

## 10-5258 McNEILL V. UNITED STATES

DECISION BELOW: 598 F.3d 161

LOWER COURT CASE NUMBER: 09-4083

### QUESTION PRESENTED:

The Armed Career Criminal Act (ACCA) applies to a person who "violates section 922(g)" and "has three previous convictions . . . for a violent felony or a serious drug offense." 18 U.S.C. § 924(e)(1). A "serious drug offense" is defined in relevant part as "an offense under State law . . . for which a maximum term of imprisonment of ten years or more *is prescribed by law.*" § 924(e)(2)(A)(ii) (emphasis added).

The Fourth Circuit Court of Appeals affirmed the district court's classification of Petitioner's North Carolina drug offenses as "serious drug offenses" under ACCA, even though at the time of Petitioner's federal sentencing, North Carolina's current sentencing law did not prescribe a maximum term of imprisonment of at least ten years for those state drug offenses. The Fourth Circuit held that since North Carolina did not apply its current sentencing law retroactively, the fact that Petitioner's drug offenses were punishable by imprisonment for at least ten years under the version of the law in effect at the time he committed these offenses qualified them as "serious drug offenses" under ACCA.

The question presented is:

Whether the plain meaning of "is prescribed by law" which ACCA uses to define a predicate "serious drug offense" requires a federal sentencing court to look to the maximum penalty prescribed by current state law for a drug offense at the time of the instant federal offense, regardless of whether the state has made that current sentencing law retroactive.

CERT. GRANTED 1/7/2011