

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 06–1646

UNITED STATES, PETITIONER *v.* GINO RODRIQUEZON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May 19, 2008]

JUSTICE ALITO delivered the opinion of the Court.

Under the Armed Career Criminal Act (ACCA), 18 U. S. C. §924(e)(2)(A)(ii), a state drug-trafficking conviction qualifies as “a serious drug offense” if “a maximum term of imprisonment of ten years or more is prescribed by law” for the “offense.” The Court of Appeals for the Ninth Circuit held that “the maximum term of imprisonment . . . prescribed by law” must be determined without taking recidivist enhancements into account. 464 F. 3d 1072, 1082 (2006). We reverse.

I

At issue in this case is respondent’s sentence on his 2004 conviction in the United States District Court for the Eastern District of Washington for possession of a firearm by a convicted felon, in violation of 18 U. S. C. §922(g)(1). Respondent had two prior state convictions in California for residential burglary and three state convictions in Washington for delivery of a controlled substance, in violation of Wash. Rev. Code §§69.50.401(a)(1)(ii)–(iv) (1994).¹ Respondent’s three Washington drug convictions

¹“Except as authorized by this chapter, it is unlawful for any person

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occurred on the same day but were based on deliveries that took place on three separate dates. Sentencing Order No. CR-03-142-RHW (ED Wash., Sept. 3, 2004), p. 5, App. 245, 250 (hereinafter Sentencing Order). At the time of respondent's drug offenses, the Washington statute that respondent was convicted of violating stated that, upon conviction, a defendant could be "imprisoned for not more than five years," §§69.50.401(a)(1)(ii)–(iv), but another provision specified that "[a]ny person convicted of a second or subsequent offense" could "be imprisoned for a term up to twice the term otherwise authorized," §69.50.408(a). Thus, by virtue of this latter, recidivist, provision respondent faced a maximum penalty of imprisonment for 10 years. The judgment of conviction for each of the drug-delivery charges listed the maximum term of imprisonment for the offense as "ten years," App. 16, 42, 93, but the state court sentenced respondent to concurrent sentences of 48 months' imprisonment on each count. *Id.*, at 21, 47, 98.

In the federal felon-in-possession case, the Government asked the District Court to sentence respondent under ACCA, which sets a 15-year minimum sentence "[i]n the case of a person who violates section 922(g) of [Title 18] and has three previous convictions . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another" 18 U. S. C. §924(e)(1) (2000 ed., Supp. V). The Government argued that respondent's two prior California burglary convictions were for "violent felonies." Pet. for Cert. 4. See §924(e)(2)(B)(ii) (2000 ed.) (listing "burglary" as a "violent felony"). The District Court agreed, and that ruling is not at issue here.

The Government also argued that at least two of respondent's Washington drug convictions were for "serious

to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance." Wash. Rev. Code §69.50.401(a)(1994).

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drug offense[s].” Under ACCA, a “serious drug offense” includes:

“an offense under State law, involving manufacturing, distributing, or possessing with intent to distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U. S. C. 802)), *for which a maximum term of imprisonment of ten years or more is prescribed by law.*” §924(e)(2)(A) (emphasis added).

Because the maximum term that respondent faced on at least two of the Washington charges was 10 years, the Government contended that these convictions had to be counted under ACCA. The District Court disagreed, holding that respondent’s drug-trafficking convictions were not convictions for “serious drug offense[s]” under ACCA because the “maximum term of imprisonment” for the purposes of §924(e)(2)(A)(ii) is determined without reference to recidivist enhancements. Sentencing Order, at 9, App. 254.

The Court of Appeals for the Ninth Circuit, applying its prior precedent in *United States v. Corona-Sanchez*, 291 F. 3d 1201 (2002) (en banc), affirmed. 464 F. 3d 1072. The Court recognized that its decision conflicted with the Seventh Circuit’s decision in *United States v. Henton*, 374 F. 3d 467, 469–470, cert. denied, 543 U. S. 967 (2004), and was “in tension” with decisions of the Fourth and Fifth Circuits. 464 F. 3d, at 1082, n. 6; see *Mutasco v. Gonzales*, 444 F. 3d 710, 712 (CA5 2006) (*per curiam*); *United States v. Williams*, 326 F. 3d 535, 539 (CA4 2003). We granted the Government’s petition for a writ of certiorari, 551 U. S. ____ (2007).

