24-6659

No. 24-10446-GG
in the Eleventh Circuit Court of Appeals

ORIGINAL

In The

Supreme Court of the United States

Ronnie Seward,

Petitioner

v.

United States of America,

Respondent

On Petition For Writ Of Certiorari
To The Supreme Court of the United States
No. 8:23-CR-101-SDM-CPT

PETITION FOR WRIT OF CERTIORARI

Ronnie Seward
Reg. #50687-510
pro-se litigant
FCI Coleman Medium
P.O. Box 1032
Coleman, FL
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LIST OF PARTIES

__ The names of all parties appear in the caption of the case on the cover page.

X There are additional parties which are listed below.

Alting, Tyrus John - Respondent

Anderson, Howard C. - Counsel for Petitioner

Bailey, Lynn Palmer - Counsel for Petitioner

Barton, Sean Michael - Co-defendent

Corrigan, The Honorable Timothy J. - Respondent

Hall, A. Fitzgerald - Respondent

Handberg, Roger B. - Respondent

Howard, Katherine - Counsel for Petitioner

Kapusta, Julia R. - Respondent

Lambert, The Honorable Laura Lothman - Respondent

Merryday, The Honorable Steven D. - Respondent.

Rhodes, David P. - Respondent

Rhodes, Yvette - Respondent

Seward, Ronnie Lee - Petitioner

Sneed, The Honorable Julie S. - Respondent

Stamm, Douglas Jordan - Respondent

Sullivan, David P. - Respondent

Tuite, The Honorable Christopher P. - Respondent

No publicly traded company or corporation has an interest in the outcome of this appeal.

QUESTION(S) PRESENTED

Did the District Court erroneously sentence Petitioner as a career criminal based on prior convictions for Florida trafficking in amphetamine?

Did the appellate court err by failing to consider the issue presented that the district court erred in sentencing Mr. Seward as a career offender?

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The United States District Court for the Middle District of Florida, Tampa Division reversibly erred when it sentenced Mr. Seward as a career offender based on its determination that Mr. Seward's Florida drug trafficking convictions were "controlled substance offense[s]" under the Sentencing Guidelines. The United States Court of Appeals for the Eleventh Circuit's binding precedent holds that Florida drug trafficking is not a "controlled substance offense" because the Florida statute is indivisible and can be violated by purchasing, an act that is excluded from the plain, narrow definition of "controlled substance offense". See Shannon, 631 F.3d 1189-90; Cintron v. United States Att'y Gen. 882 F.3d 1380,1385 (11th Cir. 2018).

Neither the United States Court of Appeals for the Eleventh Circuit's later decision in United States v. Conage, 50 F.4th 81 (11th Cir. 2022), cert. denied, No. 22-6719, 2024 WL 2805743 (June 3, 2024) ("Conage III"), nor the Florida Supreme Court opinion on which Conage III relied abrogated that binding precedent. To the contrary, in holding that Florida drug trafficking is a "serious drug offense" under the Armed Career Criminal Act (ACCA), the Conage panel expressly distinguished Shannon and the "controlled substance offense" definition. And the United States Court of Appeals for the Eleventh Circuit's recent en banc decision in United States v. Dupree, 57 F.4th 1269 (2023), confirms that the "controlled substance offense" definition is a closed universe that excludes any crimes committed by an act not listed in the definition. Purchase is one such act.

Accordingly, Mr. Seward's trafficking convictions are not "controlled substance offense[s]." Without those convictions, Mr. Seward does not have two qualifying predicates and thus is not a career offender. This erroneous classification made by the United States District Court for the Middle District

of Florida, Tampa Division significantly increased Mr. Seward's guidelines range. The United States Court of Appeals for the Eleventh Circuit was called on, but denied per curiam to consider vacating his sentence and remanding for resentencing without the career offender enhancement.

JURISDICTION

The Defendant Ronnie Seward timely filed a notice of appeal on February 12, 2024. Doc. 129. This court has jurisdiction pursuant to 28 U.S.C. §§ 1291, 1294 and 18 U.S.C. § 3742.

The appeal was denied by the Eleventh Circuit Court of Appeals on October 30, 2024.

STATEMENT OF THE CASE

I. Course of Proceedings

A grand jury returned a four-count indictment against Mr. Seward and his co-defendants. Doc 1. Mr. Seward was charged with one count of conspiring to distribute and possess methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(C) ("Count One"), and one count of possessing with intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) ("Count Four"). Id. Mr. Seward pled guilty to Count Four pursuant to a plea agreement, Docs. 74, 151, and the matter proceeded to sentencing.

