No. 24-5893

IN THE SUPREME COURT OF THE UNITED STATES

MAHLON PRATER, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the lower courts correctly found that petitioner's two conspiracy charges were not the same offense for purposes of the Double Jeopardy Clause.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-30a) is available at 2024 WL 3634526. The order of the district court (Pet. App. 57a-61a) accepting the magistrate judge's report and recommendation (Pet. App. 62a-77a) is available at 2021 WL 223382, and the report and recommendation is available at 2020 WL 8484944.

JURISDICTION

The judgment of the court of appeals was entered on August 2, 2024. The petition for a writ of certiorari was filed on October 31, 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 Eastern District of Tennessee, petitioner was convicted on one count of conspiring to distribute methamphetamine, oxycodone, and marijuana, in violation of 21 U.S.C. 841(a)(1), (b)(1)(A) and (C), and 846; one count of aiding and abetting the possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i) and 2; one count of aiding and abetting the attempted possession of 50 grams or more of methamphetamine with intent to distribute, in violation of 18 U.S.C. 2 and 21 U.S.C. 841(a)(1) and (b)(1)(A), and 846; and one count of distributing 50 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A). Pet. App. 32a-33a. Petitioner was sentenced to 384 months of imprisonment, to be followed by five years of supervised release. Id. at 34a-34a. The court of appeals affirmed. Id. at 2a-30a.

1. Petitioner was a member of the Vice Lords gang in Knoxville, Tennessee. Pet. App. 3a-4a; Pet. 5. A federal investigation uncovered a drug-trafficking operation in which, on at least three occasions between 2018 and 2019, investigators witnessed the Vice Lords shipping large quantities of methamphetamine from California to petitioner's home in Tennessee. Pet. App. 3a; Gov't C.A. Br. 6. Federal officers also recorded conversations among members of the Vice Lords gang about their drug trafficking and their use of guns. Pet. App. 3a. On September

4, 2019, a federal grand jury in the Eastern District of Tennessee indicted six Vice Lords, but not petitioner, on drug-trafficking charges. Ibid.

During their investigation of the Vice Lords, federal officers also learned that petitioner worked with low-level drug dealers in Knoxville for a few months to sell crack cocaine. Pet. App. 3a. On September 4, 2019, a federal grand jury in the Eastern District of Tennessee returned an indictment charging petitioner with distributing and possessing with intent to distribute a substance containing cocaine base (crack cocaine), in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C), and 846. Ibid. Petitioner pleaded guilty to the that conspiracy charge. Ibid.

2. A few months later, a separate grand jury in the Eastern District of Tennessee returned a superseding indictment in the Vice Lords case, charging petitioner and ten other individuals with participating in the gang's drug-trafficking conspiracy. Pet. App. 3a-4a. A second superseding indictment, returned in October 2020, charged petitioner and the other Vice Lords with additional methamphetamine-related offenses and with possessing a firearm in furtherance of a drug-trafficking crime. Id. at 4a.

Before trial, petitioner moved to dismiss the Vice Lords conspiracy charge on double-jeopardy grounds, contending that the Knoxville-based crack-cocaine conspiracy to which he had already pleaded guilty was a subset of the Vice Lords conspiracy. Pet.

App. 64a.[1] A magistrate judge recommended that the district court deny the motion. Id. at 67a, 77a. The court adopted the magistrate judge's recommendation in full and denied petitioner's motion to dismiss, finding that the two conspiracies constituted "separate and distinct offenses." Id. at 67a (citation omitted).

The case proceeded to trial. At the close of the government's case, petitioner again moved to dismiss the Vice Lords conspiracy charge on double-jeopardy grounds. Pet. App. 4a. The district court denied the motion. Ibid. The jury found petitioner guilty of one count of conspiring to distribute methamphetamine, oxycodone, and marijuana, in violation of 21 U.S.C. 841(a)(1), (b)(1)(A) and (C), and 846, as well as three other drug- and gun-related counts. Pet. App. 32a-33a. The jury acquitted petitioner, however, of one count of possessing of a firearm in furtherance of a drug-trafficking crime. Ibid.; see Second Superseding Indictment 7.

