

No. 24-6410

IN THE SUPREME COURT OF THE UNITED STATES

ANTOINE WIGGINS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the phrase "controlled substance" in Sentencing Guidelines § 4B1.2(b) includes substances that are controlled under relevant state law but not under the federal Controlled Substances Act, 21 U.S.C. 801 et seq.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D.N.J.):

United States v. Wiggins, No. 18-cr-459 (Sept. 26, 2022)

United States Court of Appeals (3d Cir.):

United States v. Wiggins, No. 22-2831 (Sept. 27, 2024)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-6) is available at 2024 WL 4315123.

JURISDICTION

The judgment of the court of appeals was entered on September 27, 2024. The petition for a writ of certiorari was filed on December 23, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of New Jersey, petitioner was convicted on one

count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 96 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1-6.

1. On May 28, 2018, police stopped petitioner for a traffic violation. Pet. App. 2. During the traffic stop, the officers learned that petitioner had an active arrest warrant. Ibid. Petitioner then tried to flee, but was chased down and arrested. Ibid. Petitioner subsequently told the officers that he had a handgun in the car and drugs in the trunk, and consented in writing to a search of the car. Ibid. When they conducted the search, the police seized a loaded pistol and 57 plastic containers of crack cocaine. Ibid.

Petitioner had previously been convicted of a felony. Presentence Investigation Report (PSR) ¶ 14. A grand jury in the District of New Jersey charged petitioner with possessing a loaded firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Indictment 1. Petitioner pleaded guilty pursuant to a plea agreement. Pet. App. 1; Gov't C.A. Br. 2.

2. The Probation Office calculated a base offense level of 24 under the Sentencing Guidelines, based in part on a determination that petitioner committed the possession offense after two felony convictions for "controlled substance

offense[s].” PSR ¶¶ 18, 42, 44; see Sentencing Guidelines § 2K2.1(a)(2) (2018). The Guidelines define a “‘controlled substance offense’” as “an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.” Id. § 4B1.2(b).

One of the controlled substance offenses identified by the Probation Office was a 2003 New Jersey conviction for possession of a controlled dangerous substance with intent to distribute the substance on or near school property, and the other was a 2007 New Jersey conviction for distribution of a controlled dangerous substance on or near school property. PSR ¶¶ 18, 42, 44. The parties agreed at sentencing that petitioner’s drug offenses involved cocaine, in violation of N.J. Stat. Ann. 2C:35-7 (West 2018). C.A. App. 84-85. The Probation Office calculated an advisory Guidelines range of 100 to 120 months of imprisonment. PSR ¶ 74-75.

At sentencing, petitioner objected to the classification of his prior cocaine offenses as controlled substance offenses under the Guidelines. He contended that the cocaine offenses were categorically not a qualifying predicate because the New Jersey

definition of cocaine is overbroad compared to the federal definition. C.A. App. 83-84. Specifically, petitioner argued that New Jersey prohibits positional isomers of cocaine whereas federal law does not. Id. at 87-88.

The district court overruled petitioner's objection, explaining that the plain language of Sentencing Guidelines § 4B1.2 incorporates state convictions irrespective of whether "there is no equivalency or a lack of equivalency between the state law definition of a controlled substance and the federal definition." C.A. App. 92. The court accordingly agreed with the Probation Office that petitioner's base offense level was 24 and that his Guidelines range was 100 to 120 months. Id. at 95, 101. Varying downward, the court sentenced petitioner to 96 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The court of appeals affirmed. The court relied on its previous decision in United States v. Lewis, 58 F.4th 764 (3d Cir.), cert. denied, 144 S. Ct. 489 (2023), which had observed that the term "controlled substance" in the Guidelines refers to a drug regulated by either state or federal law. Pet. App. 3-4 (citation omitted). The court of appeals accordingly found that the district court correctly concluded that it did not need to examine federal law because petitioner's cocaine offenses satisfied state law. Ibid.

