

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TERRELL JONES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the “serious drug offense” definition in the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(A)(ii), incorporates the federal drug schedules in effect at the time of the federal firearm offense (as the Third, Fourth, Eighth, and Tenth Circuits have held), or the federal drug schedules in effect at the time of the prior state drug offense (as the Eleventh Circuit has held).¹

¹ This question is also presented in *Jackson v. United States*, Case No. 22-6640. Mr. Jones respectfully asks this Court to hold his petition pending its consideration of *Jackson* and then dispose of it as appropriate.

RELATED PROCEEDINGS

United States District Court (M.D. Fla.)

United States v. Jones, Case No. 3:18-cr-136-TJC-PDB-1.

United States Court of Appeals (11th Cir.)

United States v. Jones, No. 20-11841.

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PETITION FOR A WRIT OF CERTIORARI

Terrell Jones respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

ORDER AND OPINION BELOW

The Eleventh Circuit's unpublished opinion affirming Mr. Jones's sentence is provided in Appendix A. The Eleventh Circuit's order denying Mr. Jones's petition for rehearing en banc is provided in Appendix B.

JURISDICTION

The Eleventh Circuit denied Mr. Jones's petition for rehearing en banc on September 30, 2022. This Court later extended the time within which Mr. Jones may petition for a writ of certiorari until January 30, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

Under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(A)(ii), the term "serious drug offense" means, in relevant part: "[A]n offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled

substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law.”

STATEMENT OF THE CASE

1. In November 2018, Mr. Jones pled guilty to possessing a gun as a felon earlier that year. The district court sentenced Mr. Jones to 180 months’ imprisonment under the ACCA based on seven prior Florida cocaine convictions, all of which occurred before 2017.

2. In anticipation of sentencing, Probation prepared a presentence investigation report. Probation recommended that the district court sentence Mr. Jones under the ACCA based on these seven convictions:

- i. Sale, Manufacture, or Delivery of Cocaine within 1000 Feet of a Community Center, Nassau County Circuit Court, Case No. 12-CF-596, a serious drug offense, committed on February 12, 2012;
- ii. Sale or Delivery of Cocaine, Nassau County Circuit Court, Case No. 12-CF-597, a serious drug offense committed on February 24, 2012;
- iii. Sale or Delivery of Cocaine, Nassau County Circuit Court, Case No. 12-CF-622, a serious drug offense, committed on April 18, 2012;

- iv. Sale or Delivery of Cocaine, Nassau County Circuit Court, Case No. 12-CF-724, a serious drug offense, committed on December 28, 2011;
- v. Sale or Delivery of Cocaine, Nassau County Circuit Court, Case No. 12-CF-725, a serious drug offense, committed on December 14, 2011;
- vi. Sale or Delivery of Cocaine, Nassau County Circuit Court, Case No. 12-CF-726, a serious drug offense, committed on June 18, 2012;
- vii. Sale or Delivery of Cocaine, Nassau County Circuit Court, Case No. 12-CF-727, a serious drug offense, committed on May 2, 2012.

Because of the ACCA enhancement, Mr. Jones's Guidelines range and mandatory minimum penalty was 180 months' imprisonment.² Mr. Jones objected to the ACCA enhancement on several grounds, including that: (1) the ACCA's different-occasions clause was unconstitutionally vague; (2) the government could not prove he committed his offenses on different occasions by relying on non-elemental facts; and (3) a Florida drug conviction was not a "serious drug offense" under the ACCA.

² Without the ACCA enhancement, Mr. Jones's Guidelines range would have been, at most, 135-to-168 months.

At sentencing, the district court overruled Mr. Jones’s objections, adopted the PSR without change, and sentenced Mr. Jones to the mandatory minimum sentence of 180 months’ imprisonment.

3. On appeal, Mr. Jones raised three issues: (1) whether the ACCA’s different-occasions clause is unconstitutionally vague; (2) whether the district court erroneously relied on non-elemental facts when finding that Mr. Jones committed his prior drug offenses on different occasions under the ACCA; and (3) whether his cocaine convictions were “serious drug offense[s]” under the ACCA.

While Mr. Jones’s appeal was pending, the Eleventh Circuit heard oral argument in *United States v. Jackson*, Case No. 21-13963, on whether certain Florida cocaine convictions, like Mr. Jones’s, are “serious drug offense[s]” under the ACCA. Mr. Jones filed a motion for supplemental briefing to address *Jackson*, as well as other cases, including this Court’s then-recent decision in *Wooden v. United States*, 142 S. Ct. 1063 (2022). Mr. Jones attached a copy of his proposed brief to his amended motion on May 2, 2022.