In advance of sentencing, the United States Probation Office prepared a Presentence Investigation Report. See Doc. 122 (Amended Final PSR). Probation calculated Mr. Seward's adjusted offense level as 34. Id. ¶ 34. Probation enhanced his offense level to 37, however, because it determined that he was a career offender under United States Sentencing Guideline § 4B1.1 Id. ¶ 43. Probation explained that Mr. Seward was a career offender because his offense of conviction was a "controlled substance offense" and he had at least two prior felony convictions for either a "crime of violence" or a "controlled substance offense" - specifically a Florida felony battery conviction and two Florida trafficking in amphetamine convictions. Id.

After applying the career offender enhancement and then accounting for acceptance of responsibility, Probation calculated Mr. Seward's total offense level as 34. With a criminal history category of VI, id. ¶ 61, Mr. Seward's guidelines range was 262

to 327 months. Id. ¶ 98. Without the career offender enhancement, Mr. Seward would have had a total offense level of 31, resulting in a guidelines range of 188 to 235 months. See id. at 26.

Mr. Seward objected to the career offender enhancement. Id. at 24-27. He explained that he lacked sufficient predicates to trigger the enhancement because his trafficking offenses were not "controlled substance offense[s]" under this Court's decision in United States v. Shannon, 631 F.3d 1187 (11th Cir. 2011). Id. at 24, 27. At sentencing, Mr. Seward renewed his objection. Doc. 140 (Sentencing Transcript) at 7.

The government opposed. It agreed that under Shannon, Mr. Seward's trafficking priors were not career offender predicates because trafficking could be committed by "purchase". Id. at 8. But it argued that Shannon had been abrogated by a later Florida Supreme Court decision, Conage v. United States, 346 So. 3d 594, 600 (Fla. 2022) ("Conage II"), which held that a conviction for Florida trafficking by "purchase" required, among other things, proof the defendant constructively possessed the drugs. See Doc. 140 at 8-9; see also Doc. 124 at 4-7.

The district court agreed with the government and overruled Mr. Seward's objection. Doc. 140 at 11. After hearing from both parties, the district court sentenced Mr. Seward to 300 months' imprisonment, followed by a five-year term of supervised release. Id. at 24. Mr. Seward appealed. Doc. 129. He is incarcerated, serving his sentence in this case.

II. Statement of the Facts

The relevant facts are in the Course of Proceedings.

III. Standard of Review

This Court reviews the interpretation of the Sentencing Guidelines, including whether a prior state conviction qualifies as a "controlled substance offense," de novo. United States v. Dubois, 94 F.4th 1284, 1291 (11th Cir. 2024).

REASONS FOR GRANTING THE PETITION

Under the United States Sentencing Guidelines, a defendant is classified as a career offender-and his offense level is accordingly enhanced-if his offense of conviction is a felony "controlled substance Offense" or "crime of violence" and he has two or more prior convictions for a felony "controlled substance offense" or "crime of violence". USSG § 4B1.1.

A Florida district court determined Mr. Seward was a career offender based on his prior convictions for Florida trafficking in amphetamines. Without one or more of the trafficking convictions, Mr. Seward lacked sufficient predicates to trigger the career offender enhancement. Doc. 122 at ¶ 43; USSG § 4B1.1. As explained below, that determination was erroneous because, under the United States Court of Appeals for the Eleventh Circuit's precedent and the plain language of the "controlled substance offense" definition in § 4B1.2(b)(1) of the Sentencing Guidelines, Florida drug trafficking convictions are not "controlled substance offense[s[". See Shannon, 631 F.3d 1189-90 (holding that Florida trafficking by purchase is not a "controlled substance offense"); Cintron, 882 F.3d 1385 (holding that alternative methods of committing trafficking under Florida law are means, not elements, so statute is indivisible). The United States Court of Appeals for the Eleventh Circuit should therefore have vacated Mr. Seward's sentence and remanded for resentencing without the career offender enhancement.

A. The United States Court of Appeals for the Eleventh Circuit's binding precedent holds that Florida drug trafficking is not a "controlled substance offense".

The Sentencing Guidelines define "controlled substance offense" as follows:

> The term "controlled substance offense" means an offense under ... 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 the possession of a controlled substance with the intent to manufacture, import, export, distribute, or dispense.

USSG § 4B1.2(b)(1).

"Significantly, this definition does not include the act of purchase." Shannon, 631 F.3d 1188. By Contrast, the drug trafficking statute under which Mr. Seward was convicted states: "Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine ..., commits a felony of the first degree ..." Fla. Stat § 893.135(1)(f)1. (2017) (emphasis added).

