

IN THE SUPREME COURT OF THE UNITED STATES

JARON MCCREE, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals permissibly affirmed the application of a four-level enhancement to petitioner's Sentencing Guidelines range on a ground that it found to be supported by the law and the record in the district court.

PARTIES TO THE PROCEEDING

Petitioner (defendant-appellant below) is Jaron McCree.

Respondent (plaintiff-appellee below) is the United States of America.

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No. 25-7142

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-25a) is reported at 160 F.4th 641.

JURISDICTION

The judgment of the court of appeals was entered on December 1, 2025. A petition for rehearing was denied on December 30, 2025 (Pet. App. 26a-27a). The petition for a writ of certiorari was filed on March 30, 2026. 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 Eastern District of Louisiana, 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)(2). Judgment 1. He was sentenced to 70 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-10a.

1. Between 2014 and 2021, petitioner was convicted of several Louisiana state felonies: aggravated battery, two separate instances of aggravated flight from an officer, possession of a firearm following a felony conviction, attempted possession of a firearm following a felony conviction, and possession of heroin. Presentence Investigation Report (PSR) ¶¶ 23-25; see Pet. App. 2a. In February 2022, New Orleans Police Department detectives set out to arrest petitioner on an outstanding warrant for an aggravated assault stemming from an incident in which petitioner, while driving on an interstate, had pointed a semiautomatic firearm out of the window of his vehicle at another driver. Pet. App. 2a; C.A. ROA 72; PSR ¶¶ 6-7.

The arresting officers observed petitioner standing outside near a corner store. Pet. App. 2a. When petitioner saw them approaching, he fled and discarded a firearm into a bush as he ran. Ibid. Shortly thereafter, the officers apprehended petitioner and recovered a 9mm Glock handgun with an extended

magazine and 28 rounds of ammunition from a nearby bush. Ibid.; PSR ¶ 8. The officers searched petitioner incident to the arrest and found five rocks of crack cocaine and \$94 in his pocket. Pet. App. 2a; PSR ¶ 9.

2. Petitioner pleaded guilty to possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). Pet. App. 2a. The Probation Office calculated petitioner's total offense level to be 21, a calculation that included a four-level enhancement under Sentencing Guidelines § 2K2.1(b)(6)(B). PSR ¶¶ 15, 22.

At the time, Section 2K2.1(b)(6)(B) provided for a four-level enhancement if the defendant "used or possessed any firearm or ammunition in connection with another felony offense." Sentencing Guidelines § 2K2.1(b)(6)(B) (2021). The application notes specified that the enhancement applied "if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense." Id. § 2K2.1, comment. (n.14(A)). The application notes further specified that the enhancement automatically applied "in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs," explaining that in those circumstances the firearm necessarily has "the potential of facilitating another felony offense." Id. § 2K2.1, comment. (n.14(B)(ii)).

In petitioner's case, the Probation Office determined that he had possessed a firearm in connection with the possession of

cocaine. PSR ¶ 15. Petitioner objected to application of the enhancement, arguing that there was insufficient evidence that his firearm possession facilitated his cocaine possession. C.A. ROA 203-204. The Probation Office declined to change its determination, noting that the officers who arrested petitioner "believed, based on the defendant's possession of five crack cocaine pieces relatively equal in size without a crack pack, heating element, pipe-pushing tool, or any other items typically associated with the personal use of crack cocaine, that the defendant possessed the crack cocaine with the intent to distribute and that the firearm was to protect the narcotics and narcotic proceeds." Addendum to PSR 2; see Pet. App. 3a.

At the sentencing hearing, petitioner renewed his argument that the enhancement did not apply. Pet. App. 28a-33a. When the court addressed the government, it asked, "isn't the underlying basis for enhancement the belief that the possession of the gun was to facilitate possession of the drugs?" Id. at 36a. The government responded "Yes," and did not dispute that coincidentally or accidentally possessing a firearm and drugs at the same time would not support the enhancement. Id. at 37a. The court then asked, "[i]s there any reliance from the government that the police officer suspected drug activity by [petitioner]?" Ibid. Before the government responded, the court added, "[i]s there anything in the record to show why they had that suspicion?" Ibid. In response, the government stated, "[t]here wasn't anything

in the record. That was what law enforcement stated in the police report.” Ibid. The government then stated that the officers likely had that belief because petitioner was found with cash, no paraphernalia for using drugs, and more than a single-use quantity of crack cocaine. Ibid.

The district court overruled petitioner’s objection and sentenced him to 70 months of imprisonment to be followed by three years of supervised release. Pet. App. 53a; Judgment 2-3. The court found that petitioner’s possession of the gun was not “a mere accident” but “was all done to facilitate the possession of those five rocks of crack cocaine.” Pet. App. 53a.

