SUPREME COURT OF THE UNITED STATES

No. 91–8199

THOMAS LEE DEAL, PETITIONER *v.*
UNITED STATES

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

[May 17, 1993]

JUSTICE SCALIA delivered the opinion of the Court.

Between January and April 1990, petitioner committed six bank robberies on six different dates in the Houston, Texas area. In each robbery, he used a gun. Petitioner was convicted of six counts of bank robbery, 18 U. S. C. §§2113(a) and (d), six counts of carrying and using a firearm during and in relation to a crime of violence, 18 U. S. C. §924(c), and one count of being a felon in possession of firearms, 18 U. S. C. §922(g). Title 18 U. S. C. §924(c)(1) provides:

> "Whoever, during and in relation to any crime of violence . . . uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence . . . , be sentenced to imprisonment for five years . . . . In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years . . . ."

The United States District Court for the Southern District of Texas sentenced petitioner to 5 years imprisonment on the first §924(c)(1) count and to 20 years on each of the other five §924(c)(1) counts, the terms to run consecutively. The United States Court of Appeals for the Fifth Circuit affirmed the convictions and sentence. 954 F. 2d 262 (1992). We granted certiorari on the question whether petitioner's second through sixth convictions under §924(c)(1) in this single proceeding arose "[i]n the

case of his second or subsequent conviction" within the meaning of §924(c)(1). 506 U. S. ___ (1992).

Petitioner contends that the language of §924(c)(1) is facially ambiguous, and should therefore be construed in his favor pursuant to the rule of lenity. His principal argument in this regard is that the word "conviction" can, according to the dictionary, have two meanings, "either the return of a jury verdict of guilt or the entry of a final judgment on that verdict," Brief for Petitioner 4; and that the phrase "second or subsequent conviction" could therefore "mean `an additional finding of guilt rendered at any time'" (which would include petitioner's convictions on the second through sixth counts in the single proceeding here) or "`a judgment of conviction entered at a later time,'" (which would not include those convictions, since the District Court entered only a single judgment on all of the counts), *id.*, at 7.

It is certainly correct that the word "conviction" can mean either the finding of guilt or the entry of a final judgment on that finding. The word has many other meanings as well, including "[a]ct of convincing of error, or of compelling the admission of a truth"; "[s]tate of being convinced; esp., state of being convicted of sin, or by one's conscience"; "[a] strong persuasion or belief; as, to live up to one's *convictions*; an intensity of thorough *conviction*." Webster's New International Dictionary 584 (2d ed. 1950). But of course susceptibility of all of these meanings does not render the word "conviction," whenever it is used, ambiguous; all but one of the meanings is ordinarily eliminated by context. There is not the slightest doubt, for example, that §924(c)(1), which deals with punishment in this world rather than the next, does not use "conviction" to mean the state of being convicted of sin. Petitioner's contention overlooks, we think, this fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used. See *King* v. *St. Vincent's*

Hosp., 502 U. S. ___, ___ (1991); *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989); *United States* v. *Morton*, 467 U. S. 822, 828 (1984).

In the context of §924(c)(1), we think it unambiguous that "conviction" refers to the finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment of conviction. A judgment of conviction includes both the adjudication of guilt and the sentence. See Fed. Rule Crim. Proc. 32(b)(1) ("A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication *and sentence*" (emphasis added)); see also Black's Law Dictionary 843 (6th ed. 1990) (quoting Rule 32(b)(1) in defining "judgment of conviction"). Thus, if "conviction" in §924(c)(1) meant "judgment of conviction," the provision would be incoherent, prescribing that a sentence which has already been imposed (the defendant's second or subsequent "conviction") shall be 5 or 20 years longer than it was.

