# SUPREME COURT OF THE UNITED STATES

No. 93–5209

DARREN J. CUSTIS, PETITIONER *v.*
UNITED STATES

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

[May 23, 1994]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The Armed Career Criminal Act, 18 U. S. C. §924(e) (ACCA), raises the penalty for possession of a firearm by a felon from a maximum of 10 years in prison to a mandatory minimum sentence of 15 years and a maximum of life in prison without parole if the defendant "has three previous convictions . . . for a violent felony or a serious drug offense." We granted certiorari to determine whether a defendant in a federal sentencing proceeding may collaterally attack the validity of previous state convictions that are used to enhance his sentence under the ACCA. We hold that a defendant has no such right (with the sole exception of convictions obtained in violation of the right to counsel) to collaterally attack prior convictions.

Baltimore City Police arrested petitioner Daniel J. Custis on July 1, 1991. A federal grand jury indicted him on three counts: (1) possession of cocaine with intent to distribute in violation of 21 U. S. C. §841(a)(1); (2) use of a firearm in connection with a drug trafficking offense in violation of 18 U. S. C. §924(c); and (3) possession of a firearm by a convicted felon in violation of 18 U. S. C. §922(g)(1). Before trial in the United

States District Court for the District of Maryland, the Government notified Custis that it would seek an enhanced penalty for the §922(g)(1) offense under §924(e)(1). The notice charged that he had three prior felony convictions: (1) a 1985 Pennsylvania state court conviction for robbery; (2) a 1985 Maryland state court conviction for burglary; and (3) a 1989 Maryland state court conviction for attempted burglary.

The jury found Custis not guilty of possession with intent to distribute and not guilty of use of a firearm during a drug offense, but convicted him of possession of a firearm and simple cocaine possession, a lesser included offense in the charge of possession with intent to distribute cocaine. At the sentencing hearing, the Government moved to have Custis' sentence enhanced under §924(e)(1), based on the prior convictions included in the notice of sentence enhancement.

Custis challenged the use of the two Maryland convictions for sentence enhancement. He argued that his lawyer for his 1985 burglary conviction rendered unconstitutionally ineffective assistance and that his guilty plea was not knowing and intelligent as required by *Boykin* v. *Alabama*, 395 U. S. 238 (1969). He claimed that his attorney had failed to advise him of the defense of voluntary intoxication, and that he would have gone to trial, rather than pleaded guilty, had he been aware of that defense. He challenged his 1989 conviction on the ground that it had been based upon a "stipulated facts" trial. He claimed that such a "stipulated facts" trial was tantamount to a guilty plea and that his conviction was fundamentally unfair because he had not been adequately advised of his rights. Custis further asserts that he had been denied effective assistance of counsel in that case because the stipulated facts established only attempted breaking and entering rather than attempted burglary under state law.

The District Court initially rejected Custis' collateral attacks on his two Maryland state court convictions. The District Court's letter ruling determined that the performance of Custis' attorney in the 1985 case did not fall below the standard of professional competence required under *Strickland* v. *Washington*, 466 U. S. 668 (1984). Order in No. S 91–0334 (D. Md., Feb. 27, 1992), p. 1. It found that counsel's recommendation of a guilty plea was not unreasonable under the circumstances. *Id.*, at 2. The District Court also rejected Custis' claim that the 1989 "stipulated facts" trial was the functional equivalent of a guilty plea. *Id.*, at 2–3.

The District Court later reversed field and determined that it could not entertain Custis' challenges to his prior convictions at all. It noted that "[u]nlike the statutory scheme for enhancement of sentences in drug cases, [§924(e)(1)] provides no statutory right to challenge prior convictions relied upon by the Government for enhancement." 786 F. Supp. 533, 535–536 (Md. 1992). The District Court went on to state that the Constitution bars the use of a prior conviction for sentence enhancement only when there was a complete denial of counsel in the prior proceeding. *Id.*, at 536, citing *Gideon* v. *Wainwright*, 372 U. S. 335 (1963); *United States* v. *Tucker*, 404 U. S. 443 (1972); and *Burgett* v. *Texas*, 389 U. S. 109 (1967). Based on Custis' offense level of 33 and his criminal history category of VI, the District Court imposed a sentence of 235 months in prison.

