 S. Ct. 798 (2019); United States v. Gama-Bastidas, 222 F.3d 779, 784-785 (10th Cir. 2000); Tronzo v. Biomet, Inc., 236 F.3d 1342, 1349 (Fed. Cir.), cert. denied, 534 U.S. 1035 (2001); United States v. Kpodi, 888 F.3d 486, 491 (D.C. Cir. 2018).[2] But the difference in

[2] The Sixth Circuit does not appear to have a uniform answer to the question of whether the mandate rule is

classification appears to have little effect in practice -- and no court would have allowed for the successful reintroduction of petitioner's statute-of-limitations claim here.

Petitioner cannot show that the classification of the mandate rule as jurisdictional or nonjurisdictional matters in his case. Petitioner suggests (Pet. 8, 17-18) that classification of the rule mattered because the government forfeited reliance on the mandate rule. But the court of appeals was entitled to rely sua sponte on the mandate rule regardless of whether the government had raised it in the district court. An appellate court may "affirm[]" a lower court's judgment based "on any ground permitted by the law and record." Murr v. Wisconsin, 582 U.S. 383, 404 (2017); see United States v. Charette, 893 F.3d 1169, 1175 n.4 (9th Cir. 2018); cf. Day v. McDonough, 547 U.S. 198, 205-210 (2006) (court of appeals can rely on forfeited defenses to habeas petitions in certain cases). And a court of appeals may be particularly inclined to rely on the mandate rule even if a party has not raised it because the purpose of the rule is to protect appellate judgments -- so the court may invoke the rule to ensure

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jurisdictional. Compare Mylant v. United States, 48 Fed. Appx. 509, 512 (6th Cir. 2002) (unpublished) ("[T]he mandate rule is a rule of policy and practice, not a jurisdictional limitation.") (citation omitted), cert. denied, 537 U.S. 1143 (2003), with Tapco Products Co. v. Van Mark Products Corp., 466 F.2d 109, 110 (6th Cir. 1972) ("[T]he District Court was without jurisdiction to modify or change the mandate.").

that district courts do not attempt to exercise a "power or authority" that they lack. Briggs, 334 U.S. at 306; cf. Cascade Nat. Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129, 136 (1967) ("The Department of Justice * * * by stipulation or otherwise has no authority to circumscribe the power of the courts to see that our mandate is carried out.").

In any event, the courts of appeals that have adopted petitioner's preferred approach generally have applied that rule to foreclose consideration of an issue on remand where, as here, the court of appeals determines that the issue was untimely raised for the first time on appeal and remands with specific directions.[3]

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[3] See, e.g., Parmalat Capital Fin. Ltd. v. Bank of Am. Corp., 671 F.3d 261, 270-271 (2d Cir. 2012) (per curiam) (finding that, where an argument was forfeited "in the initial appeal[] because it [was] not * * * raised with the District Court," the district court could not subsequently consider the issue); Invention Submission Corp. v. Dudas, 413 F.3d 411, 415 (4th Cir. 2005) (noting that a mandate instructing the district court to dismiss did not allow that court to consider a basis for jurisdiction that the plaintiff "had not properly raised * * * before the district court and therefore had not preserved * * * for consideration on appeal"), cert. denied, 546 U.S. 1090 (2006); United States v. Lee, 358 F.3d 315, 321 (5th Cir. 2004) ("[T]he [mandate] rule bars litigation of issues decided by the district court but foregone on appeal or otherwise waived, for example because they were not raised in the district court."); Tronzo, 236 F.3d at 1347 (finding that "by failing to appeal" an issue, the party was "barred from raising it on remand"); cf. United States v. Husband, 312 F.3d 247, 250 (7th Cir. 2002) ("[T]his court does not remand issues to the district court when those issues have been waived or decided."), cert. denied, 539 U.S. 961 (2003). The mandate rule may apply differently to certain types of claims arguably intertwined with the scope of a general remand, such as new arguments regarding a defendant's sentence during a remand for resentencing, see, e.g., United States v. Saucedo, 977 F.2d 597

Petitioner identifies no court of appeals decision involving the mandate rule that permitted a district court to consider a claim that the court of appeals previously found forfeited. See Pet. 8-10. For that reason alone, regardless of differences among the courts of appeals as to whether the mandate rule is "jurisdictional," petitioner has not demonstrated that the courts apply any meaningfully different approach in circumstances akin to the circumstances here.