After the jury returned its verdict, petitioner moved for a judgment of acquittal on the conspiracy charge, arguing that the evidence at trial established that his selling of crack cocaine in Knoxville was part of the broader Vice Lords conspiracy. Pet.

[1] Petitioner also sought dismissal of Counts 4 and 6, which charged him with possessing with intent to distribute and distributing methamphetamine, respectively, on the basis that they related to the conspiracy charged in Count 1.

App. 49a. The district court denied the motion, finding "no reason to deviate from its prior holding on this issue." Ibid.

The district court sentenced petitioner to 384 months of imprisonment, to be followed by five years of supervised release. Pet. App. 34a-35a.

3. The court of appeals affirmed in an unpublished opinion. Pet. App. 2a-30a.

The court of appeals explained that to determine whether two conspiracy counts charge the "'same offense'" under the Double Jeopardy Clause, it examines "five potential sources of overlap: (1) time; (2) coconspirators; (3) charges in the indictment; (4) overt acts and the nature of the conspiracy; and (5) place." Pet. App. 5a (citing United States v. Sinito, 723 F.2d 1250, 1256 (6th Cir. 1983), cert. denied, 469 U.S. 817 (1984)). The court stated that "[i]f at least a few factors differ between the conspiracies," then "it usually follows" that they are "'separate and distinct offenses.'" Id. at 5a-6a (citation omitted). Applying that five-factor framework to this case, the court found that "four of the five factors -- time, coconspirators, overt acts, [and] geography" -- indicated two separate conspiracies. Id. at 8a.

First, the court of appeals observed that the two conspiracies "covered materially distinct time periods": the crack-cocaine conspiracy lasted just four months between December 2018 and April 2019, while the Vice Lords conspiracy ran from July 2018 to November 2019. Pet. App. 6a. Second, petitioner was also the

only alleged participant in both conspiracies, one of which involved "lower-level east Knoxville crack dealers" and the other of which involved numerous named members of the Vice Lords. Ibid. (citation omitted). Third, as to the overt-acts factor that the court considered the "'most significant,'" the court noted that petitioner had distributed "a relatively small amount of crack cocaine -- just 60 to 300 doses," but had been involved in the distribution of tens of thousands of doses of methamphetamine as part of the Vice Lords conspiracy. Id. at 7a (citation omitted). The "'far more expansive scope'" and focus "on different drugs" of the Vice Lords conspiracy indicated to the court that there were two separate offenses. Ibid. (citation omitted). Fourth, the court observed that the Vice Lords conspiracy covered territory from Tennessee to California, while petitioner "confined his crack cocaine conspiracy to east Knoxville." Id. at 8a.

The court of appeals acknowledged that one factor favored petitioner: "that the two indictments share a statutory offense." Pet. App. 7a. But the court observed that to be a "minor point, since one can certainly enter two conspiracies to commit the same type of crime." Ibid. (citation omitted). The court also rejected petitioner's argument that the district court "failed to recognize that the government bore the burden of proof to show by a preponderance of the evidence" that the two conspiracies were separate. Id. at 9a. The court of appeals observed that the district court had "acknowledged the point and said the government

had met its burden," when it reasoned that the "'Government's proffered evidence' * * * 'preponderates in favor of the existence of two conspiracies.'" Ibid. (citation omitted); see id. at 72a.

Judge Griffin dissented. Pet. App. 13a-30a. He did not disagree with the legal framework applied by the majority, see id. at 17a-18a, but would have concluded that the government had not met its burden in this case, see id. at 30a.

ARGUMENT

Petitioner contends (Pet. 13-17) that the court of appeals applied the wrong framework to his double-jeopardy claim, in conflict with the Fourth Circuit. But the two courts of appeals have applied the same five-factor test for decades. Petitioner also argues (Pet. 17-19) that the decision below implicates a conflict in the circuits as to which party bears the burden of proof in establishing whether two conspiracies constitute the same offense under the Double Jeopardy Clause. But the court of appeals resolved that question in petitioner's favor when it placed the burden of proof on the government. No further review is warranted.

