No. 24-6021

ORIGINAL

Case No: 5:18-cr-00208-D-1
Case No: 5:23-cv-00263-D

24-5672

In The Supreme Court Of The United States

MARK LEON ANDREWS
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the fourth Circuit.

Petition For A Writ Of Certiorari

Respectfully Submitted

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QUESTION PRESENTED FOR REVIEW

Whether the fifth and sixth Amendments entitled the petitioner to have a jury decide whether his crimes occured on different occasions, under the Constitution of the United States.

LIST OF PARTIES

The only parties to the proceeding are those appearing in the caption to this petition.

LIST OF DIRECTLY RELATED PROCEEDINGS

United States v. MARK LEON ANDREWS (4th Cir. 2020).

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PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

On May 24 2024, the fouth Circuit Court of appeals entered its judment affirming Mr. Andrews conviction as a Armed Career Offender under commentary to United States Sentencing Guidelice § 4B1.4(c), based upon prior convictions pursuant to statues that included three prior convictions relied are: a sentence of fifthteen years in 1992 for Arson, in case No. 91CRS32141; a sentence of five years in 1992 for Common Law Robbery, in case No. 92CRS 3538; and sentence of 80-105 months for 2013 Voluntary Manslaughter, in case No. 11CRS 52280.

JURISDICTION

The judgment of the Court of appeals was entered on May 24, 2024. This petition is timely submitted. Jurisdiction to review the judgment of the court of appeals is conferred upon this Court by 28 U.S.C. 1254.

STATUTES AND UNITED STATES GUIDELINES INVOLVED

The Petitioner refers this Honorable Court to the following statutes and United States Sentencing Guidelines:

922(g)(1)

922 Unlawful Acts

(g) It shall be unlawful for any person —

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

924(e)

In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

924(e)(2)(B)

(2) As used in this subsection —

(B) the term "violent felony" means 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...

U.S.S.G. § 4B1.2(a)

Career Offender Definition:

(a) the term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that —.

U.S.S.G § 4B1.4(c)

Application of §4B1.4 in cases Involving Conviction Under 18 U.S.C. §844(h) or 929(a) —

U.S.S.G 4B1.4(c) If a sentence under this guideline is imposed in conjunction with a sentence for a conviction under 18 U.S.C. §844(h), §924(c), or 929(a), do not apply either subsection (b)(3)(A) and (c)(2) because of the relatedness of the conduct covered by these subsections to the conduct that forms the basis for the conviction under 18 U.S.C. §844(h), §924(c), or 929(a).

U.S.S.G § 4B1.2(a)

"Crime of violence" has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.

3A1.1(b)(1)

of the Guidelines provides that if the defendant knew or should have Known that a victim of the offense was a vulnerable victim increase by 2 levels. The commentary to 3A1.1 says a vulnerable victim is a person who is a victim of the offense of conviction and any conduct for which the defendant is accountable under Section 1B1.3

1B1.3

This section distinguishes between factors that determine the applicable guidelines sen-tencing range §1.B1.31 and information that a court may consider in imposing sentence within that range. This section is based on 18 U.S.C. § 3661, which recodifies 18 U.S.C. § 3577.

STATEMENT OF THE CASE

(1) On May 21, 2020, MARK ANDREWS pleaded guilty to felon in possession of a firearm in violation of 18 U.S.C., Section 922(g)(1). On November 4, 2020, he was sentenced to 288 months in prison after the district court determined that he was a Armed Career Criminal under 4B1.4(c). the district court found that his prior North Carolina convictions of Arson, Common Law Robbery, and Voluntary Manslaughter, qualified as "violent felonies" under U.S.S.G. 4B1.4(c). Mr. Andrews (attorney) argued on appeal that (1) The district court erred in finding that Mr. Andrews was competent to proceed with his criminal proceeding when he had a history of Paranoid Schizophrenia with hospitalizations and denied a request for a second psychiatric evaluation. (2) Mr. Andrews Guilty Plea under 18 U.S.C. §922(g) Must be vacated because he was not properly informed of the element that he knew being a felon prohibited him from possessing a firearm, as required by Rehaif v. United States, or Automatic Reversal by United States v. Gary. (3) Mr. Andrews did not receive a reasonable sentence because it was not procedurally sound when USSG §2X1.1 and §2A4.1 Applied as the substance offense "Kidnapping, abduction, and unlawful restraint". He was not granted a downward and/or variance, and N.C. Voluntary Manslaughter was used to classify him as an armed career criminal. If the court had agreed with him Mr. Andrews guideline range would have been 0 to 10 years in prison, rather than 15 years to life in prison.