II

The question that we must decide is whether the “maximum term of imprisonment prescribed by law” in this case is, as respondent maintains and the Ninth Cir-

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cuit held, the 5-year ceiling for first offenses or, as the Government contends, the 10-year ceiling for second or subsequent offenses. See Wash. Rev. Code §§69.50.401(a)(ii)–(iv), 69.50.408(a).

The Government’s reading is compelled by the language of ACCA. For present purposes, there are three key statutory terms: “offense,” “law,” and “maximum term.” The “offense” in each of the drug-delivery cases was a violation of §§69.50.401(a)(ii)–(iv). The relevant “law” is set out in both that provision, which prescribes a “maximum term” of five years for a first “offense,” and §69.50.408(a), which prescribes a “maximum term” of 10 years for a second or subsequent “offense.” Thus, in this case, the maximum term prescribed by Washington law for at least two of respondent’s state drug offenses was 10 years.

The Ninth Circuit’s holding that the maximum term was five years contorts ACCA’s plain terms. Although the Washington state court sentenced respondent to 48 months’ imprisonment, there is no dispute that §69.50.408(a) permitted a sentence of up to 10 years. On the Ninth Circuit’s reading of ACCA, even if respondent had been sentenced to, say, six years’ imprisonment, “the maximum term of imprisonment” prescribed by law still would have been five years. It is hard to accept the proposition that a defendant may lawfully be sentenced to a term of imprisonment that exceeds the “maximum term of imprisonment . . . prescribed by law,” but that is where the Ninth Circuit’s reading of the statute leads.

The Ninth Circuit’s interpretation is also inconsistent with the way in which the concept of the “maximum term of imprisonment” is customarily understood by participants in the criminal justice process. Suppose that a defendant who indisputably had more than three prior convictions for “violent felon[ies]” or “serious drug offense[s]” was charged in federal court with violating the felon-in-possession statute. Under ACCA, this defendant

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would face a sentence of “not less than 15 years.” 18 U. S. C. §924(e)(1) (2000 ed., Supp. V). Suppose that the defendant asked his or her attorney, “What’s the maximum term I face for the new offense?” An attorney aware of ACCA would surely not respond, “10 years,” even though 10 years is the maximum sentence without the ACCA enhancement. See §924(a)(2) (2000 ed.).

Suppose that the defendant then pleaded guilty to the felon-in-possession charge. Under Federal Rule of Criminal Procedure 11(b)(1)(H), the trial judge would be required to advise the defendant of the “maximum possible penalty.” If the judge told the defendant that the maximum possible sentence was 10 years and then imposed a sentence of 15 years based on ACCA, the defendant would have been sorely misled and would have a ground for moving to withdraw the plea. See *United States v. Gonzalez*, 420 F. 3d 111, 132 (CA2 2005); *United States v. Harrington*, 354 F. 3d 178, 185–186 (CA2 2004). In sum, a straightforward application of the language of ACCA leads to the conclusion that the “maximum term of imprisonment prescribed by law” in this case was 10 years.

III

A

In an effort to defend the Ninth Circuit’s decision, respondent offers both a textual argument and a related argument based on the “manifest purpose” of ACCA. Brief for Respondent 8.

Respondent’s textual argument is as follows. The term “offense” “generally is understood to describe the elements constituting the crime.” *Id.*, at 10. Because prior convictions required for recidivist enhancements are not typically offense elements, they should not be considered part of the “offense” under ACCA. Thus, the “maximum term of imprisonment prescribed by law” for the drug convictions at issue was the maximum term prescribed for sim-

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ply committing the elements of the drug offense and was therefore five years. *Id.*, at 10–11.