On June 1, 2022, the Eleventh Circuit issued its opinion, affirming Mr. Jones’s ACCA sentence. *United States v. Jones*, No. 20-11841, 2022

WL 1763403 (11th Cir. June 1, 2022). First, the court rejected his vagueness argument. *Id.* at *2–3. Second, it held that under its precedent, the district court could make the different-occasions determination. *Id.* at *3–4. Third, it held that his cocaine convictions were “serious drug offenses.” *Id.* at *4. In a footnote at the end the opinion, the Court denied Mr. Jones’s motion to file a supplemental brief. The Court stated: “Because we’ve considered Jones’s Federal Rule of Appellate Procedure 28(j) supplemental authority letter [on *Wooden*], and the Supreme Court’s decision in *Wooden*, we deny his motion for leave to file a supplemental brief.” *Id.* at *4 n.2. The Court did not mention *Jackson*.

On June 10, 2022, the Eleventh Circuit decided *Jackson*, holding that (1) the ACCA’s “serious drug offense” definition incorporates the federal drug schedules in effect at the time the defendant commits the federal offense, and (2) applying that understanding, certain Florida cocaine convictions, like Mr. Jones’s, are not ACCA predicate offenses. *See United States v. Jackson*, 36 F.4th 1294, 1297 (11th Cir. 2022). Specifically, the Court held that for federal gun offenses committed after September 2015, pre-July 2017 Florida cocaine convictions are not

“serious drug offense[s].” *Id.* at 1299–1304.

In light of *Jackson*, Mr. Jones asked the Eleventh Circuit to reconsider allowing him to file his supplemental brief. The Court denied his motion.

4. Mr. Jones petitioned the Eleventh Circuit to rehear his case en banc, arguing that his cocaine convictions were not “serious drug offenses” in light of *Jackson*. On September 30, 2022, the Eleventh Circuit denied his petition.

5. On December 13, 2022, the Eleventh Circuit issued a revised opinion in *Jackson*, reversing itself and holding that the ACCA’s definition of a state “serious drug offense” incorporates the version of the federal controlled-substances schedules in effect when the defendant was convicted of the prior state drug offense. *United States v. Jackson*, 55 F.4th 846, 854–61 (11th Cir. 2022).

REASONS FOR GRANTING THE WRIT

The circuits are split on what version of the federal controlled-substances schedules are incorporated in the ACCA’s “serious drug offense” definition.

This Court’s review is warranted to resolve a circuit conflict over what version of the federal drug schedules are incorporated in the

ACCA’s “serious drug offense” definition. Consistent with Mr. Jones’s position, four circuits have held that the “serious drug offense” definition incorporates the schedules in effect at the time of the federal firearm offenses. *United States v. Williams*, 48 F.4th 1125 (10th Cir. 2022); *United States v. Perez*, 46 F.4th 691 (8th Cir. 2022); *United States v. Brown*, 47 F.4th 147 (3d Cir. 2022); *United States v. Hope*, 28 F.4th 487 (4th Cir. 2022).³ The Eleventh Circuit, however, has held that the “serious drug offense” definition incorporates the schedules in effect at the time of the defendant’s prior state drug offense. *United States v. Jackson*, 55 F.4th 846 (11th Cir. 2022).

As explained in the petition for a writ of certiorari in *Jackson*, No. 22-6640, this Court’s review is warranted on this important and recurring question that has divided the circuits. Indeed, if Mr. Jones

³ In *Hope*, the Fourth Circuit held the “serious drug offense” definition incorporates that federal drug schedules in effect at the time of the federal sentencing rather than the time the federal offense was committed. 28 F.4th at 504–05. In *Brown*, however, the Third Circuit held that the schedules in effect when the federal offense was committed govern, not the schedules in effect at the time of the federal sentencing. 47 F.4th at 148, 155. As a practical matter, this distinction will rarely make a difference. It made no difference in *Williams* or *Perez*, and it makes no difference here.

had been sentenced in the Third, Fourth, Eighth, or Tenth Circuit, rather than in the Eleventh Circuit, he would have faced a maximum term of ten years in prison rather than the ACCA's 15-year mandatory minimum.

CONCLUSION

For the above reasons, Mr. Jones respectfully requests that this Court hold his petition for a writ of certiorari pending its consideration of *Jackson*, No. 22-6640, and then dispose of it as appropriate. Alternatively, Mr. Jones respectfully requests that the Court grant his petition.

Respectfully submitted,

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