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When Can a Defendant Challenge His ACCA Sentence on the Basis That His Prior State Convictions Were Unconstitutional?

by Michael O'Hear

PREVIEW of United States Supreme Court Cases, pages 207-211. © 2000 American Bar Association.

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Editor's Note: The respondent's brief in this case was not available by *PREVIEW*'s deadline.

In 1984, Congress enacted the Armed Career Criminal Act ("ACCA"), which imposes a 15-year mandatory minimum sentence on certain criminal defendants with three or more previous convictions. In the ACCA, Congress did not expressly indicate whether defendants could challenge their prior convictions on constitutional grounds. The Supreme Court, however, ruled that such challenges were generally prohibited during sentencing proceedings. *Custis v. United States*, 511 U.S. 485 (1994). The Supreme Court is now asked to decide whether the same prohibition applies when a defendant moves to modify his sentence under 28 U.S.C. § 2255.

ISSUE

When a defendant has been sentenced under the ACCA on the basis of prior state convictions for which the defendant is no longer in cus-

tody, may the defendant challenge his ACCA sentence in a § 2255 proceeding on the basis that the prior convictions are constitutionally invalid?

FACTS

In April 1994, a federal jury convicted Earthy D. Daniels Jr. of violating 18 U.S.C. § 922(g), which prohibits felons from possessing firearms. Normally, this offense would carry a maximum term of imprisonment of 10 years. However, Daniels had a record of at least four prior felony convictions in state court, including convictions for burglary in 1978 and 1979 and robbery in 1978 and 1981. Accordingly, the prosecution requested that Daniels be sentenced as a career criminal under the ACCA, which would subject Daniels to a minimum 15-year term of imprisonment. The court agreed that the ACCA applied and imposed a sentence of 176 months. (Slightly

(Continued on Page 208)

DANIELS V. UNITED STATES
DOCKET No. 99-9136

ARGUMENT DATE:
JANUARY 8, 2001
FROM: THE NINTH CIRCUIT

Case at a Glance

The Armed Career Criminal Act imposes harsh sentences on criminal defendants with three prior violent felony convictions. But what if such a defendant can demonstrate that one or more of his prior convictions were obtained in violation of his constitutional rights? In this case, a lower court refused to entertain such a constitutional challenge. The Supreme Court is asked to determine whether this decision was correct.

less than 15 years, this sentence reflected credit for the time that Daniels had already served in state custody for the same offense.) An appeals court affirmed the sentence in 1996.

After his unsuccessful appeal, Daniels launched a new round of legal proceedings in federal district court to reduce his sentence. He relied on 28 U.S.C. § 2255, which provides a mechanism for prisoners in federal custody to obtain the correction of sentences that are “imposed in violation of the Constitution or laws of the United States.” Specifically, Daniels argued that he could not be legally sentenced as a career criminal under the ACCA because two of his prior convictions were obtained in violation of his constitutional rights. First, Daniels contended that his 1978 and 1981 robbery convictions were based on invalid guilty pleas. He argued that his lawyers did not properly advise him of the nature of the crimes to which he was pleading, and that, accordingly, his pleas of guilty were not intelligent and voluntary. Second, Daniels contended that his 1981 robbery conviction was also invalid because his lawyer did not seek to suppress a damaging statement that Daniels had made after his arrest—an arrest that was arguably in violation of the Fourth Amendment.

If Daniels could demonstrate that the 1979 and 1981 robbery convictions were invalid, then he would apparently be left with a record of only two prior felony convictions. Because the ACCA applies only to offenders with three or more priors, Daniels would be relieved of the ACCA’s harsh mandatory minimum sentence. Indeed, absent application of the ACCA, Daniels’ presumptive sentence under the Federal Sentencing Guidelines would be between 84 and 105 months—some-

thing close to half his ACCA-based sentence.

