Custis v. United States: Are Unconstitutional Prior Convictions Being Used to Increase Prison Terms?

Barry W. Strike

Follow this and additional works at: http://digitalcommons.law.ggu.edu/ggulrev

Part of the Criminal Law Commons

Recommended Citation
http://digitalcommons.law.ggu.edu/ggulrev/vol25/iss2/2
CUSTIS v. UNITED STATES: ARE UNCONSTITUTIONAL PRIOR CONVICTIONS BEING USED TO INCREASE PRISON TERMS?

I. INTRODUCTION

In Custis v. United States,1 the Supreme Court held that persons convicted in federal court whose sentences were enhanced under the Armed Career Criminal Act (hereinafter “ACCA”),2 may not collaterally attack3 the constitutionality of their prior convictions.4 The ACCA increases the penalty for possession of a firearm by a felon from a maximum ten year sentence to a mandatory fifteen year minimum sentence when the person convicted has three prior convictions for violent felonies or serious drug offenses.6 The Court noted that a conviction obtained when the defendant was without counsel may

2. 18 U.S.C. § 924(e) (1988). The ACCA provides for a mandatory fifteen year minimum sentence for certain firearm violations when the person convicted has three prior convictions for violent felonies or serious drug offenses. See infra note 44 in which the statutory language is reproduced.
3. The term “collateral attack” is used to describe “an attempt to avoid, defeat or evade [a judgment] or deny its force and effect in some incidental proceeding not provided by law for the express purpose of attacking it . . . .” BLACK'S LAW DICTIONARY 261 (6th ed. 1990). See also Custis, 114 S. Ct. at 1739 n.1 (Souter, J., dissenting, joined by Blackmun & Stevens, JJ.). “The Court's opinion makes clear that it uses the phrase "collateral attack" to refer to an attack during sentencing.” Id.
4. Custis, 114 S. Ct. at 1734. The one exception to this rule allows “convictions obtained in violation of the right to counsel” to be collaterally challenged. Id.
be collaterally challenged, but held that the ACCA precluded challenges to the constitutionality of prior convictions on other grounds.

Consequently, the Court did not consider the alleged constitutional defects in Custis' prior convictions and allowed them to be used to increase his sentence from a ten year maximum to 235 months in prison. If the Court had permitted Custis to challenge any of his prior convictions, and if he was successful in doing so, he would have lacked the three prior convictions necessary for sentence enhancement under the ACCA.

This note will first explain the facts of Custis' case and then discuss the background of the ACCA. The ACCA discussion will be followed by a review of the procedural history and the Supreme Court's analysis of Custis' case. The note will then offer a critique of the Court's interpretation of the language and legislative intent behind the ACCA. Finally, the note will conclude that the Custis decision illustrates increasing judicial effort to curtail the availability of post-conviction relief formerly available to criminal defendants.

II. FACTS

Darren J. Custis was arrested in Baltimore, Maryland on July 1, 1991 and indicted for possession of cocaine with intent to distribute; possession of a firearm in connection with drug trafficking; and possession of a firearm by a convicted felon. Custis was convicted in United States District Court on the latter firearm charge and of the lesser included offense of cocaine possession.

7. Id.
8. Id. at 1739.
10. See Custis, 114 S. Ct. at 1735.
Custis was previously convicted of robbery in Pennsylvania state court in 1985, of burglary in Maryland state court in 1985, and of attempted burglary in Maryland state court in 1989. These prior convictions constituted the three "dangerous felonies" necessary for sentence enhancement under the ACCA, and the government moved to use them to increase Custis' sentence for his firearm possession conviction.

Custis asserted that inadequate assistance of counsel rendered two of his prior convictions unconstitutional, and that unconstitutional convictions should not be used to increase the sentence imposed for a subsequent conviction. Specifically, Custis alleged that his guilty plea to the 1985 burglary charge was on the advice of counsel and was not knowing and intelligent, as required by Boykin v. Alabama. Custis' counsel allegedly failed to advise him regarding the defense of voluntary intoxication; a defense Custis claimed he would have raised had he been made aware of its existence. The tran-
script of Custis' guilty plea, which he provided for the district court, affirmatively demonstrated that his lawyer did not advise him of any possible defenses, and that he was "confused" during the guilty plea proceeding.24

Custis challenged his 1989 attempted burglary conviction on the ground that it resulted from a "stipulated facts" trial.25 He asserted that a trial on stipulated facts was essentially equivalent to a guilty plea, and was unfair because he was not adequately advised of his rights and did not enter a knowing and voluntary plea.26 Custis further alleged that the stipulated facts established only attempted breaking and entering, not attempted burglary.27 He therefore reasoned that his conviction for attempted burglary was the result of ineffective assistance of counsel.28

The district court refused to consider Custis' allegations of constitutional violations in his prior convictions,29 and the Fourth Circuit Court of Appeals affirmed that decision.30 The Supreme Court granted certiorari because the Fourth Circuit opinion conflicted with the decisions of several other circuits.31 The Court affirmed the Fourth Circuit decision32 dis-

24. Brief for Petitioner at 4, Custis v. United States, 114 S. Ct. 1732 (1994) (No. 93-5209). Petitioner's brief included the following excerpt from the Maryland state court transcript:

THE COURT: Has [your lawyer] told you in the past the possible [sic] defense you might have in this case?
THE DEFENDANT: No.
THE COURT: She has not told you what defenses you might have had or that you didn't have any?
THE DEFENDANT: No.
THE COURT: Has she discussed the case with you?
THE DEFENDANT: Yes, somewhat but it's been confusing.
THE COURT: What's been confusing?
THE DEFENDANT: The whole thing really has been confusing.

Id. at 4 n.2.

