

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

STINSON v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

No. 91-8685. Argued March 24, 1993—Decided May 3, 1993

After petitioner Stinson pleaded guilty to a five-count indictment resulting from his robbery of a bank, the District Court sentenced him as a career offender under United States Sentencing Commission, Guidelines Manual §4B1.1, which requires, *inter alia*, that "the instant offense of conviction [be] a crime of violence." The court found that Stinson's offense of possession of a firearm by a convicted felon, 18 U. S. C. §922(g), was a "crime of violence" as that term was then defined in USSG §4B1.2(1). While the case was on appeal, however, the Sentencing Commission promulgated Amendment 433, which added a sentence to the §4B1.2 commentary that expressly excluded the felon-in-possession offense from the "crime of violence" definition. The Court of Appeals nevertheless affirmed Stinson's sentence, adhering to its earlier interpretation that the crime in question was categorically a crime of violence and holding that the commentary to the Guidelines is not binding on the federal courts.

Held: The Guidelines Manual's commentary which interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline. Pp. 4-11.

(a) The Court of Appeals erred in concluding that the commentary added by Amendment 433 is not binding on the federal courts. Commentary which functions to "interpret [a] guideline or explain how it is to be applied," §1B1.7, controls, and if failure to follow, or a misreading of, such commentary results in a sentence "select[ed] . . . from the wrong guideline range," *Williams v. United States*, 503 U. S. ___, ___, that sentence would constitute "an incorrect application of the . . . guidelines" that should be set aside under 18 U. S. C. §3742(f) (1) unless the error was harmless, see *Williams, supra*, at ___.

Guideline §1B1.7 makes this proposition clear, and this Court's holding in *Williams*, 503 U. S., at ___, that the Sentencing Commission's policy statements bind federal courts applies with equal force to the commentary at issue. However, it does not follow that commentary is binding in all instances. The standard that governs whether particular interpretive or explanatory commentary is binding is the one that applies to an agency's interpretation of its own legislative rule: Provided it does not violate the Constitution or a federal statute, such an interpretation must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation it interprets. See, e.g., *Bowles v. Seminole Rock & Sand Co.*, 325 U. S. 410, 414. Amended commentary is binding on the courts even though it is not reviewed by Congress, and prior judicial constructions of a particular guideline cannot prevent the Sentencing Commission from adopting a conflicting interpretation that satisfies the standard adopted herein. Pp. 4-10.

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(b) Application of the foregoing principles leads to the conclusion that federal courts may not use the felon-in-possession offense as the predicate crime of violence for purposes of imposing §4B1.1's career offender provision as to those defendants to whom Amendment 433 applies. Although the guideline text may not compel the Amendment's exclusion of the offense in question from the "crime of violence" definition, the commentary is a binding interpretation of the quoted phrase because it does not run afoul of the Constitution or a federal statute, and it is not plainly erroneous or inconsistent with §4B1.2. Pp. 10-11.

(c) The Court declines to address the Government's argument that Stinson's sentence conformed with the Guidelines Manual in effect when he was sentenced, and that the sentence may not be reversed on appeal based upon a postsentence amendment to the Manual's provisions. The Court of Appeals did not consider this theory, and it is not fairly included in the question this Court formulated in its grant of certiorari. It is left to be addressed on remand. P. 11.
943 F. 2d 1268, vacated and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.