However, the federal district court declined to review Daniels’ challenge to the prior convictions. Instead, the court denied Daniels’ § 2255 motion on procedural grounds, relying on the Supreme Court’s decision in *Custis v. United States*. *Custis* was a felon-in-possession case similar to *Daniels*. At his sentencing, Custis resisted application of the ACCA by attempting to challenge the validity of his prior convictions. In other words, Custis raised the same sorts of issues that Daniels raised, but in a different procedural setting: that is, at the initial sentencing hearing rather than at a subsequent § 2255 proceeding. However, the district court held that Custis was precluded from attacking his priors at sentencing. The Supreme Court affirmed, indicating that a defendant could raise only one type of challenge to a prior conviction at sentencing, specifically, that the defendant had been denied his constitutional right to have a lawyer. Such a claim was not made by Custis, nor is it now made by Daniels.

The district court in *Daniels* saw no reason to distinguish a § 2255 proceeding from a sentencing hearing. In affirming the district court’s ruling, the Ninth Circuit Court of Appeals agreed that Daniels’ claims were foreclosed by *Custis*. *United States v. Daniels*, 195 F.3d 501 (9th Cir. 1999). Daniels petitioned the Supreme Court to address the issue on April 12, 2000. His petition was granted on Sept. 8, 2000.

CASE ANALYSIS

In a sense, the legal arguments in this case boil down to a rather narrow question: Does the Supreme Court’s holding in *Custis* apply to § 2255 proceedings, or is *Custis* limited to sentencing? The constitution-

ality of Daniels’ state convictions is not before the Court. Indeed, Daniels will never be able to present his constitutional challenges unless he wins the current appeal. Nor is the correctness of *Custis* itself likely to be at issue. Daniels has not asked the Court to overturn *Custis*, and—with all six members of the *Custis* majority still on the Court—no reversal seems likely. Thus, the success or failure of Daniels’ appeal will likely turn on his ability to distinguish *Custis*.

Before turning to the substance of *Custis*, some additional background may be helpful. Federal law permits prison inmates to challenge their convictions and/or sentences in federal district court. Section 2255 provides the mechanism for federal inmates, while § 2254 performs the same function for state inmates. (State inmates may also be able to invoke analogous state laws in state court.) In effect, these provisions give inmates a second chance to contest their guilt or the imposition of a particular sentence, typically on the basis of the discovery of new evidence or the violation of certain constitutional rights. Because these provisions fly in the face of our normal expectation that court judgments will be final, they are subject to substantial procedural obstacles, including a requirement that, absent special circumstances, proceedings be initiated within one year after a conviction becomes final. Additionally, § 2255 motions must be presented to the same court that heard the case the first time around.

Custis did not squarely address § 2255, but the Supreme Court’s analysis turned on a set of concerns that are not limited to the sentencing context. Specifically, the Court’s decision rested on four points. First, the Court held that the ACCA itself does not authorize defendants to challenge their prior convictions.

This point is not at issue in Daniels' appeal and need not be further discussed. Second, of greater present importance, the Court held that neither does the Constitution authorize such challenges. In reaching this conclusion, the Court distinguished two older Supreme Court decisions, *Burgett v. Texas*, 389 U.S. 109 (1967), and *United States v. Tucker*, 404 U.S. 443 (1972). In *Burgett* and *Tucker*, the Court permitted challenges to enhanced sentences based on unconstitutional prior convictions. However, both cases involved a particular type of constitutional claim, namely, that the defendants had been denied their rights to appointed legal counsel. The *Custis* Court distinguished the earlier decisions on precisely this basis, reasoning that denying legal representation raises more fundamental concerns than does denying other constitutional rights. 511 U.S. at 496. Because *Custis* had a lawyer—albeit an allegedly ineffective one—the Constitution did not require that his claims be heard.

Third, the Supreme Court expressed concerns about the administrative burdens that would be imposed at sentencing if prior convictions were allowed to be challenged: sentencing courts would be required “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.” *Id.* Fourth, the Court noted the benefits of finality. Continued challenges to prior convictions “undermine confidence in the integrity of our procedures and inevitably delay and impair the orderly administration of justice.” *Id.* at 497 (citation and internal quotation marks omitted).

The Court's invocation of administrability and finality suggest that it decided *Custis* on the basis of an interest-balancing analysis.

Following this lead, interest balancing lies at the heart of Daniels' appeal. In essence, Daniels attempts to limit *Custis* to sentencing by arguing as follows: (1) society has an interest in ensuring that sentences are not based on unconstitutional prior convictions; (2) these interests are more weighty at the § 2255 stage than at sentencing; and (3) society's countervailing interests in administrability and finality are less weighty.