Respondent’s argument is not faithful to the statutory text. Respondent reads ACCA as referring to “the maximum term of imprisonment prescribed by law” for a defendant *with no prior convictions that trigger a recidivist enhancement*, but that is not what ACCA says. ACCA instead refers to “the maximum term of imprisonment prescribed by law” for “an offense,” and, as previously explained, in this case, the maximum term prescribed by Washington law for each of respondent’s two relevant offenses was 10 years.

Respondent’s argument based on ACCA’s “manifest purpose” must also be rejected. Respondent argues that ACCA uses “the maximum penalty specified for the offense by state law as a short-hand means of identifying conduct deemed sufficiently ‘serious’ to trigger [the] mandatory penalty.” *Id.*, at 9. According to respondent, “[t]he nature of [a defendant’s] conduct, the elements of the offense, and the impact of the crime . . . are the characteristics that typically are used to gauge the ‘seriousness’ of an offense,” and a defendant’s “status as a recidivist has no connection to whether the offense committed by the defendant was a ‘serious’ one.” *Id.*, at 11.

This argument rests on the erroneous proposition that a defendant’s prior record of convictions has no bearing on the seriousness of an offense. On the contrary, however, an offense committed by a repeat offender is often thought to reflect greater culpability and thus to merit greater punishment. Similarly, a second or subsequent offense is often regarded as more serious because it portends greater future danger and therefore warrants an increased sentence for purposes of deterrence and incapacitation. See *Witte v. United States*, 515 U. S. 389, 403 (1995); *Spencer v. Texas*, 385 U. S. 554, 570 (1967) (Warren, C. J., dissenting in two judgments and concurring in one).

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If respondent were correct that a defendant's record of prior convictions has no bearing on the seriousness of an offense, then it would follow that any increased punishment imposed under a recidivist provision would not be based on the offense of conviction but on something else—presumably the defendant's prior crimes or the defendant's "status as a recidivist," Brief for Respondent 11. But we have squarely rejected this understanding of recidivism statutes. In *Nichols v. United States*, 511 U. S. 738 (1994), we explained that "[t]his Court consistently has sustained repeat-offender laws as penalizing only the last offense committed by the defendant." *Id.*, at 747 (quoting *Baldasar v. Illinois*, 446 U. S. 222, 232 (1980) (Powell, J., dissenting)). When a defendant is given a higher sentence under a recidivism statute—or for that matter, when a sentencing judge, under a guidelines regime or a discretionary sentencing system, increases a sentence based on the defendant's criminal history—100% of the punishment is for the offense of conviction. None is for the prior convictions or the defendant's "status as a recidivist." The sentence "is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because [it is] a repetitive one." *Gryger v. Burke*, 334 U. S. 728, 732 (1948).

B

Respondent argues that our interpretation of ACCA produces "a sort of perverse bootstrapping" under which a defendant is "punished under federal law for being treated as a recidivist under state law," Brief for Respondent 20 (emphasis deleted), but the fact that ACCA is itself a recidivist statute bolsters our reading. Since ACCA is a recidivist statute, Congress must have had such provisions in mind and must have understood that the "maximum penalty prescribed by [state] law" in some cases would be increased by state recidivism provisions.

Contrary to respondent's suggestion, *United States v.*

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LaBonte, 520 U. S. 751 (1997), supports our interpretation of ACCA. The statute at issue in *LaBonte*, a provision of the Sentencing Reform Act of 1984, as amended, 28 U. S. C. §994(h), directed the United States Sentencing Commission to “assure” that the Sentencing Guidelines specify a prison sentence “at or near the maximum term authorized for categories of” adult offenders who commit their third felony drug offense or violent crime. We held that the phrase “maximum term authorized” “refers to all applicable statutes,” including recidivist enhancements. 520 U. S., at 758, n. 4.

Respondent claims that *LaBonte* supports his position because ACCA, unlike 28 U. S. C. §994(h), does not refer to “categories of” offenders. Respondent suggests that Congress’ failure to include such language in ACCA means that Congress intended to refer to a “maximum term” that does not depend on whether a defendant falls into the first-time-offender or recidivist “category.” Respondent does not explain how 18 U. S. C. §924(e)(2)(A) could have easily been reworded to mirror 28 U. S. C. §994(h). But in any event, the language used in ACCA, for the reasons explained above, is more than clear enough.