Additionally, and independently, this case involves a particular type of claim -- an affirmative statute of limitations defense -- that could not be introduced post-conviction, let alone after an appeal with a limited remand. In Musacchio v. United States, 577 U.S. 237 (2016), this Court explained that "a statute-of-limitations defense becomes part of a case only if the defendant puts the defense in issue." Id. at 248. "When a defendant fails to press a limitations defense, the defense does not become part of the case and the Government does not otherwise have the burden of proving that it filed a timely indictment." Ibid. Accordingly, the Court held "that a defendant cannot successfully raise this statute-of-limitations bar for the first time on appeal." Id. at 245.

(10th Cir. 1992) (Tbl.), cert. denied, 507 U.S. 942 (1993), but such applications are not presented here.

It follows a fortiori that a statute-of-limitations defense cannot be raised for the first time on a remand that does not require a new trial on the charges at issue. It would make little sense to adopt a rule that bars a defendant from obtaining relief on a statute-of-limitations defense raised for the first time on appeal but allows a defendant who obtains a limited remand on an unrelated appellate claim (like a sentencing claim) to potentially obtain relief. Indeed, a statute-of-limitations claim presented to a district court following a remand, no less than one presented for the first time on appeal, would be eligible, at best, for review "only for plain error" due to the defendant's "failure to raise it at or before trial." Musacchio, 577 U.S. at 248. And as this Court has made clear, "a district court's failure to enforce an unraised limitations defense * * * cannot be a plain error" because "[w]hen a defendant fails to press a limitations defense, the defense does not become part of the case and the Government does not otherwise have the burden of proving that it filed a timely indictment." Ibid.

3. In any event, this case would be an unsuitable vehicle for considering the question presented because even if the district court and the court of appeals could have, and should have, considered petitioner's statute-of-limitations argument, that argument is meritless. Congress has adopted two special statutes

of limitations that apply here -- each of which made petitioner's indictment timely.

First, Counts 1-10 were brought within the statute of limitations established by 18 U.S.C. 3299. Petitioner committed the conduct underlying Counts 1-10 between 2003 and 2005. C.A. E.R. 18-28. In 2006 -- before the default five-year statute of limitations on petitioner's crimes had run, see 18 U.S.C. 3282(a) -- Congress enacted Section 3299. Congress may extend the statute of limitations for any crime whose prosecution is not already time-barred without violating the presumption against retroactivity or the Ex Post Facto Clause. See, e.g., United States v. Piette, 45 F.4th 1142, 1159-1162 (10th Cir. 2022) (addressing Section 3299); Cruz v. Maypa, 773 F.3d 138, 145 (4th Cir. 2014) (collecting cases); cf. Stogner v. California, 539 U.S. 607, 611-618 (2003) (declining to disturb lower-court decisions recognizing the validity of extensions of not-yet-expired statutes of limitations for criminal offenses). And Section 3299 provides that "[n]otwithstanding any other law, an indictment may be found" "at any time without limitation" for violating various provisions, 18 U.S.C. 3299, including the provisions under which petitioner was convicted, see p. 6, supra.

Second, Counts 1-10 are independently timely under the statute of limitations established by 18 U.S.C. 3283. Section 3283 provides in relevant part that "[n]o statute of limitations

that would otherwise preclude prosecution for an offense involving the sexual or physical abuse * * * of a child under the age of 18 years shall preclude such prosecution during the life of the child." Ibid. Petitioner's offenses in Counts 1-10 -- forcing children into prostitution and sexually and physically abusing those children, see p. 3, supra -- involved "sexual or physical abuse." 18 U.S.C. 3283; see Weingarten v. United States, 865 F.3d 48, 60 (2d Cir. 2017), cert. denied, 583 U.S. 1183 (2018). The district court therefore also correctly recognized that the crimes alleged in Counts 1-10, whether or not timely under Section 3299, were timely under Section 3283. See Pet. App. 37-39.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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