ARGUMENT

Petitioner contends (Pet. 3-8) that his prior New Jersey cocaine convictions are not “controlled substance offenses” within the meaning of Sentencing Guidelines § 4B1.2(b). He contends that the Guidelines definition is limited to substances controlled under the federal Controlled Substances Act (CSA), 21 U.S.C. 801 et seq. See Pet. 6-8. Because the question presented involves the interpretation of the Sentencing Guidelines, the petition for a writ of certiorari does not warrant this Court’s review. In any event, the court of appeals correctly rejected petitioner’s contention. This Court has denied several petitions for writs of certiorari raising similar contentions, and should follow the same course here.*

* See Demont v. United States, 144 S. Ct. 281 (2023) (No. 22-7904); Ramirez v. United States, 143 S. Ct. 2480 (2023) (No. 22-7263); Trapps v. United States, 143 S. Ct. 841 (2023) (No. 22-6591); Miles v. United States, 143 S. Ct. 612 (2023) (No. 22-6117); Russey v. United States, 143 S. Ct. 330 (2022) (No. 22-5461); Rodriguez v. United States, 143 S. Ct. 329 (2022) (No. 22-5449); Nichols v. United States, 143 S. Ct. 326 (2022) (No. 22-5427); Jones v. United States, 143 S. Ct. 268 (2022) (No. 22-5342); McConnell v. United States, 143 S. Ct. 166 (2022) (No. 21-8099); Bagola v. United States, 143 S. Ct. 161 (2022) (No. 21-8075); Henderson v. United States, 142 S. Ct. 1696 (2022) (No. 21-7391); Jones v. United States, 142 S. Ct. 1167 (2022) (No. 21-6758); Sisk v. United States, 142 S. Ct. 785 (2022) (No. 21-5731); McLain v. United States, 142 S. Ct. 784 (2022) (No. 21-5633); Atwood v. United States, 142 S. Ct. 753 (2022) (No. 20-8213); Wallace v. United States, 142 S. Ct. 362 (2021) (No. 21-5413); Ward v. United States, 141 S. Ct. 2864 (2021) (No. 20-7327); Ruth v. United States, 141 S. Ct. 1239 (2021) (No. 20-5975); Guerrant v. United States, 142 S. Ct. 640 (2022) (No. 21-5099).

1. This Court ordinarily does not review decisions interpreting the Sentencing Guidelines, because the Sentencing Commission can amend the Guidelines to eliminate any conflict or correct any error. See Braxton v. United States, 500 U.S. 344, 347-349 (1991). Congress has charged the Commission with “periodically review[ing] the work of the courts” and making “whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest.” Id. at 348 (citing 28 U.S.C. 994(o) and (u)); see United States v. Booker, 543 U.S. 220, 263 (2005) (“The Sentencing Commission will continue to collect and study appellate court decisionmaking. It will continue to modify its Guidelines in light of what it learns, thereby encouraging what it finds to be better sentencing practices.”). Review by this Court of Guidelines decisions is particularly unwarranted in light of Booker, which rendered the Guidelines advisory only. 543 U.S. at 245.

No sound reason exists to depart from that practice here. The Commission has carefully attended to Section 4B1.2’s definition of “controlled substance offense,” amending it multiple times. See, e.g., Sentencing Guidelines § 4B1.2(2) (1987); id. § 4B1.2(2) (1989). The Commission initially defined the term by reference to the CSA, id. § 4B1.2(2) (1987), then by reference to

The same issue is presented in United States v. Edwards, No. 24-6898 (filed Mar. 18, 2025).

specific provisions of federal law, id. § 4B1.2(2) (1988), and then by replacing the cross-references to federal law with a broad reference to “federal or state law” that prohibits certain conduct, id. § 4B1.2(2) (1989). See United States v. Ruth, 966 F.3d 642, 652 (7th Cir. 2020), cert. denied, 141 S. Ct. 1239 (2021).

More generally, the Commission has devoted considerable attention in recent years to the “definitions relating to the nature of a defendant’s prior conviction,” and it continues to work “to resolve conflicting interpretations of the guidelines by the federal courts.” Proposed Priorities for Amendment Cycle, 81 Fed. Reg. 37,241, 37,241 (June 9, 2016). In 2023, the Commission sought public comment on the potential resolution of circuit disagreement regarding the question presented here, namely, whether the definition of “controlled substance offense” in Section 4B1.2(b) is limited to offenses involving substances controlled under the CSA, or whether it also applies to offenses involving substances controlled by applicable state law. See U.S. Sent. Comm’n, Proposed Amendments to the Sentencing Guidelines (Preliminary): Part 4, Circuit Conflicts 8-11 (Jan. 12, 2023), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230112_prelim_RF.pdf; see also Guerrant v. United States, 142 S. Ct. 640, 640 (2022) (statement of Sotomayor, J., respecting the denial of certiorari) (noting circuit disagreement).