1. Petitioner first contends (Pet. 13-17) that the court of appeals analyzed his double-jeopardy claim under the wrong legal standard. That contention does not warrant this Court's review.

a. The Fifth Amendment's Double Jeopardy Clause provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. Amend. V. In

determining that petitioner had not been charged twice for the "'same offen[s]e,'" the court of appeals correctly considered the totality of circumstances surrounding petitioner's crimes. Pet. App. 5a (citation omitted). Consistent with its longstanding precedent in United States v. Sinito, 723 F.2d 1250, 1256 (6th Cir. 1983), cert. denied, 469 U.S. 817 (1984), the court examined "five potential sources of overlap" between the two charged conspiracies: "(1) time; (2) coconspirators; (3) charges in the indictment; (4) overt acts and the nature of the conspiracy; and (5) place." Pet. App. 5a. That fact-intensive, multi-factor framework appropriately accounts for the many ways in which conspiracies could either overlap or diverge.

The court of appeals then correctly applied those factors to the facts at hand. The court observed that the conspiracies ran for different stretches of time, apparently had only petitioner in common, spanned different geographical territories, and involved different drugs in different quantities. Pet. App. 6a-8a. The court acknowledged some overlap, namely, that "the sixteen-month Vice Lords conspiracy enveloped the four-month crack cocaine conspiracy," and that "the Vice Lords operated in Knoxville, where [petitioner] sold crack cocaine." Id. at 9a-10a. But the court correctly found that those overlapping aspects of the conspiracies were outweighed by other facts indicating that the conspiracies were distinct. See id. at 7a-9a.

b. Petitioner contends (Pet. 13-14) that the decision below conflicts with the Fourth Circuit's approach to double-jeopardy claims involving multiple conspiracy charges. No such conflict exists. For decades, the Fourth Circuit has analyzed double-jeopardy challenges to conspiracy charges under the same five-factor framework applied below, focusing on: "1) time periods in which the alleged activities of the conspiracy occurred; 2) the statutory offenses charged in the indictments; 3) the places where the alleged activities occurred; 4) the persons acting as co-conspirators; and 5) the overt acts or any other descriptions of the offenses charged which indicate the nature and scope of the activities to be prosecuted." United States v. MacDougall, 790 F.2d 1135, 1144 (1986) (citing Sinito, 723 F.3d at 1256). Indeed, the Fourth Circuit has cited the precedent that the court of appeals applied in this case as exemplifying the "correct approach." Ibid.[2]

Petitioner nonetheless suggests (Pet. 14) that the two courts' frameworks diverge, on the theory that they approach the double-jeopardy inquiry from different angles. According to

[2] The Fourth Circuit no longer relies on "overt acts" in the fifth element of its double-jeopardy test, in light of this Court's holding in United States v. Shabani, 513 U.S. 10, 15 (1994), that conspiracy charges under 21 U.S.C. 846 do not require an overt act. See United States v. Slocum, 106 F.4th 308, 314-315 (4th Cir. 2024). But it continues to consider the "nature and scope of the activities to be prosecuted," id. at 315, which is functionally identical to the approach of the court of appeals, see Pet. App. 8a (considering the "scope and nature of the conduct charged in each count") (citation omitted).

petitioner, the Sixth Circuit focuses on whether the two conspiracies have "different" scopes, while the Fourth Circuit asks whether the scopes of the charged conspiracies "overlap." Ibid. (citing United States v. Jones, 858 F.3d 221, 226 (4th Cir. 2017)). But the decision below makes clear that the court was examining "potential sources of overlap." Pet. App. 5a (emphasis added). And in applying the framework, the court acknowledged overlaps in time and geography, as well as the identical statutory charges. Id. at 6a-10a. The court, however, found based on the specific facts of the case, that "the many differences between the two conspiracies" outweighed any overlap, and "favor the district court's decision to treat them as separate." Id. at 6a.