25. Custis, 114 S. Ct. at 1734.

26. See id.

27. Id.

28. Id.

29. Id. at 1735. See Custis, 786 F. Supp. at 535-36.

30. Id. 114 S. Ct. at 1735. See United States v. Custis, 988 F.2d 1355, 1357 (4th Cir. 1993).

31. Id. at 1735. At least eight other circuits had recently al-
missing Custis’ challenges to his prior convictions.33

As a result of the application of ACCA sentence enhancement provisions, Mr. Custis was sentenced to nearly twenty years in prison without possibility of parole.34 Absent his prior convictions, his sentence would have been approximately three years.35

III. BACKGROUND OF THE ARMED CAREER CRIMINAL ACT

The Armed Career Criminal Act was originally enacted as part of section 1202(a) of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (hereinafter “OCC Act”).36 The OCC Act provided that a convicted felon who possesses, receives, or transports a firearm in interstate commerce may be sentenced to imprisonment for up to two years, fined up to $10,000, or both.37 The Act further provided that a convicted felon who possesses, receives, or transports a firearm in interstate commerce and who has three prior convictions for robbery, burglary, or both,38 must receive a sentence of at least
fifteen years imprisonment and be fined up to $25,000.\textsuperscript{39} Persons convicted under the OCC Act were ineligible for suspended sentences, probation or parole.\textsuperscript{40} The portion of the OCC Act providing for increased sentences for convicted felons with the prior designated convictions was termed the Armed Career Criminal Act of 1984.\textsuperscript{41}

On November 15, 1986, Congress repealed § 1202(a)\textsuperscript{42} but recodified it into §§ 922(g)\textsuperscript{43} and 924(e)(1)\textsuperscript{44} of Title 18 of the


\textsuperscript{40} See id.

\textsuperscript{41} Id. at § 1201.


\textsuperscript{43} 18 U.S.C. § 922(g) (1988) prohibits convicted felons from possessing firearms and reads as follows:

\textit{It shall be unlawful for any person—}

\begin{enumerate}
  \item who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
  \item who is a fugitive from justice;
  \item who is an unlawful user of or addicted to any controlled substance . . . ;
  \item who has been adjudicated as a mental defective or who has been committed to a mental institution;
  \item who, being an alien, is illegally or unlawfully in the United States;
  \item who has been discharged from the Armed Forces under dishonorable conditions; or
  \item who, having been a citizen of the United States, has renounced his citizenship;
\end{enumerate}

\begin{enumerate}
  \item to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition;
  \item to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.
\end{enumerate}

\textit{Id.}

\textsuperscript{44} 18 U.S.C. § 924(e)(1) (1988) states:

\textit{In the case of a person who violates section 922(g) of this title 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, or both, committed on occasions different from one another, such person shall be fined not more than $25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to}
United States Code. Despite minor modifications to the language of the code, the relocation was effectively a reenactment of the statute.

The ACCA prohibits courts from granting suspended sentences or probation to persons convicted under § 922(g). Persons convicted under § 922(g) are not eligible for parole with respect to the sentence imposed under the ACCA. While the ACCA mandates a minimum sentence of fifteen years imprisonment, it does not specify a maximum penalty. Furthermore, because the ACCA is a sentence enhancement statute and does not define substantive offenses, the prosecution is not required to prove the defendant’s prior convictions beyond a reasonable doubt. Therefore, if a defendant is convicted under the ACCA statute, the court may impose a lifetime prison term without possibility of parole, simply by showing the conviction under section 922(g), and such person shall not be eligible for parole with respect to the sentence imposed under this subsection.

Id.

45. See supra note 38.
48. Id.
49. See id.
50. See United States v. Lowe, 860 F.2d 1370, 1377 (7th Cir. 1988) (The Lowe court stated that § 924 contains a sufficient number of common indicia of a sentence enhancement provision to establish Congress’ intent to create one.). See generally Jill C. Rafaloff, Note, The Armed Career Criminal Act: Sentence Enhancement Statute or New Offense?, 56 FORDHAM L. REV. 1085 (1988) (concluding that Congress intended the ACCA to be a mechanism for sentence enhancement and not a substantive offense).
51. See United States v. West, 826 F.2d 909, 911 (9th Cir. 1987); see also Buckley v. Butler, 825 F.2d 895, 903 (5th Cir. 1987), cert. denied, 108 S. Ct. 1738 (1988) (due process does not require that sentencing factors be proven beyond a reasonable doubt or by clear and convincing evidence).
52. See United States v. Brame, 997 F.2d 1426 (11th Cir. 1993). Defendant Brame was convicted of being a felon in possession of a firearm and was subject to sentence enhancement under the ACCA. Id. Brame contended that since the ACCA specified only a mandatory minimum sentence of fifteen years and did not specify an express maximum sentence, the maximum sentence should be some term in excess of fifteen years but less than life imprisonment. Id. at 1428. The Eleventh Circuit disagreed and adopted the position of the other circuits that addressed the issue, holding that the maximum sentence under the ACCA is life imprisonment. Id. (citing Walberg v. United States, 785 F.2d 143, 148-49 (2d Cir. 1985) (penalty statute that fails to provide explicit maximum period of imprisonment implicitly authorizes imposition of a maximum sentence of life)).
that the requisite prior convictions occurred. These sentences stand in sharp contrast to those that would be imposed absent a sentence enhancement provision.\textsuperscript{53} Mr. Custis' sentence, for example, was increased by approximately sixteen years because of his prior convictions.\textsuperscript{54}