The Court of Appeals affirmed. 988 F. 2d 1355 (CA4 1993). It recognized the right of a defendant who had been completely deprived of counsel to assert a collateral attack on his prior convictions since such a defendant "has lost his ability to assert all his other constitutional rights." *Id.*, at 1360, citing *Johnson* v. *Zerbst*, 304 U. S. 458, 465 (1938). Citing the "substantial burden" on prosecutors and the district courts, the Court of Appeals dismissed all of Custis'

challenges to his prior convictions as the "fact-intensive" type that pose a risk of unduly delaying and protracting the entire sentencing process. 988 F. 2d, at 1361. The prospect of such fact-intensive inquiries led it to express great reluctance at forcing district courts to overcome the "`inadequacy or unavailability of state court records and witnesses'" in trying to determine the validity of prior sentences. *Id.*, at 1361, quoting *United States* v. *Jones*, 977 F. 2d 105, 109 (CA4 1992). In addition to the practical hurdles, the Court of Appeals specified concerns over comity and federalism as other factors weighing against permitting collateral attacks. "`Federal courts are not forums in which to relitigate state trials.'" 988 F. 2d, at 1361, quoting *Barefoot* v. *Estelle*, 463 U. S. 880, 887 (1983). We granted certiorari, 510 U. S. ___ (1993), because the Court of Appeals' decision conflicted with recent decisions from other Courts of Appeals that permitted defendants to challenge prior convictions that are used in sentencing under §924(e)(1).[1]

Custis argues that the ACCA should be read to permit defendants to challenge the constitutionality of convictions used for sentencing purposes. Looking to the language of the statute, we do not believe §924(e) authorizes such collateral attacks. The ACCA provides an enhanced sentence for any person who unlawfully possesses a firearm in violation of 18

---

[1]See, *e.g.*, *United States* v. *Paleo*, 967 F. 2d 7, 11 (CA1 1992); *United States* v. *Merritt*, 882 F. 2d 916, 918 (CA5 1989); *United States* v. *McGlocklin*, 8 F. 3d 1037 (CA6 1993) (en banc); *United States* v. *Gallman*, 907 F. 2d 639, 642–465 (CA7 1990); *United States* v. *Day*, 949 F. 2d 973, 981–983 (CA8 1991); *United States* v. *Clawson*, 831 F. 2d 909, 914–915 (CA9 1987); and *United States* v. *Franklin*, 972 F. 2d 1253, 1257–1258 (CA11 1992).

U. S. C. §922(g)[2] and "has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense . . . ." Section 924(e) applies whenever a defendant is found to have suffered "three previous convictions" of the type specified. The statute focuses on the *fact* of the conviction and nothing suggests that the prior final conviction may be subject to collateral attack for potential constitutional errors before it may be counted.

Absent specific statutory authorization, Custis contends that an implied right to challenge the constitutionality of prior convictions exists under §924(e). Again we disagree. The Gun Control Act of 1968, of which §924(e) is a part, strongly indicates that unchallenged prior convictions may be used for purposes of §924(e). At least for prior violent felonies, §921(a)(20) describes the circumstances in which a prior conviction may be counted for sentencing purposes under §924(e):

> "What constitutes a conviction of . . . a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not

---

[2]Title 18 U. S. C. §922 provides in pertinent part as follows:

"(g) It shall be unlawful for any person—

"(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

. . . . . .

"to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

> be considered a conviction for purposes of this chapter [18 U. S. C. §§921–930]."

The provision that a court may not count a conviction "which has been . . . set aside" creates a clear negative implication that courts *may* count a conviction that has *not* been set aside.

Congress' passage of other related statutes that expressly permit repeat offenders to challenge prior convictions that are used for enhancement purposes supports this negative implication. For example, 21 U. S. C. §851(c), which Congress enacted as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970, sets forth specific procedures allowing a defendant to challenge the validity of a prior conviction used to enhance the sentence for a federal drug offense. Section 851(c)(1) states that "[i]f the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information." Section 851(c)(2) goes on to provide:

> "A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge."

The language of §851(c) shows that when Congress intended to authorize collateral attacks on prior convictions at the time of sentencing, it knew how to do so. Congress' omission of similar language in §924(e) indicates that it did not intend to give

defendants the right to challenge the validity of prior convictions under this statute. Cf. *Gozlon-Peretz* v. *United States*, 498 U. S. 395, 404 (1991) ("`[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'"), quoting *Russello* v. *United States*, 464 U. S. 16, 23 (1983) (internal quotation marks omitted).