Daniels begins his argument by identifying a broader constitutional principle in *Burgett* and *Tucker* than *Custis* found: the due process clause of the Constitution prohibits courts from basing sentences on prior convictions that are “materially untrue.” Pet. Br. at 7 (quoting *Townsend v. Burke*, 334 U.S. 736, 741 (1948)). A line of federal cases prior to *Custis* indicates that this prohibition encompasses a range of constitutional defects in addition to the denial of counsel. Pet. Br. at 9-10 (citing cases). For the same reason that an uncounseled prior conviction may be an unreliable indicator of a defendant's criminal history, Daniels reasons, prior convictions associated with other constitutional violations may be equally untrustworthy. Pet. Br. at 11.

In Daniels' view, *Custis* did nothing to upset the preexisting ban on the use of unconstitutional prior convictions. “*Custis* presented a forum question. The issue was where, not whether, the defendant could attack a prior conviction for constitutional infirmity.” Pet. Br. at 14 (quoting *Nichols v. United States*, 511 U.S. 738, 765 (1994) (Ginsburg, J., dissenting)). While *Custis* held that sentencing was not the right forum, *Custis* did not rule one way or another on § 2255. Given a due process right not to be sentenced on the basis of unconstitutional priors, the question remains: procedurally,

at what point can the right be vindicated? In answer to this question, Daniels in effect poses another: If not now, when?

In *Custis*, the Court suggested that defendants could deal with unconstitutional priors through a two-step process: (1) obtain reversal of the prior state conviction through § 2254 or a state-law analog; then (2) apply for resentencing in federal court on the basis of the corrected criminal history. 511 U.S. at 497. But Daniels is procedurally barred from the first step. Pet. Br. at 16. Under the applicable state and federal laws, he can no longer challenge his state-court convictions because he is no longer in state custody. For Daniels, it will be § 2255 or nothing. Such now-or-never concerns are not present at sentencing, and, Daniels argues, provide a basis for distinguishing *Custis*.

But, the United States counters, if Daniels faces a now-or-never dilemma, the dilemma is of his own making. If Daniels had meritorious constitutional challenges to his prior convictions, he should have raised those challenges while he was still in state custody. In the interests of finality, federal law imposes a multitude of restrictions on the review of state-court convictions, such as the requirement that § 2254 proceedings generally be initiated one year after the conviction becomes final. Why, the United States seems to ask, should we regard a procedural bar on challenges like Daniels' as any more unjust than a bar on bringing § 2254 claims even one day after the one-year limit? Indeed, would not § 2255 challenges like Daniels' effectively circumvent the one-year bar?

Daniels notes, however, that one should not assume constitutional claims could have been raised earlier.

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er. For instance, if a defendant's lawyer is incompetent, in violation of the Constitution, the defendant certainly cannot rely on this same lawyer to advise him of the fact. Likewise, evidence of prosecutorial misconduct or witness perjury may not come to light until long after a conviction has become final. Indeed, the law provides exceptions to the one-year bar in such circumstances.

As the Court weighs these arguments, it will no doubt also bear in mind the administrability and finality concerns raised in *Custis*. Here, too, Daniels attempts to distinguish the earlier case. Daniels contends that courts are accustomed to performing fact-intensive inquiries in § 2255 hearings; the administrative burdens of federal review are thus somehow lessened in the § 2255 context. Likewise, Daniels attempts to neutralize the finality issue by suggesting that the finality interests are reduced in cases, such as his, where the underlying state sentences have already been served in their entirety. "[T]he state suffers no prejudice if the district court subsequently finds the prior conviction an invalid basis for an increased federal sentence. That action will not affect the state's judgment, and the state will not need to retry the defendant; it only eliminates the conviction's use to enhance a federal sentence." Pet. Br. at 25.

