

No. 17-7368

IN THE SUPREME COURT OF THE UNITED STATES

LENNY CURTIS ANDERS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

JOHN P. CRONAN
Acting Assistant Attorney General

MICHAEL A. ROTKER
Attorney

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

QUESTION PRESENTED

Whether the court of appeals correctly determined that petitioner's challenge to the constitutionality of the statute under which he was convicted, 18 U.S.C. 922(g)(1), did not implicate the district court's subject-matter jurisdiction.

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-7368

LENNY CURTIS ANDERS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the court of appeals (Pet. App. 1a-2a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 5, 2017. The petition for a writ of certiorari was filed on December 6, 2017. 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 North Carolina, petitioner was convicted of possession of a firearm by a convicted felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 120 months of imprisonment, to be followed by three years of supervised release. Id. at 2-3. The court of appeals dismissed petitioner's appeal. Pet. App. 1a-2a.

1. On May 18, 2016, Captain John Elkins of the Buncombe County Sheriff's Office was notified by a confidential informant that petitioner had left a handgun at 40 King Road in Weaverville, North Carolina. Presentence Investigation Report (PSR) ¶ 6. A review of petitioner's criminal history revealed that he had several prior felony convictions. PSR ¶ 7. On May 23, 2016, the informant notified Captain Elkins that petitioner would be retrieving the handgun from the King Road residence later that day. PSR ¶ 8. That evening, sheriff's deputies stopped a car driven by petitioner shortly after it left the residence. PSR ¶¶ 8-13. During a search of the vehicle, the officers discovered methamphetamine and drug paraphernalia. PSR ¶¶ 14-15. After obtaining a search warrant, officers continued searching the vehicle the following day and found a loaded revolver. PSR ¶ 16.

A federal grand jury in the Western District of North Carolina returned an indictment charging petitioner with possession of

methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1); and possession of a firearm by a convicted felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1. Petitioner entered into a written plea agreement in which he agreed to plead guilty to the felon-in-possession charge in exchange for dismissal of the drug-possession charge and an agreed-upon sentence of 120 months of imprisonment. Plea Agreement 1, 3-4.

2. A magistrate judge conducted the plea colloquy required by Federal Rule of Criminal Procedure 11. 8/12/16 Tr. 1-26. During the colloquy, petitioner affirmed that he understood the felon-in-possession charge, the elements of that offense, and the applicable penalties. Id. at 6-8. He affirmed that the factual basis on which his guilty plea was submitted was accurate and that he was in fact guilty of the offense. Id. at 12-16.

Petitioner further affirmed that he understood and accepted the limitations on his right to appeal imposed by the plea agreement. 8/12/16 Tr. 20-21. Specifically, the prosecutor explained that, as part of the plea agreement, petitioner was waiving "all of his rights to contest his conviction except for claims of ineffective assistance of counsel or prosecutorial misconduct," id. at 20, and petitioner confirmed, under oath, that he understood that meant he "may not appeal [his] conviction or sentence, or contest the same in a post-conviction proceeding, unless it is on the grounds of, one, prosecutorial misconduct or,

two, ineffective assistance of counsel,” id. at 21. He informed the court that he “knowingly and willfully accept[ed] these limitations on [his] right to appeal.” Ibid. Based on the plea colloquy, the magistrate judge found petitioner’s plea of guilty was “knowingly and voluntarily made.” Id. at 23.

At sentencing, the district court accepted petitioner’s plea and sentenced petitioner in accordance with the plea agreement. 3/21/17 Sent. Tr. 1-23. The court first addressed petitioner directly, and petitioner confirmed that his answers were “in fact true and correct when [he] answered the questions of the magistrate judge.” Id. at 4. Petitioner also confirmed that his “answers would be the same” if the court asked him the same questions from the plea colloquy again. Ibid. Based on these representations and the colloquy with the magistrate judge, the court determined that petitioner’s guilty plea was knowingly and voluntarily made. Id. at 6. The court then reviewed the plea agreement, heard from both parties, and accepted petitioner’s guilty plea, without objection. Id. at 7-17. Finally, the court imposed the 120-month sentence to which the parties agreed under Rule 11(c)(1)(C). Id. at 16-17.