Petitioner contends that this absurd result is avoided by the "[i]n the case of" language at the beginning of the provision. He maintains that a case is the "case of [a defendant's] second or subsequent" entry of judgment of conviction even before the court has entered that judgment of conviction and even before the court has imposed the sentence that is the prerequisite to the entry of judgment of conviction. We think not. If "conviction" meant "entry of judgment of conviction," a "case" would surely not be the "case of his second or subsequent conviction" *until* that judgment of conviction was entered, by which time a lower sentence than that which §924(c)(1) requires would already have been imposed. And more fundamentally still, petitioner's contention displays once again the regrettable penchant for construing words in isolation. The word "case" can assuredly refer to a legal proceeding, and if the phrase "in the case of" is followed by a name, such

as "*Marbury* v. *Madison*," that is the apparent meaning. When followed by an act or event, however, "in the case of" normally means "in the event of"—and we think that is its meaning here.

The sentence of §924(c)(1) that immediately follows the one at issue here confirms our reading of the term "conviction." That sentence provides: "Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection." That provision, like the one before us in this case, is obviously meant to control the terms of a sentence *yet to be imposed*. But if we give the term "convicted" a meaning similar to what petitioner contends is meant by "conviction"—as connoting, that is, the entry of judgment, which includes sentence—we once again confront a situation in which the prescription of the terms of a sentence cannot be effective until it is too late, *i.e.*, until after the sentence has already been pronounced.[1]

We are also confirmed in our conclusion by the recognition that petitioner's reading would give a prosecutor unreviewable discretion either to impose or to waive the enhanced sentencing provisions of §924(c)(1) by opting to charge and try the defendant either in separate prosecutions or under a multicount indictment. Although the present prosecution would not have permitted enhanced sentencing, if the same

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[1]Petitioner also argues that the terms "second" and "subsequent" admit of at least two meanings—next in time and next in order or succession. That ambiguity is worth pursuing if "conviction" means "judgment," since a judgment entered once-in-time can (as here) include multiple counts. The point becomes irrelevant, however, when "conviction" means (as we hold) a finding of guilt. Unlike a judgment on several counts, findings of guilt on several counts are necessarily arrived at successively in time.

charges had been divided into six separate prosecutions for the six separate bank robberies, enhanced sentencing would clearly have been required. We are not disposed to give the statute a meaning that produces such strange consequences.[2]

The dissent contends that §924(c)(1) must be read to impose the enhanced sentence only for an offense committed after a previous sentence has become final. Though this interpretation was not mentioned in petitioner's briefs, and was put forward only as a fall-back position in petitioner's oral argument, see Tr. of Oral Arg. 4, the dissent thinks it so "obvious," *post*, at 6, that our rejection of it constitutes a triumph of "textualism" over "common sense," *post*, at 10, and the result of "an elaborate exercise in sentence-parsing," *post*, at 10. We note, to begin with, that most of the textual distinctions made in this opinion—*all* of them up to this point—respond to the elaborate principal argument of petitioner that "conviction" means "entry of judgment." It takes not much "sentence-parsing" to reject the quite different argument of the dissent that the terms "subsequent offense" and "second or subsequent conviction" mean exactly the same thing, so that "second conviction" means "first offense after an earlier conviction."

No one can disagree with the dissent's assertion

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[2]The dissent contends that even under our reading of the statute, "prosecutors will continue to enjoy considerable discretion in deciding how many §924(c) offenses to charge in relation to a criminal transaction or series of transactions." *Post*, at 9. That discretion, however, pertains to the prosecutor's universally available and unvoidable power *to charge or not to charge* an offense. Petitioner's reading would confer the extraordinary new power *to determine the punishment for a charged offense* by simply modifying the manner of charging.

that "Congress sometimes uses slightly different language to convey the same message," *post*, at 1—but when it does so it uses "slightly different language" *that means the same thing*. "Member of the House" instead of "Representative," for example. Or "criminal offense" instead of "crime." But to say that "subsequent offense" means the same thing as "second or subsequent conviction" requires a degree of verbal know-nothingism that would render government by legislation quite impossible. Under the terminology "second or subsequent conviction," in the context at issue here, it is entirely clear (without any "sentence-parsing") that a defendant convicted of a crime committed in 1992, who has previously been convicted of a crime committed in 1993, would receive the enhanced sentence.