Sentence enhancement legislation has been enacted in various forms by most states in this country.\textsuperscript{55} The general purpose of such laws is to deter repeat offenders; a group believed to be responsible for the majority of violent crimes in the United States.\textsuperscript{56} Anti-recidivism legislation has been unsuccessfully challenged on multiple constitutional grounds\textsuperscript{57} and has repeatedly been upheld by the Supreme Court.\textsuperscript{58} The prohibition on collateral attacks to prior convictions announced in \textit{Custis} will have widespread impact if it is applied to defendants convicted under the myriad other anti-recidivism statutes currently in place in the United States.\textsuperscript{59}

\begin{itemize}
  \item \textsuperscript{53} See, e.g., United States v. Bronaugh, 895 F.2d 247 (6th Cir. 1990) (defendant was convicted of making a false statement to acquire a firearm and his sentence was increased five-fold under the ACCA).
  \item \textsuperscript{54} See Brief for Petitioner at 5-6, United States v. Custis, 114 S. Ct. 1732 (1994) (No. 93-5209).
  \item \textsuperscript{55} See, e.g., 1994 Cal. Adv. Legis. Servo 12 (Deering) (California's recently enacted "three strikes" law). See generally Note, Selective Incapacitation: Reducing Crime Through Predictions of Recidivism, 96 HARV. L. REV. 511 (1982) (stating that as of 1979, recidivist statutes were in force in 44 states, the District of Columbia, Puerto Rico, the Virgin Islands, and at the federal level).
  \item \textsuperscript{57} See, e.g., United States v. Goodface, 835 F.2d 1233, 1236-37 (8th Cir. 1987) (mandatory sentencing under 18 U.S.C. § 924 (c)(2) does not violate due process merely by divesting court of sentencing discretion); United States v. Gilliard, 847 F.2d 21, 25-27 (1st Cir. 1988) (fifteen year mandatory sentence under 18 U.S.C. § 924 does not violate eighth amendment prohibition against cruel and unusual punishment since statute focuses on violent crimes and seeks to remove guns from the possession of violent criminals); United States v. Conner, 886 F.2d 984, 985 (8th Cir. 1989) (use of prior state court armed robbery convictions to enhance sentence under 18 U.S.C. § 924 was not double jeopardy since conviction in state court and conviction under § 924 resulted from charges brought by separate sovereigns for separate incidents).
  \item \textsuperscript{59} See generally Cole, \textit{supra} note 35.
\end{itemize}
IV. PROCEDURAL HISTORY

The Maryland District Court initially reviewed Custis' attacks on his prior convictions in a letter ruling. The court rejected Custis' assertion that his 1989 "stipulated facts" trial for attempted burglary was the functional equivalent of a guilty plea. However, the court concluded that in Custis' 1985 burglary conviction, counsel's failure to discuss possible defenses with the defendant could constitute performance below the applicable standards of professional competence. The court deferred ruling on the matter, intending to hear testimony at the sentencing hearing, but subsequently reversed its position and held that the Armed Career Criminal Act "provides no statutory right to challenge prior convictions relied on by the government for enhancement." That determination was based on the court's reading of the ACCA as prohibiting collateral challenges to prior convictions unless the defendant was without counsel. Since Custis asserted that his prior convictions were rendered unconstitutional by ineffective counsel, rather than by absence of counsel, the district court deemed those convictions not reviewable in that forum.

The Court of Appeals for the Fourth Circuit affirmed the district court opinion. The Fourth Circuit was concerned with the "substantial burden" imposed on prosecutors and district courts by a requirement that they conduct "fact-inten-

61. See id. at 2-3.
62. See id. at 1. See also, Brief for Petitioner at 6, Custis v. United States, 114 S. Ct. 1732 (1994) (No. 93-5209).
65. Id. at 536-37. The district court could not locate binding precedent from the Fourth Circuit which addressed a defendant's right to collaterally attack prior convictions on grounds other than absence of counsel. Id. It acknowledged that other circuits had allowed such challenges but stated that a defendant's right to such a challenge was of uncertain origin. Id. The court concluded that, to the extent those cases extended the right to collateral challenges to include cases not involving absence of counsel, those decisions were unsound. Id.
66. Id. at 534.
67. Id. at 537.
sive” inquiries into state court records that are likely to be inadequate or unavailable. The court also expressed concern over issues of federalism and comity, stating that “federal courts are not forums in which to relitigate state trials."

The Supreme Court granted *certiorari* because the Fourth Circuit opinion conflicted with the decisions of Courts of Appeals in several other circuits, which allowed defendants to challenge the constitutional validity of prior convictions used in sentencing under the ACCA. Grounds for collateral attack in other circuits included ineffective assistance of counsel, and an unknowing or involuntary guilty plea.

V. SUPREME COURT’S ANALYSIS

A. MAJORITY OPINION

1. The Language of the ACCA

The majority began its analysis by interpreting the relevant language of the Armed Career Criminal Act. The ACCA provides for an increased sentence for any person who possesses a firearm in violation of 18 U.S.C. § 922(g) and

---

69. *Id.* at 1361 (quoting United States v. Jones, 977 F.2d 105, 109 (4th Cir. 1992)).


71. Comity: “The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation but out of deference and respect.” *Black’s Law Dictionary* 267 (6th ed. 1990).


75. See, e.g., United States v. Preston, 910 F.2d 81, 87-89 (3d Cir. 1990); United States v. Clawson, 891 F.2d 909, 914-15 (9th Cir. 1989).

76. See, e.g., United States v. Wicks, 995 F.2d 964, 978 (10th Cir. 1993); United States v. Paleo, 967 F.2d 7, 11 (1st Cir. 1992); United States v. Ruo, 943 F.2d 1274, 1276-77 (11th Cir. 1991); United States v. Galman, 907 F.2d 639, 642-43 (7th Cir. 1990); United States v. Taylor, 882 F.2d 1018, 1031 (6th Cir. 1989).


79. 18 U.S.C. § 922(g) (1988) reads in relevant part:
who has "three previous convictions by any court referred to in § 922(g)(1) for a violent felony or a serious drug offense."80 The majority believed that Congress' use of the phrase "three previous convictions," indicated its intent to allow sentences to be increased based on the "fact of conviction" alone.81 The majority concluded that the statute's failure to expressly provide a means of challenging such convictions suggested that Congress did not wish collateral attacks to be available.82

Custis argued that even absent express statutory authorization, defendants have an implied right under § 924(e) to challenge the constitutionality of prior convictions.83 The Court rejected that argument, citing a portion of the Gun Control Act of 1968,84 of which the ACCA is a part, as illustrative of legislative intent: "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 be considered a conviction for purposes of this chapter."85 The Court concluded that the express statutory mention of convictions which were 'set aside' created the negative implication that all convictions that had not been set aside may be used to increase sentences under the ACCA.86

In support of its conclusion, the Court pointed to other statutes enacted by Congress which contain sentence enhancement provisions and which expressly allow repeat offenders to challenge prior convictions.87 The existence of statutes which

(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 . . . .