3. The court of appeals affirmed. Pet. App. 1a-10a. The court noted the government’s argument that the district court had correctly found that the Section 2K2.1(b)(6)(B) enhancement applied because the gun “had at least the potential to embolden [petitioner’s] possession of drugs.” Id. at 9a. But the court affirmed on the alternative ground that, “irrespective of whether [petitioner’s] possession of a firearm facilitated his possession of the crack cocaine, the record renders amply plausible that [petitioner] possessed the firearm in connection with his trafficking of drugs.” Id. at 9a-10a. The court emphasized that petitioner had possessed a firearm with an extended magazine while also possessing five rocks of crack cocaine; that he was standing on a “street corner with no paraphernalia associated with the personal use of crack cocaine, such as a crack pack, heating

element, or pipe-pushing tool”; and that he “immediately fled” from police. Id. at 10a.

Judge Graves dissented in part. Pet. App. 11a-25a. In his view, the record did not support the conclusion that the firearm facilitated petitioner’s cocaine possession, or that petitioner possessed the gun in connection with drug trafficking. Id. at 17a-25a.

ARGUMENT

Petitioner contends (Pet. 14-23) that this Court should summarily reverse, or grant plenary review, on the theory that the court of appeals violated the party-presentation principle and engaged in improper fact-finding when it affirmed his sentence. Those contentions lack merit, and petitioner identifies no sound basis for this Court’s review in this fact-bound sentencing appeal. The petition for a writ of certiorari should be denied.

1. It is well-settled that appellate courts “have discretion to affirm on any ground supported by the law and the record that will not expand the relief granted below.” Upper Skagit Indian Tribe v. Lundgren, 584 U.S. 554, 560 (2018). “The reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate.” SEC v. Chenery Corp., 318 U.S. 80, 88 (1943); see Richison v. Ernest Grp., 634 F.3d 1123, 1130 (10th

Cir. 2011) ("This reluctance to command do-overs in the district court is * * * why we treat arguments for affirming the district court differently than arguments for reversing it. We have long said that we may affirm on any basis supported by the record, even if it requires ruling on arguments not reached by the district court or even presented to us on appeal."). And that is the practice on which the court of appeals relied here. It affirmed the district court's judgment because, even if there was insufficient evidence that petitioner's firearm possession facilitated his drug possession, there was ample evidence that petitioner possessed a firearm while engaged in drug trafficking such that "the district court did not commit clear error by applying the enhancement under § 2K2.1(b)(6)(B)." Pet. App. 2a; see id. at 8a-10a.

Petitioner's authorities (Pet. 14-17) do not displace the settled rule that a court of appeals may affirm on any ground supported by the record. Instead, in each of the cited cases, this Court found that a court of appeals had improperly reversed or vacated on a newly injected ground. In Greenlaw v. United States, 554 U.S. 237 (2008), the court of appeals, "acting on its own initiative, order[ed] an increase in a defendant's sentence," which violated the rule that "an appellate court may not alter a judgment to benefit a nonappealing party." Id. at 240, 244. In United States v. Sineneng-Smith, 590 U.S. 371 (2020), the court of appeals "radical[ly] transform[ed]" the case by appointing three

amici, relegating the parties to a “secondary role,” and reversing a conviction by invalidating a federal statute on a constitutional ground that the defendant had not raised. Id. at 375, 380; see id. at 378-380. And in Clark v. Sweeney, 607 U.S. 7 (2025) (per curiam), the court of appeals “departed so drastically from the principle of party presentation as to constitute an abuse of discretion” by reversing the district court and granting relief on an ineffective-assistance-of-counsel claim that a state habeas applicant did not raise. Id. at 10 (citation omitted); see also Margolin v. National Ass’n of Immigration Judges, 146 S. Ct. 1285, 1286-1287 (2026) (per curiam) (summarily reversing a court of appeals decision that granted relief to an appellant on a ground that the appellant had not raised).

Petitioner ultimately recognizes (Pet. 19) that an appellate court may affirm on a ground not raised below. But he contends (Pet. 18-19, 21) that a different rule should apply to arguments that an appellee knowingly waived (rather than forfeited). That issue is not presented here, however, because the government did not waive the ground on which the court of appeals relied -- namely, that petitioner is subject to a sentencing enhancement under Section 2K2.1(b)(6)(B) because he possessed a firearm while engaged in drug trafficking.

In asserting otherwise (Pet. 21), petitioner overreads the colloquy between the district court and the government. The court asked whether the government was relying on the fact that the

police "suspected drug activity" by petitioner. Pet. App. 37a. But before the government responded, the court asked whether there was "anything in the record to show why they had that suspicion." Ibid. The government then stated: "There wasn't anything in the record. That was what law enforcement stated in the police report." Ibid. In context, the government was responding to the court's second question; it did not specifically address the first question as to whether it was relying on the drug trafficking.