Our decision in *Lewis* v. *United States*, 445 U. S. 55 (1980), also supports the conclusion that prior convictions used for sentence enhancement purposes under §924(e) are not subject to collateral attack in the sentence proceeding. *Lewis* interpreted 18 U. S. C. App. §1202(a)(1) (1982 ed.), one of the predecessors to the current felon in possession of a firearm statute. Section 1202(a)(1) was aimed at any person who "has been convicted by a court of the United States or of a State . . . of a felony." We concluded that "`[n]othing on the face of the statute suggests a congressional intent to limit its coverage to persons [whose convictions are not subject to collateral attack].'" *Id.*, at 60, quoting *United States* v. *Culbert*, 435 U. S. 371, 373 (1978). This lack of such intent in §1202(a)(1) also contrasted with other federal statutes that explicitly permitted a defendant to challenge the validity or constitutionality of the predicate felony. See, *e.g.*, 18 U. S. C. §3575(e) (note following ch. 227) (dangerous special offender) and 21 U. S. C. §851(c)(2) (recidivism under the Comprehensive Drug Abuse Prevention and Control Act of 1970). The absence of expressed intent, and the contrast with other federal statutes, led us to determine that "the firearms prosecution [under §1202(a)(1)] does not open the predicate conviction to a new form of collateral attack." 445 U. S., at 67.

Similarly, §924(e) lacks any indication that Congress intended to permit collateral attacks on

prior convictions used for sentence enhancement purposes. The contrast between §924(e) and statutes that expressly provide avenues for collateral attacks, as well as our decision in *Lewis, supra*, point strongly to the conclusion that Congress did not intend to permit collateral attacks on prior convictions under §924(e).

Custis argues that regardless of whether §924(e) permits collateral challenges to prior convictions, the Constitution requires that they be allowed. He relies upon our decisions in *Burgett* v. *Texas*, 389 U. S. 109 (1967), and *United States* v. *Tucker*, 404 U. S. 443 (1972), in support of this argument. Both of these decisions relied upon our earlier decision in *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), holding that the Sixth Amendment of the United States Constitution required that an indigent defendant in state court proceedings have counsel appointed for him. *Gideon*, in turn, overruled our earlier decision in *Betts* v. *Brady*, 316 U. S. 455 (1942), which had held that the Sixth Amendment right to counsel, long applied in federal court proceedings, was not itself made applicable to the States by the Due Process Clause. The Due Process Clause, *Betts* had held, required the appointment of counsel for an indigent defendant in state courts only upon a showing of special circumstances. *Id.*, at 473.

But even before *Betts* v. *Brady* was decided, this Court had held that the failure to appoint counsel for an indigent defendant in a federal proceeding not only violated the Sixth Amendment, but was subject to collateral attack in federal habeas corpus. *Johnson* v. *Zerbst*, 304 U. S. 458 (1938). At a time when the underlying habeas statute was construed to allow collateral attacks on final judgments of conviction only where the rendering court lacked "jurisdiction"—albeit a somewhat expansive notion of "jurisdiction," see *Moore* v. *Dempsey*, 261 U. S. 86 (1923)—this Court attributed a jurisdictional significance to the

failure to appoint counsel. The Court said:

> "If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty . . . The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by *habeas corpus.*" 304 U. S., at 468.

When the Court later expanded the availability of federal habeas to other constitutional violations, it did so by frankly stating that the federal habeas statute made such relief available for them, without claiming that the denial of these constitutional rights by the trial court would have denied it jurisdiction. See, *e.g., Waley* v. *Johnston*, 316 U. S. 101, 104–105 (1942) (coerced confession); *Brown* v. *Allen*, 344 U. S. 443 (1953). There is thus a historical basis in our jurisprudence of collateral attacks for treating the right to have counsel appointed as unique, perhaps because of our oft-stated view that "[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." *Powell* v. *Alabama*, 287 U. S. 45, 68–69 (1932).

Following our decision in *Gideon*, the Court decided *Burgett* v. *Texas*, *supra*. There the defendant was charged under a Texas recidivist statute with having been the subject of four previous felony convictions. 389 U. S., at 111. The prosecutor introduced certified records of one of the defendant's earlier convictions in Tennessee. *Id*., at 112. The defendant objected to the admission of this conviction on the ground that he had not been represented by counsel and had not waived his right to counsel, but his objection was overruled by the trial court. *Id*., at 113. This Court reversed, finding that the certified records of the Tennessee conviction on their face raised a "presumption that petitioner was denied his right to

counsel . . . , and therefore that his conviction was void." *Id.*, at 114. The Court held that the admission of a prior criminal conviction which is constitutionally infirm under the standards of *Gideon* is inherently prejudicial and to permit use of such a tainted prior conviction for sentence enhancement would undermine the principle of *Gideon*. *Id.*, at 115.