See supra, note 43, wherein the statutory language is reproduced.
81. Custis, 114 S. Ct. at 1736.
82. Id.
83. Id.
84. Id.; see 18 U.S.C. § 921(a)(20).
85. Id. (citing 18 U.S.C. § 921 (a)(20)).
86. Custis, 114 S. Ct. at 1736 (emphasis added).
87. Id. (citing 21 U.S.C. § 851(c) as an example). Section 851(c) is a part of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and states in relevant part:
allow such challenges at the time of sentencing convinced the Court that Congress was capable of incorporating similar provisions into the ACCA, had it desired to do so. The Court viewed the absence of such language in the ACCA as indicative of a conscious legislative intent to prohibit collateral attacks on prior convictions.

2. Ineffective Counsel versus Absence of Counsel

Custis argued that regardless of whether the ACCA permitted attacks to prior convictions, the Constitution required that they be allowed. Custis cited *Burgett v. Texas* and *United States v. Tucker* to support his right to challenge constitutionally infirm predicate convictions. In *Burgett* the defendant was charged with assault with intent to murder. The prosecution offered evidence of prior felony convictions which, if proved, would have rendered the defendant subject to life imprisonment for the current offense. The trial judge acknowledged that one of the prior state court convictions had been obtained without the defendant having legal counsel, and the court instructed the jury to disregard testimony relat-

(1) If 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 . . . .

(2) 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 . . . .


89. Id.
91. 389 U.S. 109 (1967) (introduction of constitutionally infirm prior conviction was inherently prejudicial; use of such a conviction to enhance punishment for another offense would allow an unconstitutional procedure to injure a defendant twice).
92. 404 U.S. 443 (1972) (affirmed appellate court decision remanding case for reconsideration of defendant's sentence because district court considered unconstitutional prior convictions when determining that sentence).
95. Id. at 111.
96. Id. at 112.
ed to that prior unconstitutional conviction. The defendant was subsequently convicted of the assault charge but the United States Supreme Court reversed the conviction, holding that evidence of an unconstitutional prior conviction is inherently prejudicial, and instructions to disregard such testimony do not adequately protect the defendant.

In *Tucker*, the defendant was convicted of armed robbery. The trial judge explicitly considered the defendant's prior felony convictions when imposing the maximum sentence of twenty-five years. Two of the defendant's prior felony convictions were later determined to have been obtained without counsel, rendering them constitutionally invalid. The case was, therefore, remanded for resentencing.

The Court distinguished both *Burgett* and *Tucker* from *Custis* case, however, stating that the finding of unconstitutionality in both of the earlier cases was limited to violations based on the holding in *Gideon v. Wainwright*. *Gideon* held that indigent defendants in state court proceedings were entitled to state-appointed counsel and the lack thereof rendered any resulting conviction unconstitutional. The Court held that a complete absence of counsel is a "unique constitutional defect" and thus has much greater significance than a claim of inadequate counsel. By interpreting *Burgett* and *Tucker* as relevant only in absence of counsel cases, the Court precluded

---

97. *Id.* at 112.
98. *Id.* at 110.
101. *Id.* at 444.
102. *Id.* at 444-45. The Superior Court of Alameda County, California held in a collateral proceeding that defendant's 1938 burglary conviction in Florida and his 1946 burglary conviction in Louisiana were obtained without defendant having the assistance of counsel. *See* *In re Tucker*, 409 P.2d 921 (Super. Ct. Cal. 1966).
104. *Id.* at 446.
106. *Gideon*, 372 U.S. at 339-40 (overruling *Betts* v. *Brady*, 316 U.S. 455 (1942), which held that the Sixth Amendment right to counsel for indigent defendants was not applicable to the States by the Due Process Clause without a showing of special circumstances).
107. *See* *Custis*, 114 S. Ct. at 1738.
their application to Custis' case.

The Court cited Johnson v. Zerbst\(^{108}\) to support its conclusion that convictions obtained without counsel for defendant are unique, and not applicable to Custis' case.\(^{109}\) The Court held in Johnson that failure to appoint counsel not only violated the Sixth Amendment,\(^{110}\) but gave the defendant the right to collaterally attack his conviction via federal habeas corpus review.\(^{111}\) Prior to the Johnson decision, habeas review was available to collaterally attack a conviction only when the forum court lacked jurisdiction.\(^{112}\) The Court effectively decided in Johnson that absence of counsel rose to the level of a jurisdictional defect, and that a "conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus."\(^{113}\)

The Court explained that its decisions, beginning with Johnson over fifty years ago, and extending through the more recent Burgett and Tucker opinions, illustrated that a conviction obtained when the defendant was without counsel is unconstitutional by virtue of a jurisdictional defect.\(^{114}\) The Court believed that those cases illustrated that absence of counsel cases have historically been viewed differently than cases flawed by other constitutional violations.\(^{115}\) The Court found no such historical evidence of unique treatment for convictions that resulted from ineffective assistance of counsel or an uninformed guilty plea, and concluded that they did not suffer from

\(^{108}\) 304 U.S. 458 (1938).
\(^{109}\) Custis, 114 S. Ct. at 1738.
\(^{110}\) U.S. CONST. amend. VI. The Sixth amendment provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process in obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

\(^{111}\) Custis, 114 S. Ct. at 1737 (citing Johnson, 304 U.S. 458).
\(^{112}\) Id. (citing Moore v. Dempsey, 261 U.S. 88 (1923)).
\(^{113}\) Id. at 1737 (quoting Johnson, 304 U.S. at 468) (quotation omitted).
\(^{114}\) Id. at 1738.
\(^{115}\) See id.
the same jurisdictional flaw. Accordingly, it held that convictions marred by constitutional flaws other than absence of counsel are not subject to collateral attack during sentencing under the ACCA.

