

No. 24-6898

IN THE SUPREME COURT OF THE UNITED STATES

AVERY JAMAL EDWARDS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

MATTHEW R. GALEOTTI
THOMAS E. BOOTH
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a) is available at 2024 WL 4779551.

JURISDICTION

The judgment of the court of appeals was entered on November 14, 2024. A petition for rehearing was denied on December 18, 2024 (Pet. App. 2a). The petition for a writ of certiorari was filed on March 18, 2025. 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 Western District of Arkansas, petitioner was convicted on one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(8). 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. 1a.

1. On January 21, 2023, police officers went to a Goodwill store to investigate a trespassing charge. Presentence Investigation Report (PSR) ¶ 11. The officers were informed that the men's bathroom smelled like marijuana, and that petitioner, a Goodwill employee, also smelled strongly of marijuana. PSR ¶ 12. The officers searched petitioner's locker and seized a brown bag containing a handgun, 2.6 grams of marijuana, a glass pipe, and a crystal-like substance later determined to be methamphetamine. PSR ¶¶ 12, 14.

Petitioner had previously been convicted of a felony. PSR ¶ 92. A grand jury in the Western District of Arkansas charged petitioner with possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(8). Indictment 1. Petitioner pleaded guilty to that offense. Pet. App. 1a.

2. Before sentencing, the Probation Office calculated a base offense level of 20 under the Sentencing Guidelines, based in part on a determination that petitioner committed the possession offense after a felony conviction for a "controlled substance offense." PSR ¶¶ 18, 23; see Sentencing Guidelines § 2K2.1(a)(4)(A) (2021). 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). The controlled substance offense identified by the Probation Office was a 2013 Arkansas conviction for delivery of methamphetamine. PSR ¶¶ 23, 92.

Petitioner objected to the Probation Office's classification of his prior methamphetamine offense as a controlled substance offense under the Guidelines. Addendum to PSR 1. He contended that the methamphetamine offense was categorically not a qualifying predicate, asserting that the Arkansas definition of methamphetamine is overbroad compared to the federal definition. Ibid. Specifically, petitioner argued that Arkansas prohibits certain isomers of methamphetamine whereas federal law does not.

Id. at 1-2. The Probation Office adhered to its recommendation.

Id. at 3.

At sentencing, petitioner renewed the objection that his prior methamphetamine-delivery offense did not qualify as a "controlled substance offense" under the Guidelines. Sent. Tr. 5-6. The district court overruled the objection, observing that circuit precedent foreclosed petitioner's reading of the Sentencing Guidelines. Id. at 6-7. The district court sentenced petitioner to 96 months of imprisonment. Id. at 20.

3. The court of appeals affirmed in an unpublished, per curiam opinion. Pet. App. 1a. The court relied on its previous decision in United States v. Henderson, 11 F.4th 713 (8th Cir. 2021), cert. denied, 142 S. Ct. 1696 (2022), which had recognized that the term "controlled substance offense" in the Guidelines refers to a drug regulated by state or federal law. Pet. App. 1a. The court accordingly explained that petitioner's prior conviction for methamphetamine delivery qualified as a "controlled substance offense" under Guidelines Section 4B1.2(b), "regardless of what the federal drug schedules say." Ibid.

ARGUMENT

Petitioner contends (Pet. 5-7) that his prior Arkansas conviction for methamphetamine delivery is not a "controlled substance offense" within the meaning of Sentencing Guidelines 4B1.2(b) (2021). He argues 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. 5-7. As explained in the government's brief in opposition to the petition for a writ of certiorari in Wiggins v. United States, No. 24-6410 (Dec. 23, 2024), the Guidelines definition includes substances that are controlled under relevant state law but not under the federal CSA, and petitioner's contrary contention does not warrant further review. See Br. in Opp. at 5-14, Wiggins, *supra*.¹ This Court has denied numerous petitions for writs of certiorari raising similar contentions, and should follow the same course here.²

1. This Court ordinarily does not review decisions interpreting the Sentencing Guidelines, because the Sentencing

¹ The government has served petitioner with a copy of its brief in Wiggins, which is also available on this Court's online docket.