A similar situation arose in *Tucker, supra*. The defendant had been convicted of bank robbery in California in 1953. At sentencing, the district court conducted an inquiry into the defendant's background, and, the record shows, gave explicit attention to the three previous felony convictions that the defendant had acknowledged at trial. The District Court sentenced him to 25 years in prison—the stiffest term authorized by the applicable federal statute, 18 U. S. C. §2113(d). 404 U. S., at 444. Several years later, after having obtained a judicial determination that two of his prior convictions were constitutionally invalid, the defendant filed a writ of habeas corpus in the District Court in which he had been convicted of bank robbery. He challenged the use at his 1953 bank robbery trial of his three previous felony convictions. This Court sustained his challenge insofar as his sentence was concerned, saying "*Gideon* . . . established an unequivocal rule `making it unconstitutional to try a person for a felony in a state court unless he had a lawyer or had validly waived one.'" *Id.*, at 449, quoting *Burgett* v. *Texas*, *supra,* at 114. The Court held that "[e]rosion of the *Gideon* principle can be prevented here only by affirming the judgment of the Court of Appeals remanding this case to the trial court for reconsideration of the [defendant's] sentence." 404 U. S., at 449.

Custis invites us to extend the right to attack collaterally prior convictions used for sentence enhancement beyond the right to have appointed counsel established in *Gideon*. We decline to do so.

We think that since the decision in *Johnson* v. *Zerbst* more than half a century ago, and running through our decisions in *Burgett* and *Tucker*, there has been a theme that failure to appoint counsel for an indigent defendant was a unique constitutional defect. Custis attacks his previous convictions claiming the denial of the effective assistance of counsel, that his guilty plea was not knowing and intelligent, and that he had not been adequately advised of his rights in opting for a "stipulated facts" trial. None of these alleged constitutional violations rises to the level of a jurisdictional defect resulting from the failure to appoint counsel at all. *Johnson* v. *Zerbst*, 304 U. S. 458 (1938).

Ease of administration also supports the distinction. As revealed in a number of the cases cited in this opinion, failure to appoint counsel at all will generally appear from the judgment roll itself, or from an accompanying minute order. But determination of claims of ineffective assistance of counsel, and failure to assure that a guilty plea was voluntary, would require sentencing courts to rummage through frequently nonexistent or difficult to obtain state court transcripts or records that may date from another era, and may come from any one of the 50 States.

The interest in promoting the finality of judgments provides additional support for our constitutional conclusion. As we have explained, "[i]nroads on the concept of finality tend to undermine confidence in the integrity of our procedures" and inevitably delay and impair the orderly administration of justice. *United States* v. *Addonizio*, 442 U. S. 178, 184, n. 11 (1979). We later noted in *Parke* v. *Raley*, 506 U. S. ___ (1992), that principles of finality associated with habeas corpus actions apply with at least equal force when a defendant seeks to attack a previous convictions used for sentencing. By challenging the previous conviction, the defendant is asking a district

court "to deprive [the] [state court judgment] of [its] normal force and effect in a proceeding that ha[s] an independent purpose other than to overturn the prior judgmen[t]." *Id.*, at ___ (slip op., at 9). These principles bear extra weight in cases in which the prior convictions, such as one challenged by Custis, are based on guilty pleas, because when a guilty plea is at issue, "the concern with finality served by the limitation on collateral attack has special force." *United States* v. *Timmreck*, 441 U. S. 780, 784 (1979) (footnote omitted).

We therefore hold that §924(e) does not permit Custis to use the federal sentencing forum to gain review of his state convictions. Congress did not prescribe and the Constitution does not require such delay and protraction of the federal sentencing process. We recognize, however, as did the Court of Appeals, see 998 F.2d, at 1363, that Custis, who was still "in custody" for purposes of his state convictions at the time of his federal sentencing under §924(e), may attack his state sentences in Maryland or through federal habeas review. See *Maleng* v. *Cook*, 490 U. S. 492 (1989). If Custis is successful in attacking these state sentences, he may then apply for reopening of any federal sentence enhanced by the state sentences. We express no opinion on the appropriate disposition of such an application.

The judgment of the Court of Appeals is accordingly

*Affirmed.*