The Court cited ease of administration as additional justification for the distinction drawn between ineffective counsel and absence of counsel. While the absence of counsel would be evident from the judgment roll, an attorney's effectiveness or the voluntariness of a defendant's guilty plea is not readily determinable and may require examination of transcripts from the prior trials. The Court expressed reluctance at requiring sentencing courts to examine state court transcripts that may be difficult to obtain or nonexistent.

The Court further supported its conclusion by expressing its concern with the finality of judgments. Quoting its prior opinion in United States v. Addonizio, the Court cautioned that "[i]nroads on the concept of finality tend to undermine confidence in the integrity of our procedures." The Court was particularly concerned with the finality of judgments in cases in which the defendant pleaded guilty, as Custis did to the charges leading to his prior convictions. The Court was reluctant to create new avenues through which to attack convictions obtained by guilty pleas because the vast majority of criminal convictions are the result of guilty pleas.

117. See id.
118. Id. at 1738-39.
119. Id. at 1738.
120. Id.
122. Id. at 1739.
123. 442 U.S. 178 (1979). Addonizio, former Mayor of Newark, New Jersey, was convicted of conspiracy and sixty-three separate counts of extortion while in office. Id. at 180 n.2. When modifications in the policies of the United States Parole Commission resulted in Addonizio serving a longer sentence than that anticipated by the sentencing judge, Addonizio appealed, asserting that his sentence was contrary to the judge's intent. Id. at 180-82. The Supreme Court denied his right to collaterally attack his sentence, citing as partial justification for its holding, its concern with the finality of judgments. Id. at 184-87.
124. Custis, 114 S. Ct. at 1739 (quoting Addonizio, 442 U.S. at 184 n.11) (alteration in original) (quotation omitted).
125. Id.
126. See id. at 1739; see also United States v. Timmreck, 441 U.S. 780, 784
3. **Availability of Habeas Review**

The Court recognized that a defendant who is "in custody" for prior convictions during sentencing under the ACCA, is free to challenge the prior convictions directly in the jurisdiction in which he was convicted or through federal habeas review. Once a sentence has expired, however, the defendant is no longer in custody for that conviction and habeas review is unavailable. The possibility that a defendant's prior conviction will be used to enhance the sentence imposed for a subsequent conviction does not renew his status as "in custody" for the prior conviction.

The Court stated that because Custis was still in custody for his prior convictions at the time of his sentencing under the ACCA, he was free to seek habeas review of those earlier convictions. The Court also stated that if Custis successfully attacked the constitutionality of any of the prior convictions, he could apply to have his sentence under the ACCA reopened.

---

127. See Maleng v. Cook, 490 U.S. 488 (1989). Maleng defined "in custody" to include the period of time before a sentence is fully expired, even though the prisoner has been released from physical confinement. Id. at 491-92. A prisoner released on parole is thus viewed as remaining in custody for purposes of habeas review. Id.

128. Custis, 114 S. Ct. at 1739; see also Maleng, 490 U.S. at 490-91 (referring to 21 U.S.C. § 2241(c)(3) to define the relevant circumstances under which a court may grant a writ of habeas corpus: (c) The writ of habeas corpus shall not extend to a prisoner unless—(3) He is in custody in violation of the Constitution or laws or treaties of the United States . . . ).

129. See Maleng, 490 U.S. at 492 (holding that once a prisoner's sentence has completely expired, the possibility that the prior conviction will be used to enhance the sentence for a subsequent conviction is not sufficient to render an individual "in custody").

130. See id.

131. Neither the Supreme Court opinion (Custis, 114 S. Ct. 1732 (1994)) nor the opinions below (Custis, 786 F. Supp 533 (1992), Custis, 988 F.2d 1355 (1993)) explain why Custis remained "in custody" at the time of his sentencing. The Supreme Court opinion stated that Custis may directly attack his state court convictions "in Maryland." Custis, 114 S. Ct. at 1739. As Custis was not physically imprisoned for prior convictions at the time of his ACCA sentencing, it can be inferred that he was on parole for one of the prior convictions in Maryland. This would account for his status as "in custody" at the time of his ACCA sentencing.


133. Id.
4. **Summary of Majority’s Holding**

To summarize, the majority concluded that the ACCA as written does not expressly provide a defendant with the right to collaterally attack a prior conviction used to enhance the sentence imposed under that statute. The Court recognized that convictions obtained without the defendant having legal counsel suffer from a constitutional flaw that has historically been regarded as unique, and that those convictions rise to the level of a jurisdictional defect. Accordingly, those convictions should not be used to enhance the sentence imposed for a subsequent conviction, and may be collaterally attacked. However, convictions which are alleged to be unconstitutional by virtue of inadequate assistance of counsel or an uninformed guilty plea are not flawed to the same degree as convictions marred by absence of counsel. The Court, therefore, reasoned that those convictions must be attacked directly in the rendering forum or through federal habeas corpus review. Because Custis’ allegations of constitutional error were based on ineffective assistance of counsel and an uninformed guilty plea, the Court held that they were not subject to review in the federal sentencing forum. The Court acknowledged that because Custis was in custody for his prior felony convictions at the time of his sentencing under the ACCA, habeas review remained available to him.