Petitioner contends (Pet. 16-17) that the decision below conflicts with the Fourth Circuit's decision in United States v. Jones, which found a double-jeopardy violation when the government charged one 14-year conspiracy and another conspiracy that spanned only a month within that 14-year conspiracy. 858 F.3d at 227. But the overlap between the two charged conspiracies in Jones was much more substantial than in this case. For example, the long-running conspiracy in that case "operated 'primarily in the region around Lynchburg, Virginia,'" which is also where the one-month conspiracy took place. Ibid. (citation omitted). Here, in contrast, the Vice Lords conspiracy stretched from California to Tennessee, whereas the crack-cocaine conspiracy centered only around East Knoxville. Pet. App. 6a. In addition, Jones presented

"a serious and substantial overlap as to co-conspirators," and money seized by law enforcement during one conspiracy likely came from the other. 858 F.3d at 227. Here, in contrast, the court of appeals found the two conspiracies to involve non-overlapping participants and drugs. The difference in outcomes between this case and Jones thus reflects its different facts; at a minimum, it does not demonstrate that the Fourth Circuit would have reached a different outcome on the facts here.

2. Petitioner also urges this Court (Pet. ii, 17-19) to grant a writ of certiorari to resolve which party bears the burden of proof when a defendant claims that two conspiracy indictments charge the same offense. Petitioner asserts that a majority of circuits, once the defendant to make only a prima facie showing that the two conspiracy indictments charge the same offense, shift the burden to the government to prove that the conspiracies are distinct. Pet. 17 (citing cases from the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Eleventh Circuits). And he asserts that the Tenth Circuit places the burden entirely on the defendant to prove that the conspiracies are the same, and that the Ninth Circuit places the burden of production on the government burden but the ultimate burden of proof on the defendant. Pet. 18 (citing United States v. Leal, 921 F.3d 951, 960 n.6 (10th Cir. 2019); United States v. Ziskin, 360 F.3d 934, 943 (9th Cir. 2003)).

The conflict that petitioner asserts does not implicate this case. As petitioner recognizes (Pet. 17), the court of appeals in this case has adopted the approach that he prefers. The lower courts did not purport to deviate from that approach here. See Pet. App. 5a, 9a, 72a. And because that approach is less demanding on a defendant than the alternatives that petitioner identifies, petitioner's claim would have failed no matter the court in which it had been raised. This case is accordingly an inappropriate vehicle to address the second question presented.

Petitioner asserts (Pet. 20-22) that even if the courts below acknowledged his preferred approach, they did not actually apply it. He argues (Pet. 21), for example, that the magistrate judge improperly relied on "the language of the indictments alone" in recommending the denial of petitioner's pre-trial motion to dismiss. Petitioner also argues (ibid.) that in denying his posttrial motion for acquittal, the district court failed to recognize that the government itself chose "not to introduce evidence that the Vice Lords distributed crack cocaine," even though it was supposedly aware of such evidence. Those contentions lack merit. In reviewing a motion to dismiss an indictment, a court must "accept[] the factual allegations [therein] as true," and decide "only whether the indictment is valid on its face." United States v. McAuliffe, 490 F.3d 526, 531 (6th Cir.), cert. denied, 552 U.S. 976 (2007). And petitioner's baseless accusation that the government withheld evidence at trial fails to properly

account for the trial testimony of a Vice Lord who was "unaware of any Vice Lords selling crack cocaine [as part of the charged] conspiracy." Pet. App. 10a.

In any event, petitioner's factbound contentions do not warrant this Court's review. See Sup. Ct. R. 10. This Court "do[es] not grant * * * certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925). And "under what [the Court] ha[s] called the 'two-court rule,' the policy has been applied with particular rigor when [the] district court and court of appeals are in agreement as to what conclusion the record requires." Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting); see Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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