The Commission did not address the conflict in its final amendments for that amendment cycle. See generally Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28,254 (May 3, 2023). But in December 2024, the Commission proposed another amendment that would resolve the issue by limiting “controlled substance offenses” under Section 4B1.2 to a specific list of federal-law offenses, rather than all offenses under “federal or state law” that meet certain criteria. U.S. Sent. Comm'n, Proposed Amendments to the Sentencing Guidelines 4 (Dec. 19, 2024), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20241230_rf_proposed.pdf.

The Commission did not adopt that proposal in its recent amendments to the Guidelines. See <https://www.ussc.gov/guidelines/amendments/adopted-amendments-effective-november-1-2025>. But the Commission’s repeated attention to the question presented, and presentation of proposals that would address it, illustrate that the Commission continues to be aware of the issue and is proactively looking for ways to resolve it. Accordingly, the Commission “should have the opportunity to address this issue in the first instance.” Longoria v. United States, 141 S. Ct. 978, 979 (2021) (Sotomayor, J., respecting the denial of certiorari) (discussing another Guidelines dispute) (citing Braxton, 500 U.S. at 348); see Guerrant, 142 S. Ct. at 640-641 (statement of Sotomayor, J., respecting the denial of certiorari).

(similar for circuit conflict concerning whether controlled substance offense must involve a substance listed on the federal schedules to qualify under the Guidelines).

2. In any event, the court of appeals correctly recognized that the term "controlled substance offense" in Sentencing Guidelines § 4B1.2(b) includes substances that are controlled under relevant state law but not under the federal CSA.

The Guidelines define that term to encompass "an offense under * * * state law, * * * that prohibits * * * the possession of a controlled substance * * * with intent to * * * distribute." Sentencing Guidelines § 4B1.2(b). Because state law restricted the use of the substances at issue in both of petitioner's prior state convictions, those substances fall squarely within the ordinary meaning of "controlled substance," namely, "'any of a category of behavior-altering or addictive drugs, as heroin or cocaine, whose possession and use are restricted by law.'" Ruth, 966 F.3d at 654 (quoting The Random House Dictionary of the English Language 443 (2d ed. 1987)).

Petitioner argues (Pet. 4-5) that New Jersey's definition of cocaine at issue in his prior convictions is broader than the corresponding definition in the federal CSA and that Section 4B1.2(b) implicitly incorporates the federal CSA's schedule of controlled substances. But Section 4B1.2 "does not incorporate, cross-reference, or in any way refer to the Controlled Substances

Act.” Ruth, 966 F.3d at 651. Nor does it contain any other textual indication that it is limited in scope to federally prohibited conduct. See United States v. Ward, 972 F.3d 364, 372 (4th Cir. 2020) (observing that the argument that Section 4B1.2(b) is limited “to state offenses that define substances just as federal law defines them” “ignores the plain meaning of [Section] 4B1.2(b)”), cert. denied, 141 S. Ct. 2864 (2021).

To the contrary, Section 4B1.2(b) defines a controlled substance offense as an offense “under federal or state law,” Sentencing Guidelines § 4B1.2(b) (emphasis added), specifically “refer[ring] [a court] to state law in defining the offense,” Ward, 972 F.3d at 374. The Guidelines definition accordingly applies to offenses involving substances controlled under federal or relevant state law. And the unadorned term “controlled substance” is a natural one to use in a general description of federal and state drug crimes, which focus on unlawful activities involving a product that the relevant jurisdiction regulates. Thus, “there is no textual basis to graft a federal law limitation onto” the Guidelines’ definition of “controlled substance.” United States v. Henderson, 11 F.4th 713, 718–719 (8th Cir. 2021), cert. denied, 142 S. Ct. 1696 (2022).