B. **DISSENTING OPINION**

1. **Conflicting Decisions From Other Circuits**

The dissent began by noting that with the single exception of the Fourth Circuit holding below, United States

---

135. Id. at 1736-38.
136. Id.
137. Id.
138. Id. at 1739.
139. Custis, 114 S. Ct at 1739.
140. Id.
Courts of Appeals had consistently interpreted the ACCA as allowing sentence enhancement based on prior "lawful" convictions, and have allowed defendants to demonstrate at sentencing that prior convictions were unlawfully obtained.\textsuperscript{143} Constitutional challenges to prior convictions have been based on absence of counsel, which the majority concurs is permissible, but also on ineffective assistance of counsel,\textsuperscript{144} and an unknowing or involuntary guilty plea;\textsuperscript{145} the same constitutional infirmities Custis claimed.\textsuperscript{146}

The dissent observed that despite the numerous appellate decisions which allowed collateral challenges to convictions which were rendered unconstitutional by flaws other than absence of counsel, Congress has not amended the ACCA to expressly prohibit such challenges.\textsuperscript{147} The dissent pointed out that Congress has amended the language of § 924 several times\textsuperscript{148} but left the relevant portion of the ACCA unchanged.\textsuperscript{149} The dissent reasoned that Congress' failure to express legislative disagreement with the appellate holdings cited above was a clear indication of approval.\textsuperscript{150} Thus, the dissent concluded that Congress must have intended to allow challenges for constitutional flaws other than absence of counsel.\textsuperscript{151} The dissent found support for its conclusion in \textit{Herman \& MacLean v. Huddleston},\textsuperscript{152} in which the Court said, "[i]n light of [a] well established judicial interpretation [of a statutory provision], Congress' decision to leave [the provision] intact suggests that Congress ratified the interpretation."\textsuperscript{153}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{143} Custis v. United States, 114 S. Ct 1732, 1739-40 (1994).
\item \textsuperscript{144} See, e.g., United States v. Preston, 910 F.2d 81, 87-89 (3d Cir. 1990); United States v. Clawson, 831 F.2d 909, 914-15 (9th Cir. 1987).
\item \textsuperscript{145} See, e.g., United States v. Wicks, 995 F.2d 964, 978 (10th Cir. 1993); United States v. Paleo, 967 F.2d 7, 11 (1st Cir. 1992); United States v. Ruo, 943 F.2d 1274, 1276-77 (11th Cir. 1991); United States v. Gallman, 907 F.2d 639 (7th Cir. 1990); United States v. Taylor, 882 F.2d 1018, 1031 (6th Cir. 1989).
\item \textsuperscript{146} Custis, 114 S. Ct. at 1734.
\item \textsuperscript{147} Custis, 114 S. Ct. at 1740-41.
\item \textsuperscript{148} See 18 U.S.C. § 924 (1988) (listing amendments following the text of the code).
\item \textsuperscript{149} Custis, 114 S. Ct. at 1740.
\item \textsuperscript{150} Id.
\item \textsuperscript{151} Id.
\item \textsuperscript{152} 459 U.S. 375, 385-86 (1983).
\item \textsuperscript{153} Custis, 114 S. Ct. at 1741 (quoting Herman \& MacLean v. Huddleston, 459 U.S. 375, 385-86 (1983)) (alteration in original) (quotation omitted).
\end{itemize}
\end{footnotesize}
2. Misreading of Burgett and Tucker Cases

The dissent criticized the majority's interpretation of the Burgett and Tucker opinions as overly narrow. The majority concluded that the right recognized in those cases to collaterally attack prior sentences was limited to the right to have counsel present. The dissent asserted that Burgett and Tucker were better read as embodying the broader principle that a sentence may not be enhanced by a conviction the defendant can show was obtained in violation of any constitutional right. The dissent found support for its interpretation of Burgett and Tucker in appellate opinions that "consistently read [Burgett and Tucker] as requiring courts to entertain claims that prior convictions relied on for enhancement were unconstitutional for reasons other than Gideon violations." Two of the cases the dissent cited involved the same constitutional errors that Custis alleged were present in his prior convictions: unknowing or involuntary guilty plea (United States v. Martinez) and ineffective assistance of counsel (Brown v. United States).

In Brown, the defendant was convicted of interstate transportation of forged securities. He alleged that his sentence was improperly enhanced because of prior unconstitutional state court convictions. Defendant averred that the guilty

---

157. Id. at 1738.
158. See id.
159. Id. at 1740 & n.3 (citing the following cases, which allowed collateral attack for reasons other than absence of counsel: United States v. Mancusi, 442 F.2d 561 (2d Cir. 1971) (confrontation clause); Jefferson v. United States, 488 F.2d 391, 393 (5th Cir. 1974) (self-incrimination); United States v. Martinez, 413 F.2d 61 (7th Cir. 1969) (unknowing and involuntary guilty plea); Taylor v. United States, 472 F.2d 1178, 1179-80 (8th Cir. 1973) (self-incrimination); Brown v. United States, 610 F.2d 672, 674-75 (9th Cir. 1980) (ineffective assistance of counsel); Martinez v. United States, 464 F.2d 1289 (10th Cir. 1972) (self-incrimination)).
160. See United States v. Martinez, 413 F.2d 61 (7th Cir. 1969) (unknowing and involuntary guilty plea).
161. See Brown v. United States, 610 F.2d 672, 674-75 (9th Cir. 1980) (ineffective assistance of counsel).
162. Id. at 674.
163. Id.
plea in one of those convictions resulted from police threats and coercion and that his attorney improperly disregarded those circumstances.\textsuperscript{164} The Ninth Circuit acknowledged the potential ineffective counsel issue and remanded the case for reconsideration of the defendant's sentence,\textsuperscript{165} stating that "it is clear that the right to the assistance of counsel and the right to effective assistance of counsel are constitutional equivalents.\textsuperscript{166}

The Seventh Circuit addressed the issue of an unknowing or involuntary guilty plea in \textit{Martinez}.\textsuperscript{167} \textit{Martinez} was convicted of a narcotics violation and his sentence was increased because of a prior narcotics conviction.\textsuperscript{168} Defendant alleged that his guilty plea in the previous conviction was uninformed.\textsuperscript{169} Based on the defendant's potentially uninformed guilty plea, the Seventh Circuit reversed the district court opinion denying \textit{Martinez} the right to challenge his prior conviction, and remanded the case to determine the validity of the prior conviction.\textsuperscript{170} The court rejected the argument that the validity of the prior conviction would be difficult to determine, stating that "[i]f the district court has the power to strike invalid prior convictions, it is only fundamental that the same court with its inherent fact finding power and incidental power to conduct hearings can determine which prior convictions are invalid."\textsuperscript{171}