The dissent quotes extensively from *Gonzalez* v. *United States*, 224 F. 2d 431 (CA1 1955). See *post*, at 2–3. But far from supporting the "text-insensitive" approach favored by the dissent, that case acknowledges that "[i]n construing subsequent offender statutes . . . the decisions of the courts have varied depending upon the particular statute involved." 224 F. 2d, at 434. It says, as the dissent points out, that federal courts have "uniformly" held it to be the rule that a second offense can occur only after conviction for the first. *Ibid*. But those holdings were not arrived at in disregard of the statutory text. To the contrary, as *Gonzalez* goes on to explain:

> "`It cannot legally be known that an offense has been committed until there has been a conviction. A second offense, as used in the the criminal statutes, is one that has been committed after conviction for a first offense.'" *Ibid.* (quoting *Holst* v. *Owens*, 24 F. 2d 100, 101 (CA5 1928)).

The present statute, however, does not use the term "offense," so it cannot possibly be said that it requires a criminal act after the first conviction. What it requires is a *conviction* after the first conviction.

There is utterly no ambiguity in that, and hence no occasion to invoke the rule of lenity. (The erroneous lower-court decisions cited by the dissent, see *post*, at 6–8, do not alter this assessment; judges cannot cause a clear text to become ambiguous by ignoring it.)

In the end, nothing but personal intuition supports the dissent's contention that the statute is directed at those who "`failed to learn their lessons from the initial punishment,'" *post*, at 10 (quoting *United States* v. *Neal*, 976 F. 2d 601, 603 (CA9 1992) (Fletcher, J., dissenting)). Like most intuitions, it finds Congress to have intended what the intuitor thinks Congress *ought* to intend.[3] And like most intuitions, it is not very precise. "[F]ailed to learn their lessons from the initial punishment" would seem to suggest that the *serving* of the punishment, rather than the mere pronouncement of it, is necessary before the repeat criminal will be deemed an inadequate student—a position that certainly appeals to "common sense," if not to text. Elsewhere, however, the dissent says that the lesson is taught once "an earlier conviction has become final," *post*, at 6—so that the felon who escapes during a trial that results in a conviction becomes eligible for enhanced punishment for his later crimes, though he has seemingly been taught no lesson except that the law is easy to beat. But no matter. Once text is abandoned, one intuition will serve as well as the other. We choose to follow the language of the statute, which gives no indication that punishment of

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[3]The dissent quotes approvingly the ungarnished policy view that "`punishing first offenders [*i.e.*, repeat offenders who have not yet been convicted of an earlier offense] with twenty-five-year sentences does not deter crime as much as it ruins lives.'" *Post*, at 10, n. 10 (quoting *United States* v. *Jones*, 965 F. 2d 1507, 1521 (CA8 1992)).

those who fail to learn the "lesson" of prior conviction or of prior punishment is the sole purpose of §924(c)(1), to the exclusion of other penal goals such as taking repeat offenders off the streets for especially long periods, or simply visiting society's retribution upon repeat offenders more severely. We do not agree with the dissent's suggestion that these goals defy "common sense." It seems to us eminently sensible to punish the second murder, for example, with life in prison rather than a term of years—whether or not conviction of the first murder (or completion of the sentence for the first murder) has yet occurred.

Finally, we need not tarry over petitioner's contention that the rule of lenity is called for because his 105–year sentence "is so glaringly unjust that the Court cannot but question whether Congress intended such an application of the phrase, `in the case of his second or subsequent conviction.'" Brief for Petitioner 24. Even under the dissent's reading of §924(c)(1), some criminals whose only offenses consist of six armed bank robberies would receive a total sentence of 105 years in prison. We see no reason why it is "glaringly unjust" that petitioner be treated similarly here, simply because he managed to evade detection, prosecution, and conviction for the first five offenses and was ultimately tried for all six in a single proceeding.

The judgment of the Court of Appeals is affirmed.

It is so ordered.