Because the police report was not in the record, government counsel explained that there was nothing in the record itself documenting why the officers suspected drug trafficking, as recounted by the Probation Office in the presentence report. Pet. App. 37a. But counsel went on to summarize the record evidence that would have supported such a suspicion: namely, that petitioner was not in possession of drug paraphernalia to use crack cocaine himself, was carrying \$94 in cash, fled from police, and had five crack rocks, which was "more than a single use of that substance." Ibid. If anything, that summary of the evidence would appear to endorse -- not waive -- the argument that petitioner's apparent drug trafficking supported the enhancement. Petitioner errs in asserting otherwise. And even if that fact-bound record-interpretation issue were contestable, it would not warrant this Court's review.

Petitioner also contends (Pet. 20-23), that a court of appeals may not affirm on an alternative ground when doing so would require it to make new factual findings. But the court did not make new factual findings; it simply determined that the application of the enhancement was supported by undisputed facts. Pet. App. 10a. Specifically, the court relied on the facts that petitioner possessed a firearm with an extended magazine while also possessing five rocks of crack cocaine; that petitioner was standing on a street corner with no paraphernalia associated with the personal use of crack cocaine; and that he immediately fled when he saw an officer approach him. Ibid. Based on those undisputed facts, the court observed that "the record contains evidence rendering plausible the application of the sentencing enhancement." Id. at 10a n.2. That ordinary application of clear-error review did not "usurp[] the district court's proper role as factfinder." Contra Pet. 23.

2. Petitioner identifies no sound basis for this Court's review. For the reasons above, he errs in asserting that the court of appeals departed so sharply from the principle of party presentation as to warrant summary reversal. And he fails to explain why this fact-bound sentencing appeal would warrant plenary review. See United States v. Johnston, 268 U.S. 220, 227 (1925) (explaining that this Court "do[es] not grant * * * certiorari to review evidence and discuss specific facts.").

Petitioner does not identify any circuit whose precedent would have precluded it from following the same course as the court of appeals here. The geographic circuits are in accord that a court of appeals may affirm a sentencing enhancement on any ground supported by the record. See, e.g., United States v. Nieves-Díaz, 99 F.4th 1, 9 (1st Cir.), cert. denied, 145 S. Ct. 307 (2024); United States v. Defelice, 576 Fed. Appx. 56, 58 (2d Cir. 2014); United States v. Stanford, 75 F.4th 309, 316 (3d Cir. 2023); United States v. Dennings, 922 F.3d 232, 237 n.3 (4th Cir. 2019); United States v. Brown, 86 F.4th 1164, 1166 (6th Cir. 2023); United States v. Melega, 173 F.4th 907, 911 (7th Cir. 2026); United States v. Henry, 132 F.4th 1063, 1065 (8th Cir. 2025); United States v. Munoz, 57 F.4th 683, 686 (9th Cir. 2023); United States v. McKinley, 732 F.3d 1291, 1298 n.3 (11th Cir. 2013) (per curiam); United States v. Miller, 890 F.3d 317, 328 (D.C. Cir. 2018); see also United States v. Gallegos, No. 22-2107, 2023 WL 8802687, at *4 n.6 (10th Cir. 2023).

Moreover, the question presented would have no practical effect on petitioner's sentence because the application of Section 2K2.1(b)(6)(B)'s sentencing enhancement was correct on both the ground identified by the district court (that petitioner's firearm possession facilitated his cocaine possession), as well as the ground identified by the court of appeals (that the firearm possession was in connection with drug trafficking). See Pet. App. 9a-10a (not resolving whether possession, as well as

trafficking, was facilitated). The undisputed facts show that the firearm both facilitated his possession of the cocaine and the attempted sale of it. Petitioner possessed a loaded semiautomatic Glock with an extended magazine and 28 rounds of ammunition; he possessed the firearm and crack cocaine on his person; he was out in public, standing on a street corner in front of a corner store; the crack cocaine consisted of five rocks that were the same size; he had cash in his pocket; and he had no drug-use paraphernalia. PSR ¶¶ 8-9; Addendum to PSR 2.

Petitioner is incorrect (Pet. 13, 16-17, 22) that the district court and court of appeals each rejected the other's theory. The district court said nothing about drug trafficking, choosing to rely on the argument that petitioner's firearm possession facilitated his cocaine possession. Pet. App. 52a-53a. And while the court of appeals noted a factual "resemblance" between this case and others in which it had found insufficient evidence of facilitating drug possession, id. at 9a, petitioner errs in asserting (Pet. 16-17) that the court of appeals found that "the district court's ruling on that issue was clearly erroneous under well-established circuit precedent." The court simply chose to rely on an alternative ground supported by the record. The fact that two lower courts saw different paths to the same fact-bound result is not a basis for this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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