The dissent further supported its contention that the \textit{Burgett} and \textit{Tucker} holdings were not intended to be limited to absence of counsel cases by quoting text from both opinions: "a sentence may not be founded [even] in part upon misinforma-
tion of constitutional magnitude,\footnote{Custis, 114 S. Ct. at 1743 (citing United States v. Tucker, 404 U.S. 443, 447 (1972)).} because to do so would be to allow the underlying right to be denied anew and to suffer serious erosion.\footnote{Custis, 114 S. Ct. at 1743 (citing Burgett v. Texas, 389 U.S. 109, 116 (1967)) (quotation omitted).} The dissent explained that the \textit{Burgett} and \textit{Tucker} courts referred to \textit{Gideon}\footnote{See \textit{Gideon v. Wainwright}, 372 U.S. 335 (1963) (holding that indigent defendants in state court criminal trials must have counsel appointed for them).} because the right to be represented by counsel, as established in \textit{Gideon}, was the specific right at issue in those cases.\footnote{Custis, 114 S. Ct. 1743.} The \textit{Burgett} and \textit{Tucker} courts' discussions of \textit{Gideon} were not intended to limit permissible collateral attacks to the specific constitutional violation suffered by Mr. Gideon, but were intended to be "illustrative of the limitations the Constitution places on state criminal procedures."\footnote{Id. (quoting Burgett, 389 U.S. at 114) (quotation omitted).}

Moreover, the dissent saw no adequate justification for the distinction the majority drew between absence of counsel, a flaw which can be collaterally attacked, and ineffective assistance of counsel, which cannot be collaterally attacked.\footnote{Id. at 1744.} The dissent asserted that the Sixth Amendment's\footnote{See supra note 110, in which the language of the Sixth Amendment to the U.S. Constitution is reproduced.} guarantee of assistance of counsel is not a mere formality, and compliance is not ensured simply by having an attorney present at trial, because "the right to counsel is the right to the effective assistance of counsel."\footnote{Id. at 1744.} The dissent further argued that a conviction marred by an uninformed or involuntary guilty plea merits no more consideration for purposes of sentence enhancement than do convictions obtained without counsel.\footnote{See \textit{id.} (comparing the right to be represented by counsel to the Sixth Amendment rights to a jury trial and to confront adverse witnesses; both of which are impermissibly forfeited by a defendant who unknowingly or unwillingly pleads guilty).} In both instances, defendants are deprived of rights guaranteed by the Sixth Amendment.\footnote{Id. (comparing the right to be represented by counsel to the Sixth Amendment rights to a jury trial and to confront adverse witnesses; both of which are impermissibly forfeited by a defendant who unknowingly or unwillingly pleads guilty).}
3. **Statutory Interpretation**

The dissent also criticized the majority's conclusion that the absence of express statutory language permitting collateral attacks was an intentional omission. The dissent cautioned that the maxim *expressio unius est exclusio alterius* is a flawed assumption when applied to the interpretation of statutes and that all legislative omissions are not necessarily deliberate. The dissent further questioned the majority's logic by pointing out that Congress was equally capable of expressly precluding collateral attacks, yet chose to omit that language from the statute as well.

4. **Ease of Administration**

Finally, the dissent questioned the "ease of administration" that the majority contended would result from disallowing collateral attacks. The dissent argued that collateral attacks on prior convictions used to enhance sentences under the ACCA have been taking place in federal courts for nearly a decade, and at no time has any action been taken to relieve the judicial burden anticipated by the majority. The dissent also pointed out that the burden of locating the necessary state court records, which the majority feared may be difficult to obtain, will fall on the defendant rather than the sentencing court. Lastly, the dissent contended that collateral attacks

---

184. Custis, 114 S. Ct. at 1741 (citing Posner, *Statutory Interpretation in the Classroom and in the Courtroom*, 50 U. CHI. L. REV. 800, 813 (1983); and Radin, *Statutory Interpretation*, 43 HARV. L. REV. 863, 873-74 (1930)). Both articles cautioned that the legislature is not omniscient, and therefore, it is unwise to assume that all omissions are deliberate.
185. Id. at 1742.
187. Id. at 1746, 1740 n.2; see also supra notes 75 & 76 and accompanying text, wherein several appellate cases are listed in which collateral attacks were allowed. The earliest of those cases was United States v. Clawson, 831 F.2d 909, 914-15 (9th Cir. 1987), in which the Ninth Circuit allowed a collateral challenge to a conviction enhanced under 18 U.S.C. § 1202(a)(1), the predecessor of section 924(e). See supra notes 36-59 and accompanying text.
188. See Custis, 114 S. Ct. at 1746.
189. Id. (*"[N]o one disagrees that the burden of showing the invalidity of prior*
during sentencing may in fact increase judicial efficiency.\(^{190}\) Because the option of federal habeas review is open to a defendant seeking to challenge a prior conviction,\(^{191}\) allowing that challenge to be heard at the time of sentencing would eliminate the need to evaluate a habeas review at a later date in another proceeding.\(^{192}\)

VI. CRITIQUE

As the dissent persuasively argued, the absence of an express provision in the Armed Career Criminal Act allowing collateral attacks to prior sentences is far from an express prohibition of collateral attacks.\(^{193}\) If an inference regarding legislative intent is to be drawn from a blank slate, the more compelling conclusion is that reached by the dissent: Congress did not intend to foreclose collateral review of convictions used to enhance sentences under the ACCA.\(^{194}\) Congress failed to amend the ACCA, despite the fact that courts in at least eight circuits have interpreted it as allowing collateral attacks based on a variety of constitutional infirmities.\(^{195}\) This fact strongly supports the dissent's conclusion that Congressional intent was not misinterpreted by the appellate courts which allowed collateral review.\(^{196}\)

Also tenuous is the majority's distinction between a defendant deprived of counsel and a defendant who suffered ineffective assistance counsel.\(^{197}\) The Court has long recognized the constitutional requirement\(^{198}\) that defendants have the assis-

\(^{190}\) Id. at 1746-47.