Mr. Andrews appealed his sentence to the fourth Circuit Court of Appeals. the Court of appeals had jurisdiction pursuant to 28 U.S.C. §1291, which gives it jurisdiction over all final decisions of the district court of the United States. The district court had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. In its opinion, the Fourth Circuit noted that the district court had properly applied its precedent and findings that the offenses were qualifying predicates for the Armed Career Offender designation. This Petition for a writ of certiorari follows.

REASON FOR GRANTING THE PETITION

This Court (Supreme Court) should revisit the decision that was made in United States v. MARK L. ANDREWS because of the ruling this Court made in U.S. v. Erlinger, No. 23-370, 602 U.S., on a writ of certiorari in which this court affirmed that for Mr. Erlinger and (those like him) sentencing purposes, facts that relate to a defendants prior crimes cannot be determined by judges but instead must be found by juries. The fifth and sixth amendments says "require a jury" to decide unanimously and beyond a reasonable doubt whether — ACCA's U.S.S.G. § 4B1.4(c), predicates were "committed on occasion different from one another." This Courts recent decision in Wooden v. United States, 595 U.S. 360 (2022) that decision did not directly address whether a judge may, or a jury must, resolve disputes about whether multiple crimes occured on multiple occasions. But, the government acknowledge, Wooden did hold that ACCA's occasion "inquiry" can require an examination of a "range" of facts, including whether the defendants past offenses were "committed close in time," whether they were committed near to or far from one another, and whether the offenses were "similar or intertwined" in purpose and character. And given the intensely factual nature of this inquirly and the impact it's resolution can have on a defendants sentence the government admitted, a jury must resolve it. That conclusion, the government represented, flows directly from this Court consistent holding that the 5th and 6th amendments generally guarantee a defendant the right to have a unanimous jury find beyond a reasonable doubt any fact that increases his exposure to punishment. Despite the governments concession, the 7th Cir. refused to disturb the district courts sentence that left Mr. Erlinger in the United States v. Erlinger (7th cir) to petition this court for certiorari. The government filed a brief in support of Mr. Erlinger petition. In it, the government argued that a number of court of appeals have refused request for juries in cases like Mr. Erlinger's and that "this Court intervention is nessary to ensure that the Circuits correctly recognize defendants constitutional rights in this context." The Supreme Court agreed to take up Mr. Erlinger's case to decide whether ACCA's occasions inquiry must be resolved by a jury. This Court found that it Must. Defendants procedural protections well established at common law, including the "ancient rule" that the government must prove to a jury every one of its charges beyond a reasonable doubt. United States v. Haymond, 588 U.S. 634, 641 (2019); see Apprendi v. New Jersey, 530 U.S. 466, 477-478 (2000) Equally the 5th and 6th amendment sought to ensure that a judges power to punish would "derive wholly" from, and remain always "controlled" by the jury and its verdict. Blakely v. Washington, 542 U.S. 296, 306 (2004). It is a principle we (Supreme Court) have since reiterated in response to a variety of other recent sentencing innovations. See Haymond, 588 U.S. at 644. And it is a principle, we have observed, that does not just apply when a judge seeks to issue a sentence that exceeds the maximum penalty authorized by a jurys finding (or a guilty plea). It is a principle that also applies when a judge seeks to increase a defendants minimum punishment. Alleyne illustrates the point, Commendly, the government in U.S. v. Erlinger (7th cir) concedes before us, (Supreme Court) as it did before the court of appeals, what all this means for Mr. Erlinger in U.S. v. Erlinger (7th cir) case and others like it. Like the case U.S. v. ANDREWS (4th cir.). Under §922(g). Mr. Erlinger faced between 0 to 10 years in prison. §924(a)(2)(2012). To trigger ACCA and expose him to longer prison terms, the government had to prove that his past included three convictions for "violent felonies" or "serious drug offense" that were "committed on occasions different from one another." §924(e)(1) And under Wooden, deciding whether those past offenses occurred on (3) or more different occasions is a fact-laden task. Were the crimes "committed close in time"? 595 U.S. at 369. How about the "proximity" of their "location"? Were the offenses "similar or intertwined" in purpose and character? All these question, Wooden observed, "may be relevant" to determing whether the offenses were committed on one occasion or separate ones — and all require facts to be found before ACCA's more punitive mandatory mininimum sentence may be lawfully deployed. As the government recognizes, there is no doubt what the Constitution requires in these circumstances: Virtually "any fact" that "increases the prescribed range of penalties to which a criminal defendant is exposed" must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea). Apprendi, 530 U.S. at 490; see Brief for United States 9. Judges may not assume the jury's fact finding function for themselves, let alone purport to perform it using a mere preponderance-of-the-evidence standard, hold otherwise not portend a revival of the vice-admiralty courts the framers so feared. In Apprendi, a judge relied on his own factual findings under a preponderance-of-the-evidence standard to increase the defendant's maximum sentence from 10 to 20 years. 530 U.S. at 469. In Alleyne, a judge proceed the same way to increase the defendants minimum sentence from (5) to (7) years. 570 U.S., at 104. Here, the sentencing courts factual finding that Mr. Erlinger in U.S. v. Erlinger offences occurred on at least (3) separate occasions had the effect of increasing both the maximum and minimum sentence he faced. Rather than a maximum sentence of (10) years in prison, the judges finding left Mr. Erlinger exposed to life in prison. Rather than a minimum penalty of no prison time, the judges finding meant Mr. Erlinger (and those like him) had to serve at least (15) years. While recognizing Mr. Erlinger was entitled to have a jury resolve ACCA's occasions inquiry unanimously and beyond a reasonable doubt, ~~we~~ (judges) decide no more than that. For purposes of the proceedings before us, the parties take as given that Mr. Erlinger committed four burglaries and that each qualifies as a "violent offense" under ACCA in U.S. v. Erlinger. But they disagree vigorously about whether those burglaries took place on at least three different occasions (so that ACCA's enhanced sentences would apply) or during a single criminal episode (so that they would not). Presented with evidence about the times, location, purpose, and character of those crimes, a jury might have concluded that some or all occurred on different occasions. Or it might not have done so. The Supreme Court say for certain is that the sentencing court erred in taking that decision from a jury of Mr. Erlinger peers. The Court-appointed amicus in U.S. v. Erlinger resists the conclusion the (Supreme Court) reach.