3. Petitioner appealed, arguing, for the first time, that 18 U.S.C. 922(g)(1) was unconstitutional, on the theory that the Commerce Clause did not give Congress the authority to enact it and that the district court had therefore lacked jurisdiction to

enter his conviction. See Pet. C.A. Br. 3-9. The government moved to dismiss petitioner's appeal, arguing that petitioner "waived the only issue that he seeks to raise in this appeal * * * by pleading guilty," and that, contrary to petitioner's contention, his challenge to the constitutionality of Section 922(g)(1) did not implicate the subject-matter jurisdiction of the district court. See Gov't Mot. to Dismiss 1; see id. at 1-6.

The court of appeals dismissed the appeal. Pet. App. 1a-2a. The court reasoned that "[a]n unconditional guilty plea generally waives all antecedent, nonjurisdictional issues." Id. at 1a. And it observed that "[a]llthough [petitioner] purports to challenge federal subject matter jurisdiction, in essence his appeal challenges the validity of the statute under which he was convicted and therefore is waived by his guilty plea." Id. at 2a. The court explained that, to the extent petitioner attempted to frame his appeal as challenging the district court's jurisdiction, "his claim is patently frivolous." Ibid.

ARGUMENT

1. Petitioner renews his contention (Pet. 4-6) that his constitutional challenge to 18 U.S.C. 922(g)(1) is a non-waivable challenge to the district court's subject-matter jurisdiction. The court of appeals correctly rejected that contention, and that conclusion does not conflict with any decision of this Court or any other court of appeals. To the contrary, in United States v.

Williams, 341 U.S. 58 (1951), this Court explained that a claim that a federal criminal statute is unconstitutional is not a challenge to subject-matter jurisdiction and that such a claim does not affect the district court's power to adjudicate the case. See id. at 66 ("Even the unconstitutionality of the statute under which the proceeding is brought does not oust a court of jurisdiction."). Neither United States v. Johnson, 319 U.S. 302 (1943) (per curiam), nor Moore v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 47 (1971) (per curiam), concerning collusive suits or suits in which the parties agree on the correct result, is to the contrary. Cf. Pet. 5. Further review of the question presented is not warranted.

2. The court of appeals further determined that petitioner had, in fact, waived his constitutional challenge to 18 U.S.C. 922(g)(1) by entering an unconditional guilty plea. See Pet. App. 1a-2a. In Class v. United States, No. 16-424 (Feb. 21, 2018), decided after petitioner filed his petition, this Court held that an unconditional guilty plea, by itself, does not bar a defendant from claiming on direct appeal that the statute of conviction is unconstitutional. See slip op. 3. In so holding, Class abrogated the reasoning of the court of appeals in this case.

A remand for further consideration in light of Class is unnecessary, however, because the court of appeals' judgment is fully consistent with the Court's decision in Class. See Black v.

Cutter Laboratories, 351 U.S. 292, 297 (1956) ("This Court * * * reviews judgments, not statements in opinions."). In Class, this Court held only that a defendant's guilty plea "by itself" does not waive a claim that the statute of conviction is unconstitutional. Slip op. 3. In this case, petitioner independently and expressly waived his rights to "contest [his] conviction except for: (1) claims of ineffective assistance of counsel or (2) prosecutorial misconduct," in exchange for substantial concessions by the government, as part of a written plea agreement. Plea Agreement 5. The magistrate judge reviewed this aspect of the agreement with petitioner during his plea colloquy, and petitioner stated that he understood the effect of the waiver. See pp. 3-4, supra. On that basis, the magistrate judge found that petitioner "knowingly and willfully accept[ed] these limitations on [his] right to appeal." 8/12/16 Tr. 21.

Although the Court concluded in Class that the defendant's written plea agreement there did not extend to the defendant's constitutional challenge, petitioner's agreement here unambiguously covered his constitutional challenge to Section 922(g)(1). And nothing in this Court's decision in Class calls into question a defendant's ability to waive his right to appeal such a claim where the waiver is knowingly and voluntarily made. See United States v. Mezzanatto, 513 U.S. 196, 201 (1995) ("A

criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

JOHN P. CRONAN
Acting Assistant Attorney General

MICHAEL A. ROTKER
Attorney

APRIL 2018