Respondent argues that the Ninth Circuit’s decision is supported by the so-called “categorical” approach that we used in *Taylor v. United States*, 495 U. S. 575 (1990), in determining which offenses qualify as “violent felon[ies]” under 18 U. S. C. §924(e)(2)(B)(ii). Section 924(e)(2)(B)(ii) provides that four enumerated crimes—burglary, arson, extortion, and offenses involving the use of explosives—are “violent felon[ies]” for ACCA purposes. In *Taylor*, we held that Congress intended for these crimes to have a “uniform definition” that was “independent of the labels employed by the various States’ criminal codes.” *Id.*, at 592. According to respondent, “[t]he categorical approach rests on the congressional intent—reflected in the statutory language—to focus the ACCA inquiry on the offense

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of conviction, rather than on collateral matters unrelated to the definition of the crime.” Brief for Respondent 12.

We see no connection, however, between the issue in *Taylor* (the meaning of the term “burglary” in §924(e)(2)(B)(ii)) and the issue here (the meaning of the phrase “maximum term of imprisonment . . . prescribed by law” under §924(e)(2)(A)(ii)). *Taylor* held that the meaning of “burglary” for purposes of ACCA does not depend on the label attached by the law of a particular State, 495 U. S., at 600–601, but the “maximum penalty prescribed by law” for a state offense necessarily depends on state law.

For a similar reason, we reject respondent’s argument that, under our interpretation, offenses that are not really serious will be included as “serious drug offense[s]” because of recidivist enhancements. In §924(e)(2)(A)(ii), Congress chose to rely on the “maximum term of imprisonment . . . prescribed” by state law as the measure of the seriousness of state offenses involving the manufacture, distribution, or possession of illegal drugs. Congress presumably thought—not without reason—that if state lawmakers provide that a crime is punishable by 10 years’ imprisonment, the lawmakers must regard the crime as “serious,” and Congress chose to defer to the state lawmakers’ judgment. Therefore, our interpretation poses no risk that a drug-trafficking offense will be treated as a “serious” without satisfying the standard that Congress prescribed.²

²In any event, the only “minor drug crime” that respondent identifies as potentially constituting an ACCA predicate based on recidivist enhancement is distribution of a 21 U. S. C. §812, Schedule III narcotic in violation of Mich. Comp. Laws Ann. §333.7401(2)(b)(ii) (West Supp. 2007). Given that Schedule III substances include anabolic steroids and painkillers with specified amounts of certain narcotics like opium, see 21 U. S. C. §812, one might debate respondent’s assertion that distribution of these narcotics is not “serious” in the generic sense of the

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C

Respondent argues that it will often be difficult to determine whether a defendant faced the possibility of a recidivist enhancement in connection with a past state drug conviction and that therefore our interpretation of ACCA will require the federal courts to “engage in difficult inquiries regarding novel questions of state law and complex factual determinations about long-past proceedings in state courts.” Brief for Respondent 21. Respondent greatly exaggerates the problems to which he refers.

First, in some cases, a defendant will have received a recidivist enhancement, and this will necessarily be evident from the length of the sentence imposed. Second, as the present case illustrates, see App. 16, 42, 93, the judgment of conviction will sometimes list the maximum possible sentence even where the sentence that was imposed did not exceed the top sentence allowed without any recidivist enhancement. Third, as respondent himself notes, some jurisdictions require that the prosecution submit a formal charging document in order to obtain a recidivist enhancement. See Brief for Respondent 33. Such documents fall within the limited list of generally available documents that courts already consult for the purpose of determining if a past conviction qualifies as an ACCA predicate. See *Shepard v. United States*, 544 U. S. 13, 20 (2005). Fourth, in those cases in which the defendant pleaded guilty to the state drug charges, the plea colloquy will very often include a statement by the trial judge regarding the maximum penalty. This is mandated by Federal Rule of Criminal Procedure 11(b)(1)(H), and many

word. However, Congress chose to defer to the Michigan Legislature’s judgment that the offense was “serious” enough to warrant punishment of first offenses by up to seven years’ imprisonment, and certain repeat offenses by a maximum term of life imprisonment. See Mich. Comp. Laws Ann. §§333.7401(2)(b)(ii), 333.769.12(1).