² 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); Guerrant v. United States, 142 S. Ct. 640 (2022) (No. 21-5099); 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).

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); see also Br. in Opp. at 6-7, Wiggins, supra (No. 24-6410) (explaining further). Review by this Court of Guidelines decisions is particularly unwarranted in light of United States v. Booker, 543 U.S. 220, 245 (2005), which rendered the Guidelines advisory only.

No sound reason exists to depart from that practice here. As the government's brief in opposition in Wiggins explains, the Commission in recent years has devoted considerable attention to the question presented, and to proposals that would address it. See Br. in Opp. at 8-9, Wiggins, supra (No. 24-6410). 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) (statement of Sotomayor, J., respecting the denial of certiorari) (discussing another Guidelines dispute) (citing Braxton, 500 U.S. at 348); see Guerrant, 142 S. Ct. 640, 640-641 (2022) (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. Section 4B1.2(b) expressly defines a controlled substance offense as an offense "under federal or state law," ibid. (emphasis added), thereby specifically "refer[ring] [a court] to state law in defining the offense," United States v. Ward, 972 F.3d 364, 374 (4th Cir. 2020), cert. denied, 141 S. Ct. 2864 (2021). And as the government's brief in opposition in Wiggins explains, several other textual and contextual features reinforce that understanding of the Guidelines definition's plain text. See Br. in Opp. at 9-12, Wiggins, supra (No. 24-6410).

Petitioner advances (Pet. 5) the policy argument that referring to state law will undermine uniformity in sentencing by creating "inconsistencies based on state definitions of crimes." 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) (2021), 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 are in accord with published decisions from the Third, Fourth, Sixth, Seventh, 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). United States v. Ruth, 966 F.3d 642, 652 (7th Cir. 2020), cert. denied, 141 S. Ct. 1239 (2021); see Lewis, 58 F.4th at 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); United States v. Jones, 15 F.4th 1288, 1292-1296 (10th Cir. 2021), cert. denied, 143 S. Ct. 268 (2022).

As the government explained in its brief in opposition in Wiggins, two courts of appeals have concluded that the term "'controlled substance'" in Section 4B1.2(b) "refers exclusively to a substance controlled by the" federal Controlled Substances Act. United States v. Townsend, 897 F.3d 66, 72 (2d Cir. 2018); United States v. Bautista, 989 F.3d 698, 702 (9th Cir. 2021); see Br. in Opp. at 13-14, Wiggins, supra (No. 24-6410). Like the petitioner in Wiggins, petitioner here cites (Pet. 5) the First

Circuit's decision in United States v. Crocco, 15 F.4th 20 (2021), cert. denied, 142 S. Ct. 2877 (2022), and the Fifth Circuit's decision in United States v. Gomez-Alvarez, 781 F.3d 787 (2015). But for the reasons explained in the government's Wiggins opposition brief, those decisions are not on point. See Br. in Opp. at 13, Wiggins, supra (No. 24-6410).

Petitioner in this case cites (Pet. 5) two additional decisions, but neither implicates the question presented. The Fifth Circuit's decision in United States v. Minor, 121 F.4th 1085 (2024) involved federal marijuana offenses, and the issue before the court of appeals was whether the relevant drug definition was the one in effect at the time of sentencing. And in United States v. Leal-Vega, 680 F.3d 1160, 1164 (9th Cir. 2012), cert. denied, 568 U.S. 1145 (2013), the issue was whether a California drug offense constituted a "drug trafficking offense" under a former version of Sentencing Guidelines § 2L1.2 (1998), not whether that offense was a "controlled substance offense" under Sentencing Guidelines § 4B1.2(b). 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.

D. JOHN SAUER
Solicitor General

MATTHEW R. GALEOTTI
THOMAS E. BOOTH
Attorneys

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