Shannon compared the "controlled substance offense" definition to Florida's drug trafficking statute and held that "the plain language of § 4B1.2(b) controls this case." 631 F.3d 1189. Shannon explained that to read the "controlled substance offense" definition to include the word "purchase" would violate the prohibition on rewriting [the guideline] by adding or subtracting words." Id. (citing Salinas v. United States, 547 U.S. 188 (2006), which held that a conviction for simple possession, which was not covered by § 4B1.2(b)'s plain language, was not a "controlled substance offense"). Thus, because the act of "purchase" is not included in § 4B1.2(b)(1), Shannon concluded that the Florida trafficking crime is not a "controlled substance offense." 631 F. 3d 1189. Shannon considered trafficking in cocaine under Fla. Stat. § 893.135(1)(b)1. But the relevant portions of the cocaine trafficking and amphetamine tracking subprovisions are identical. Both prohibit when one "knowingly sells, purchases, manufactures, delivers, or brings into the state, or who knowingly is in actual or constructive process" a threshold amount of a controlled substance. Compare Fla. Stat. § 893.135(1)(b)1., with id. § 893.135(1)(f)1.

And in Cintron, the United States Court of Appeals for the Eleventh Circuit examined Fla. Stat. § 893.135 and held that "the statutory language 'sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of,' listed ... alternative means of

committing a single crime." 882 F.3d 1385. Because the statutory language is indivisible, the United States Court of Appeals for the Eleventh Circuit must presume a trafficking conviction under § 893.135 is based on "purchase". See Descamps v. United States, 570 U.S. 254, 258 (2013) (holding that courts may not apply the modified categorical approach to an indivisible statute).

Binding precedent thus establishes that Mr. Seward's trafficking convictions are not "controlled substance offense[s]." Under the prior panel precedent rule, the United States Court of Appeals for the Eleventh Circuit is bound by Shannon and Cintron. See United States v. Hicks, 100 F.4th 1295, 1299-1300 (11th Cir. 2024) (explaining said Court's strong prior panel precedent rule).

B. **Shannon has not been overruled or undermined to the point of abrogation; to the contrary, its reasoning has been affirmed by the United States Court of Appeals for the Eleventh Circuit's later case law, including its en banc decision in Dupree.**

Although in Conage III the United States Court of Appeals for the Eleventh Circuit held that the inclusion of "purchase" does not render the Florida drug trafficking statute overbroad as compared to ACCA's "serious drug offense" definition, 50 F.4th 81-82, Conage III does not change the outcome here. That's because the ACCA's "serious drug offense" definition and the Sentencing Guideline's "controlled substance offense" definition are materially different.

The "serious drug offense" definition broadly encompasses state crimes that "involve"-i.e., "necessarily entail" or "require"-any of the enumerated conduct, including possession with intent to distribute. See Schular v. United States, 589 U.S. 154, 160, 162 (2020); United States v. Conage, 976 F.3d 1244, 1252 (11th Cir. 2020) ("Conage I"). By contrast, the "controlled substance offense" definition is narrower. The definition states that a "controlled substance offense" "means" a state crime that "prohibits" the listed conduct. USSG § 4B1.2(b)(1); see infra at 10-14. So it does not follow that every state crime that is a "serious drug offense" is also a "controlled substance offense."

The Conage panel expressly recognized those differences. Before holding that a Florida drug trafficking conviction can be a "serious drug offense," the Conage panel certified a question to the Florida Supreme Court about the meaning of "purchase" in the drug trafficking statute. See Conage I, 976 F.3d 1263. In doing so, the Conage panel distinguished Shannon and the "controlled substance offense" definition. Id. at 1254 n.10.

Conage I explained that the Sentencing Guidelines define a controlled substance offense as a felony offense that "prohibits" specific acts "and does not include 'purchase' as one of those prohibited acts." Id (emphasis added by Conage courts); see Shannon, 631 F.3d 1188-89. ACCA, by contrast, "does not require that the predicate drug conviction be based on a statute that expressly prohibits one of the specified acts set out in the ACCA." Conage I, 976 F.3d 1254 n.10. Instead, "ACCA's definition broadly includes any offense 'involving'" certain conduct. Id. (emphasis added by Conage court) (internal quotation marks ommitted).

"Thus," Conage I continued, "ACCA's definition of a serious drug offense is broader than the guidelines definition of a controlled substance offense." Id. In short, even if one panel could overrule another-which it cannot, see Hicks, 100 F.4th 1299-1300-the Conage panel did not overrule Shannon but expressly distinguished it. And The United States Court of Appeals for the Eleventh Circuit is further bound by Conage I's interpretation of Shannon. See id.