However, amicus does not dispute the Constitution time-honored guarantee that a unanimous jury ordinarily must find beyond a reasonable doubt any fact that increases a defendant's exposure to punishment. See Brief for Court-Appointed Amicus Curiae 1. in U.S. v. Erlinger. In defending the decision below, amicus relies instead on an exception to that rule, this Court announced in Almendarez-Torres v. U.S, 523 US. 244(1998). On amicus's telling, that exception permits a judge to find perhaps any fact related to a defendants past offenses, including whether he committed them on different occasions. The (Supreme Court) disagree. In Almendarez-Torres, the Court considered sentencing law applicable to aliens who returned to the United States after a previous removal. The default sentencing range was up to two years of imprisonment. 8 U.S.C. §1326(a)(1994 ed). But a finding that the government previously removed the alien after a "conviction for commission of an aggravated felony" triggered a new maximum penalty of up to 20 years in prison. §1326(b)(1994 ed) In Almendarez-Torres, the Court permited a judge to undertake the job of finding the fact of a prior conviction — and that job alone. 523 U.S., at 246-247. Almost immediately, too, the decision came under scrutiny. Jones, 526 U.S. at 249, n.10. The Court has since described Almendarez-Torres as "at best an exceptional departure" historic practice" Apprendi, 530 U.S., at 487. That decision we (Supreme Court) have said, parted ways from the uniform course of decision during the entire history of our jurisprudence" Id, at 490. It was "arguably... incorrect" Id, at 489. And it amounted to an unusual... exception to the sixth amendment rule in criminal cases that 'any fact that increases the penalty for a crime' must be proved to a jury." Pereida v. Wilkinson, 592 U.S. 244, 238(2021) (quoting Apprendi, 530 U.S., at 490). Still, no one in the case of U.S. v. Erlinger, has asked us to revisit Almendarez-Torres. In the years since that decision, this Court has expressly delimited it's reach. It persists as a "narrow exception" permitting judges to find only "the fact of a prior conviction." Alleyne, 570 U.S., at 111, n. 1. Under that exception, a judge may "do no more, consistent with the sixth amendment, than determine what crime, with what elements, the defendants was convicted of." Mathis, 579 U.S., at 511-512. The Supreme Court has reiterated this limit on the scope of Almendarez-Torres "over and over." See Pereida v. Wilkinson, 592 U.S. [illegible], 224, 238(2021); United States v. Haymond, 588 U.S. 634, 644 n. 3(2019)(plurality opinion); United States v. Descamps, 570 U.S. 254, 269(2013); Cunningham v. California, 549 U.S. 270, 282(2007); United States v. Shepard, 544 U.S. 13, 24(2005)(plurality opinion); United States v. Booker, 543 U.S. 220, 244(2005); Blakely v. Washington, 542 U.S. 296, 301(2004); Apprendi v. New Jersey, 530 U.S. 466, 490(2000). To determine whether Mr. Erlinger in U.S. v. Erlinger, prior convictions triggered ACCA's enhanced penalties, the district court had to do more than identify his previous convictions and the legal elements required to sustain them. It had to find that those offenses occurred on at least three separate occasions. And in doing so, the court did more than Almendarez-Torres allows. If Almendarez-Torres permits a judge to find "what crime, with what elements the defendants was convicted of," Mathis, 579 U.S., at 511-512, amicus reasons, that necessarily implies a judge may also find the jurisdiction in which the underlying offense occured and the date it happened. Brief for Court-Appointed Amicus Curiae 29 in U.S. v. Erlinger. And amicus continues, in at least some (but admittedly not all) cases, knowing those facts will make the occasions inquiry so "straightforward" that sending it to a jury would be pointlessly inefficient. The Supreme Court disagreed. To conduct the narrow inquiry Almendarez-Torres authorizes, a court may need to know the jurisdiction in which the defendants crime occurred and its date in order to ascertain what legal elements the government had to prove to secure a conviction in that place at that time And to answer those questions, a sentencing court may sometimes consult "a restricted set of materials", often called Shepard documents, that include judicial records, plea agreements, and colloquies between a judge and the