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States have similar requirements.³ Finally, in those cases in which the records that may properly be consulted do not show that the defendant faced the possibility of a recidivist enhancement, it may well be that the Government will be precluded from establishing that a conviction was for a qualifying offense. The mere possibility that some future cases might present difficulties cannot justify a reading of ACCA that disregards the clear meaning of the statutory language.

D

Respondent's last argument is that if recidivist enhancements can increase the "maximum term" of imprisonment under ACCA, it must follow that mandatory guidelines systems that cap sentences can decrease the "maximum term" of imprisonment. Brief for Respondent 38. In each situation, respondent argues, the "maximum term" of imprisonment is the term to which the state court could actually have sentenced the defendant. Respondent concedes that he has waived this argument with respect to his own specific state-court convictions. See Brief in Opposition 15, n. 7. He argues, however, that Congress cannot have wanted to make the "maximum term" of imprisonment for ACCA purposes dependent on the complexities of state sentencing guidelines. We conclude, however, that the phrase "maximum term of imprisonment . . . prescribed by law" for the "offense" was not

³See, e.g., Kan. Stat. Ann. §22–3210(a)(2) (2007); N. C. Gen. Stat. Ann. §15A–1022(a)(6) (Lexis 2007); Tex. Crim. Proc. Code Ann. §§26.13(a)(1), (d) (West Supp. 2007); Ala. Rule Crim. Proc. 14.4(a)(1)(ii) (Lexis 2007); Fla. Rule Crim. Proc. 3.172(b), (c)(1) (West 2007); Ga. Uniform Super. Ct. Rule 33.8(C)(3) (Lexis 2008); Ill. Sup. Ct. Rule 402(a)(2) (West 2007); Pa. Rule Crim. Proc. 590, *comment* (West 2008); Ohio Rule Crim. Proc. 11(C)(2)(a) (West 2008); Mich. Rule Crim. Proc. 6.302(B)(2) (West 2007); *Alexander v. State*, 605 So. 2d 1170, 1172 (Miss. 1992); *Bunnell v. Superior Court*, 13 Cal. 3d 592, 604–605, 531 P. 2d 1086, 1094 (1975).

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meant to apply to the top sentence in a guidelines range.

First, the top sentence in a guidelines range is generally not really the “maximum term . . . prescribed by law” for the “offense” because guidelines systems typically allow a sentencing judge to impose a sentence that exceeds the top of the guidelines range under appropriate circumstances. The United States Sentencing Guidelines, for example, permit “upward departures,” see United States Sentencing Commission, Guidelines Manual §5K2.0 (Nov. 2007), and essentially the same characteristic was shared by all of the mandatory guidelines system in existence at the time of the enactment of the ACCA provision at issue in this case.⁴ (Following this pattern, Washington law likewise provided at the time of respondent’s state convictions that a sentencing judge could “impose a sentence outside the standard sentence range” upon a finding “that there [were] substantial and compelling reasons justifying an exceptional sentence.” Wash. Rev. Code §9.94A.120(2) (1994).⁵)