It is true that intervening on-point case law from the Florida Supreme Court can abrogate prior panel precedent. See United States v. Chubbock, 252 F.3d 1300, 1305 n.7 (11th Cir. 2001). But no such intervening precedent exists here. The Florida Supreme Court, in answering the Conage panel's certified question, stated that for a completed "purchase" under the state's drug trafficking statute, the defendant must (1) give considration for and (2) obtain control over a specified quantity of drugs. Conage v. United States, 346 So. 3d 594, 600 (Fla. 2022)

("Conage II"). The Florida Supreme Court also opined that the "control" required was synonymous with constructive possession under federal law. Id.

The Conage panel then relied on that answer-and its reasoning in Conage I-to conclude that "purchase" satisfies the "serious drug offense" definition because it "involves" constructive possession under federal law. Conage III, 50 F.4th 81-82. But the fact that "purchase" under the Florida drug trafficking statute "involves" constructive possession does not undermine to the point of abrogation Shannon.

As noted above, ACCA's "involving" language is broader than § 4B1.2(b)'s "prohibits" language. And as Conage I explained, Shannon's holding that trafficking by purchase is not a "controlled substance offense" was "control[led]" by "the plain language of § 4B1.2(b)." Conage I, 976 F.3d 1254 n.10 (quoting Shannon, 631 F.3d 1189) (internal quotation marks ommitted). Nothing the Florida Supreme Court said about the meaning of "purchase" changed that federal-law based holding.

Indeed, the United States Court of Appeals for the Eleventh Circuit's recent en banc decision in Dupree affirms Shannon's and Conage I's reasoning and supports that the plain language of § 4B1.2(b)(1) does not accommodate trafficking by "purchase"-regardless of whether "purchase" requires in part constructive possession. Dupree considered whether § 4B1.2(b)(1)'s definition included inchoate crimes like conspiracy offenses. As Dupree explained, § 4B1.2(b)(1) provides that "[t]he term controlled substance offense means an offense ... that prohibits" certain conduct. 57 F.4th 1277 (quoting USSG § 4B1.2(b)(1)).

"A 'definition which declares what a term 'means' excludes any meaning that is not stated.'" Id. (quoting Burgess v. United States, 553 U.S. 124, 130 (2008)). Thus, Dupree concluded, the exclusion of inchoate crimes from the definition was a "strong indicator that the term did not include those offenses." Id.

The same follows here. The exclusion of "purchase" from the guideline text indicates that the definition here does not include crimes that prohibit purchase. To hold otherwise would be to improperly add an offense not listed in the Guideline text. See id. That a completed purchase requires in part control akin to constructive possession does not negate the fact that "purchase" is specific conduct that has been excluded from the "controlled substance offense" definition. As noted supra at n.4, "purchase" is not synonymous with "possession." Purchase requires the distinct conduct of giving consideration for a threshold quantity of drugs, Conage II, 356 So. 3d 600-conduct that has been excluded from the "controlled substance offense" definition.

The word "prohibit" further narrows the "controlled substance offense" definition: the state offense must "forbid by law" the specified conduct. Dupree, 57 F. 4th 1279. Florida's drug trafficking statute, however, "forbid[s] by law" a different type of conduct not specified in the definition-purchase. And since the guideline's use of "means" requires the exclusion of anything outside the definition's listed conduct, see supra, it follows that Florida's drug trafficking statute is not a "controlled substance offense."

C. The Middle District Court of Florida, Tampa Division's court error resulted in a substantially increased guidelines range.

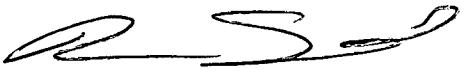
Without the two trafficking convictions, Mr. Seward lacks sufficient predicates for the career offender enhancement. See Doc. 122 at ¶ 43; USSG § 4B1.1. Accordingly, said district's court procedurally erred by calculating Mr. Seward's guidelines range as 262-327 months rather than the 188-235 months it would have been without the erroneous enhancement. See supra at 2. A miscalculated guidelines range constitutes "significant procedural error" and warrants correction. Gall v. United States, 552 U.S. 38, 51 (2007); see Rosales-Mireles v. United States, 585 U.S. 129,139 (2018) (explaining that an error resulting in a higher guidelines range generally establishes a reasonable probability that the

defendant's sentence is longer than "necessary" to fulfill the purposes of incarceration.

CONCLUSION

For all the reasons explained prior, this Court should consider granting the petition based on the United States Court of Appeals for the Eleventh Circuit's erroneous rejection of the case to consider vacating Mr. Seward's sentence and remanding for resentencing without the career offender enhancement.

Respectfully Submitted,



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