defendant. Descamps, 570 U.S. at 262; See Shepard, 544 U.S., at 20-21; United States v. Taylor, 495 U.S. 575, 602 (1990). None of that, however, means that a court may use Shepard documents or any other materials for any other purpose. To ensure compliance with the fifth and sixth amendments a sentencing judge may use the information he gleans from Shepard documents for the "limited function" of determining the fact of a prior conviction and the then-existing elements of that offense. Descamps, 570 U.S. at 260. "No more" is allowed. Mathis, 579 U.S., at 511. In particular, a judge may not use information in shepard documents to decide "what the defendant... actually did," or the "means" or "manner" in which he committed his offense in order to increase the punishment to which he might be exposed. 579 U.S., at 504, 510-511; see Descamps, 570 U.S. at 269. To sanction that practice would be to allow a sentencing court to do exactly what the 5th and 6th amendments forbid. The sentencing court in U.S. v. Erlinger and U.S. v. ANDREWS (4th cir) case(s) disregarded these constraints. To determine what legal elements attached to Mr. Erlingers in U.S. v. Erlinger and U.S. v. ANDREWS (4th cir) decades-old offenses, the court might have needed to consult Shepard documents to ascertain the jurisdiction in which they occurred and the date on which they happened. But the court had no need or authority "to go any futher" Mathis, 579 U.S. at 511 and assume for itself the responsibility of deciding whether Mr. Erlinger in U.S. v. Erlinger and also in U.S. v. ANDREWS (4th cir) past offense differed enogh in time, location, character, and purpose to have transpired on different occasions. Let alone undertake that inquiry all with an eye toward increasing his punishment. The 5th and 6th amendment "contemplate that a jury — not a sentencing court — will find such facts, unanimously and beyond a reasonable doubt." Descamps, 570 U.S., at 269. Other consideration fortify our conclusion. Often, as amicus concedes in U.S. v. Erlinger, shepard documents will not contain all this information needed to conduct a sensible ACCA occasions inquiry, such as the exact times and location of the defendants past crime. Brief for Court-Appointed Amicus Curiae 40 in U.S. v. Erlinger, when shepard documents do contain that kind of granular information, more still may be required. After all this court (Supreme Court) has held that no particular laspe of time or distance between offenses automatically separates a single occasion from distint ones. Wooden, 595 U.S., at 369-370. Often a aqualitative assessment about "the character and relationship" of the offenses may be required. Id., 369. So may an inquiry into whether the crimes shared "a common scheme or purpose". Not only are shepard documents of limited utility, they can be "prone to error." Mathis, 579 U.S., at 512; see also Brief for National Association of Federal Defenders as Amicus Curiae 8-15 (NAFD Brief) (recounting examples of material errors);

(Opinion of Justice Jackson J, acknowledging records are "imperfect" and may contain "material gaps.") The risk of error may be especially grave when it comes to facts recounted in shepard documents on which adversarial testing was "unnecessary" in the prior proceedings. Mathis, 579 U.S. at 512. As we have recognized, at trail, and still more at plea hearing, a defendant may have no incentive to contest what does not matter" to his conviction at the time he may even "have good reason not to." For Mr. Erlinger in the case of U.S. v. Erlinger and also United States v. ANDREWS (4th cir) may mean perhaps (10) more or more years in prison. As a matter of fair notice alone, old recorded details, prone to error, sometimes untested, often inessential, and the consequences of which a defendant may not have appreciated at the time, should not come back to haunt [him] many years down the road by triggering a lengthy mandatory sentence." 579 U.S. at 512, see also Jones, 526 U.S. at 249. This Court should grant review in this case to ensure consistent and correct application of the ACCA's guideline in this case.

Conclusion

For the foregoing reason, petitioner MARK LEON ANDREWS, request that this Court grant this petition for a writ of certiorari and accept this case on review.

Dated, this 13 day of September, 2024

Respectfully
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