The use of the term “controlled substance” is particularly unlikely to be a silent cross-reference to the federal schedules because “[t]he Sentencing Commission clearly knows how to cross-

reference federal statutory definitions when it wants to.” Ruth, 966 F.3d at 651. Section 4B1.2 itself incorporates definitions from federal statutes in defining the terms “firearm” and “explosive material.” See Sentencing Guidelines § 4B1.2(a)(2) (referring to “a firearm described in 26 U.S.C. § 5845(a)” and “explosive material as defined in 18 U.S.C. § 841(c)”). Other provisions likewise define particular terms by reference to federal law. See, e.g., Sentencing Guidelines § 2D1.1, comment. (nn.4 & 6).

The absence of any cross-reference of “controlled substance” in Section 4B1.2 to the CSA is especially telling because the Commission amended Section 4B1.2 to remove a reference to the CSA, replacing it with a broad definition that expressly includes “state law” offenses that prohibit certain conduct related to “a controlled substance” more generally. Compare Sentencing Guidelines § 4B1.2(2) (1987) (“The term ‘controlled substance offense’ as used in this provision means an offense identified in 21 U.S.C. §§ 841, 952(a), 955, 955a, 959; §§ 405B and 416 of the [CSA] as amended in 1986, and similar offenses.”), with id. § 4B1.2(b) (“The term ‘controlled substance offense’ means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled

substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.").

Petitioner advances (Pet. 7) the policy argument that referring to state law will undermine uniformity in sentencing by creating "discrepancies" between defendants who commit their offense "'on the right side of the border'" (quoting Ward, 972 F.3d at 381 (Gregory, J., concurring in judgment)). But "the federal-law-only approach would do likewise," United States v. Lewis, 58 F.4th 764, 770 (3d Cir.), cert. denied, 144 S. Ct. 489 (2023), because any differences are inherent in the inclusion of convictions under "state law," Sentencing Guidelines § 4B1.2(b), which turns on what States choose to criminalize, how they choose to criminalize it, and their prosecutorial strategies, see Lewis, 58 F.4th at 770 n.2 (observing that there is "good reason for the purported discrepancy * * * between the hypothetical hemp dealer in a state that did not criminalize hemp and the one in a state that did," given that "culpability attaches to trafficking a controlled substance because the state criminalizes it"). Under petitioner's own approach, even when defendants are convicted in different States for similar conduct, one State's law may be too broad to fit within the Guidelines, while the other's is not, leading to differential results.

3. The decision below, and the circuit precedent on which it relies, accords with published decisions from the Fourth, Sixth,

Seventh, Eighth, Tenth, and Eleventh Circuits, which have likewise declined “to engraft the federal Controlled Substances Act’s definition of ‘controlled substance’” onto Section 4B1.2(b). Ruth, 966 F.3d at 654 (7th Cir.); see Lewis, 58 F.4th at 768-771 (3d Cir.); Ward, 972 F.3d at 369-374 (4th Cir.); United States v. Jones, 81 F.4th 591, 597-600 (6th Cir. 2023), cert. denied, 144 S. Ct. 611 (2024); Henderson, 11 F.4th at 718-719 (8th Cir.); United States v. Jones, 15 F.4th 1288, 1292-1296 (10th Cir. 2021), cert. denied, 143 S. Ct. 268 (2022).

Two courts of appeals have taken the view that the term “controlled substance” in Section 4B1.2(b) “refers exclusively to a substance controlled by the” federal CSA. United States v. Townsend, 897 F.3d 66, 72 (2d Cir. 2018); see United States v. Bautista, 989 F.3d 698, 702 (9th Cir. 2021). Petitioner cites (Pet. 6) the First Circuit’s decision in United States v. Crocco, 15 F.4th 20 (2021), cert. denied, 142 S. Ct. 2877 (2022), but the court in that case reviewed the defendant’s unpreserved claims for plain error and specifically stated that it was not deciding the issue here. Id. at 21, 23. Petitioner also cites (Pet. 6) the Fifth Circuit’s decision in United States v. Gomez-Alvarez, 781 F.3d 787 (2015), but that decision does not interpret Section 4B1.2(b) and instead addresses the definition of “drug trafficking offense” in the commentary to Section 2L1.2. See id. at 792-793. Thus, although some courts of appeals, like petitioner, view the

circuit disagreement somewhat more broadly, see Ruth, 966 F.3d at 653; Bautista, 989 F.3d at 702-703, any direct conflict is relatively limited. That counsels even further against this Court's review and in favor of allowing the Sentencing Commission the continued opportunity to address it, as it has been seeking to do.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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