Still, the dispute in this case seems likely to play out as disputes over procedural bars inevitably do. One side argues that courts are there to vindicate rights and should give parties every opportunity to be heard on the merits. The other side raises concerns about administrative burdens and finality, while suggesting that any fault lies not with the procedural rules but with litigants who sleep on their rights until it is too

late. Daniels' difficulty here is that the Court already staked out a strong position on the administrability/finality side in *Custis*, and—Daniels' arguments notwithstanding—it is hard to see how the administrability/finality interests differ substantially under § 2255. Indeed, as the United States notes, Daniels' arguments would produce a rather odd procedural result: his reading of *Custis* would "prohibit claims like [Daniels'] at sentencing, but ... require courts to adjudicate those claims a day—or even an hour—after the sentencing proceedings have been completed." Resp. Br. at 8.

Daniels' best hope may lie in the possibility that the Court did not fully appreciate the plight of defendants like himself who lack any recourse to the two-step remedial process envisioned in *Custis*. If § 2255 really is a now-or-never opportunity to vindicate constitutional rights for defendants like Daniels, the Court may be reluctant to strip that opportunity away, even if an unusual procedural rule would result.

SIGNIFICANCE

Even if Daniels wins his appeal, he will still be a long way from reducing his sentence: the burden will lie with him to establish that at least two of his prior convictions were unconstitutional. Still, for Daniels and many others sentenced under the ACCA, this case has great significance. Because the ACCA imposes such severe sentences on repeat offenders, many years' imprisonment may turn on challenges to the validity of prior convictions. With so much at stake, even a long-shot opportunity for sentence reduction is far preferable to no shot.

For similar reasons, this case is of interest to advocates of tough-sentencing laws, such as *amicus curiae*

Criminal Justice Legal Foundation. The foundation notes in its brief that "habitual criminals" are responsible for a disproportionate share of crime. The foundation is concerned that some such criminals may take advantage of legal technicalities—constitutional violations that do not bear on actual guilt or innocence—at the § 2255 stage in order to avoid incarceration under the ACCA. In other words, if Daniels wins, some habitual criminals may be released from prison many years earlier than they would have been otherwise.

Further, the impact of this case is not limited to those prosecuted or sentenced under the ACCA. Many other statutes impose enhanced sentences for repeat offenders, as do the Federal Sentencing Guidelines. Courts have relied on *Custis* to preclude attacks on priors outside the ACCA context. See, e.g., *United States v. Thomas*, 42 F.3d 823 (3d Cir. 1994) (holding that defendant cannot challenge priors used to enhance a sentence under the guidelines). Presumably, *Daniels* will have similar reach.

Criminal history has traditionally played an important role at sentencing in this country. However, sentencing reform over the past two decades has given criminal history a vastly increased prominence, perhaps best illustrated by the many "three strikes" laws enacted at the federal and state levels.

Consequently, in many criminal cases, the defendant's sentence is determined less by the immediate offense than by the number and seriousness of prior offenses. The Court confronted a classic example in *Solem v. Helm*, 463 U.S. 277 (1983), in which the defendant was sentenced under a recidivism statute to life imprisonment without possibility of parole for passing a bad check for \$100. Such harsh sen-

tences reflect an abandonment of rehabilitative goals in the sentencing of repeat offenders. Instead, the objective seems to be incapacitation: simply lock them up and get them off the streets for as long as possible.

As sentencing laws have evolved, the Supreme Court has confronted a series of cases raising various types of legal challenges to the use of prior convictions. The Court has at times struggled to balance the legislative desire for punishment of repeat offenders that is swift, certain, and severe, with the demands of defendants for greater procedural and substantive fairness. The Court's sharply divided decision in *Solem*, which rejected the defendant's sentence as unconstitutionally cruel and unusual, provides a good example. Following *Solem*, *Custis* and others in this line of cases, *Daniels* now gives the Court yet another opportunity to articulate the constitutional parameters in this increasingly important aspect of sentencing law.

**ATTORNEYS FOR THE
PARTIES**

For Earthy D. Daniels (Guy Michael Tanaka (213) 894-4140)

For the United States (Seth P. Waxman, Solicitor General, U.S. Department of Justice (202) 514-2217)

**AMICUS BRIEFS (AS OF
DEC. 11)**

**In Support of the United States
Criminal Justice Legal
Foundation** (Kent S. Scheidegger (916) 446-0945)