⁴ By 1986, when Congress added the relevant statutory language, see Pub. L. 99–570, §1402, 100 Stat. 3207–39, eight States had guidelines systems in effect. See Frase, *State Sentencing Guidelines: Diversity, Consensus, and Unresolved Policy Issues*, 105 Colum. L. Rev. 1190, 1196, Table 1 (2005). Two of those States (Utah and Maryland) had voluntary guidelines, *id.*, at 1198, and the other six States had guidelines systems that allowed for sentences in excess of the recommended range in various circumstances, see *People v. Miles*, 156 Mich. App. 431, 437, 402 N. W. 2d 34, 37 (1986) (remanding for the trial court to state reasons for upward departure); *Staats v. State*, 717 P. 2d 413, 422 (Alaska App. 1986) (affirming upward departure); *State v. Armstrong*, 106 Wash. 2d 547, 549–550, 723 P. 2d 1111, 1113–1114 (1986) (en banc) (same); *State v. Mortland*, 395 N. W. 2d 469, 474 (Minn. App. 1986) (same); *Walker v. State*, 496 So. 2d 220 (Fla. App. 1986) (*per curiam*) (same); *Commonwealth v. Mills*, 344 Pa. Super. 200, 204, 496 A. 2d 752, 754 (1985) (same).

⁵ While Washington law provided a list of “illustrative factors which the court [could] consider in the exercise of its discretion to impose an exceptional sentence,” the list was “not intended to be exclusive” of

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Second, the concept of the “maximum” term of imprisonment or sentence prescribed by law was used in many statutes that predated the enactment of ACCA and the federal Sentencing Reform Act of 1984, Pub. L. 98–473, §211, 98 Stat. 1987, and in all those statutes the concept necessarily referred to the maximum term prescribed by the relevant criminal statute, not the top of a sentencing guideline range. See, *e.g.*, 18 U. S. C. §3 (1982 ed.) (“[A]n accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment . . . for the punishment of the principal”); §3575(b) (allowing for an increased sentence for dangerous special offenders “not disproportionate in severity to the maximum term otherwise authorized by law for” the underlying felony); see also §371 (the punishment for conspiracy to commit a misdemeanor “shall not exceed the maximum punishment provided for such misdemeanor”); §3651 (allowing for confinement and suspension of sentence upon conviction of an offense not punishable by death or life imprisonment “if the maximum sentence for such offense is more than six months”); §3653 (referring to the “maximum probation period”).

It is instructive that, even in the Sentencing Reform Act, the concept of the “maximum term of imprisonment” prescribed for an offense was used in this sense. See §212, 98 Stat. 1991–1992 (new 18 U. S. C. §3559 classifying offenses based on “the maximum term of imprisonment authorized . . . by the statute describing the offense”); §235(b)(1)(F), 98 Stat. 2032 (“The maximum term of imprisonment in effect on the effective date [of the Sentencing Reform Act]” remains in effect for five years after the effective date “for an offense committed before the effective date”); §1003(a), *id.*, at 2138 (solicitation to commit a crime of violence punishable by “one-half the maximum

other potential reasons for departing. §9.94A.390.

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term of imprisonment . . . prescribed for the punishment of the crime solicited”). In light of this established pattern and the relative newness of sentencing guidelines systems when the ACCA provision at issue here was added, we conclude that Congress meant for the concept of the “maximum term of imprisonment” prescribed by law for an “offense” to have same meaning in ACCA.

Our decision in *United States v. R. L. C.*, 503 U. S. 291 (1992), is not to the contrary. The statutory provision there, 18 U. S. C. §5037(c) (2000 ed.), set out the term of official detention for a juvenile found to be a delinquent. This provision was amended by the Sentencing Reform Act, see §214, 98 Stat. 2013, and then amended again two years later, see §§21(a)(2)–(4), 100 Stat. 3596. As thus amended, the provision did not refer to the “maximum term of imprisonment” prescribed for an “offense.” Rather, the provision focused on the particular juvenile being sentenced. It provided that, “in the case of a juvenile who is less than eighteen years old,” official detention could not extend beyond the earlier of two dates: the juvenile’s 21st birthday or “the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.” *United States v. R. L. C.*, *supra*, at 295–296, n. 1 (quoting 18 U. S. C. §5037(c)). Because this provision clearly focuses on the circumstances of the particular juvenile and not on the offense, 503 U. S., at 299, it is not analogous to the ACCA provision that is before us in this case.

* * *

For these reasons, we hold that the “maximum term of imprisonment . . . prescribed by law” for the state drug convictions at issue in this case was the 10-year maximum set by the applicable recidivist provision. Accordingly, we reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.