\(^{191}\) Habeas review will remain open to the defendant as long as he remains in custody for that conviction. See supra notes 127 & 128.

\(^{192}\) See Custis, 114 S. Ct. at 1746-47.


\(^{194}\) See id.

\(^{195}\) See id. at 1739-40 ("Courts of Appeals . . . (with the one exception of the court below) have understood "conviction[n]" in the ACCA to mean "lawful conviction," and have permitted defendants to show at sentencing that a prior conviction offered for enhancement was unconstitutionally obtained . . . ").

\(^{196}\) See id.

\(^{197}\) See id. at 1737-38.

\(^{198}\) U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence.").
tance of counsel. In Strickland v. Washington, the Court further defined the protection mandated by the Constitution to include the assistance of effective counsel. The Court declared in Strickland, "[t]hat a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command." In Custis, however, the Court prohibited a defendant from showing that ineffective assistance of counsel prejudiced a conviction, despite the fact that the prejudiced conviction would be used to dramatically increase the defendant's prison sentence. Reconciling Custis with Strickland is difficult: Strickland would make void a conviction obtained without effective assistance of counsel, but Custis would allow that same unappealed conviction to be used against a defendant for sentencing purposes.

The Custis prohibition against collateral challenges yields similar anomalous results when applied to other constitutional violations. For instance, Boykin v. Alabama held that it was plain error to accept an involuntary or uninformed guilty plea and a conviction resulting from such a plea was void. Yet, despite the Court's recognition that such a plea renders the resulting conviction unreliable, it authorizes the use of such convictions to increase prison sentences under the ACCA. Convictions obtained under any of these circumstances are flawed and potentially erroneous, and as such, they should not be used to increase prison terms for subsequent convictions.

199. See, e.g., Johnson v. Zerbst, 304 U.S. 458 (1938) (Sixth Amendment entitles criminal defendants to assistance of counsel); Gideon v. Wainwright, 372 U.S. 335 (1963) (fundamental right to assistance of counsel applicable to state courts by Fourteenth Amendment).
201. Id. at 685.
203. Custis was sentenced under the ACCA to nearly twenty years; absent the application of the ACCA sentence enhancement provisions, his sentence would have been approximately three years. See supra note 35.
205. Id. at 242 (trial judge erred when he accepted Boykin's guilty plea without ascertaining whether it was voluntary and informed; the Court reversed Boykin's conviction).
Why then, does the Court permit potentially flawed convictions to be used against defendants for sentencing purposes? The answer appears to lie with the Court’s concern with ease of administration and finality of judgments.

The chief distinction between reviewable and non-reviewable constitutional claims appears to be their relative “ease of administration.” If the flaw rendering a prior conviction invalid is readily apparent from the transcript of the rendering court, as would be the absence of counsel, the majority is willing to allow that defect to be challenged during sentencing. However, if the sentencing court is required to assess the merits of a less obvious violation, the Court appears willing to forego constitutional protection. Presumably, this concern with ease of administration stems from increasingly overcrowded court dockets.

The majority also cited finality of judgments as a major policy reason supporting its decision. However, even if ensuring the finality of judgments is sufficiently important to warrant denying defendants the right to challenge some constitutionally infirm prior convictions, the Custis decision is unlikely to achieve that goal. Many defendants do not currently appeal their convictions because they may be nearing release or may be unable to afford the cost of an appeal. However, when the consequence of an unappealed prior unconstitutional conviction may be life imprisonment through sentence enhancement, defendants are likely to pursue every available form of post-conviction review. “Thus, in the interest of finality, the government’s position will create an in-

207. See id.
208. See id.
211. See David Cole, Criminals Called Out Before Finishing Their Chance At Bat, CONN. L. TRIB., Mar. 28, 1994, at 18. Mr. Cole’s article focuses on the effect the then-impending Supreme Court opinion in Custis would have on the general type of legislation referred to as “three strikes” laws.
212. See id.
213. See id.
centive for an unending stream of post-conviction proceedings that would otherwise never occur."214

The limits the Court placed on collateral review of prior convictions in *Custis* are analogous to the steps the Court has taken over the past several years to curtail access to habeas corpus review.215

Over the past fifteen years, virtually every Term of the Supreme Court has brought new and substantial limits on the availability of federal habeas corpus. On the procedural side, the Court has foreclosed relief, with narrow exceptions, to state prisoners who have failed to preserve their claims in state court, lost on the merits of their claims in prior federal petitions, or failed to raise issues that could have been raised in prior filings. On the substantive side, the Court has withdrawn habeas review of Fourth Amendment exclusionary-rule claims that have been (or could have been) fully litigated in state court and sharply limited the retroactive application of "new" constitutional decisions.216

In 1989, in *Teague v. Lane*,217 the Court so limited access to habeas review that some commentators believed the decision "sounded the death knell of habeas corpus as a vehicle for the protection of defendants' rights."218 The Court held in a plurality opinion that "new rules"219 would not be applicable to cases pending on habeas corpus review unless those rules fit

214. *Id.*


216. *Id.* at 303-04 (footnotes omitted).

217. *See Teague v. Lane*, 489 U.S. 288 (1989). The *Teague* Court held that new rules could not be applied retroactively to benefit petitioners seeking habeas review. *Id.* at 305-10. Thus, petitioners were precluded from benefiting from new rules that would have changed the results of the petitioners' trials, had the new rules been in effect at the time the petitioner was tried. *Id.* at 311-15.


219. Justice O'Connor explained that "a case defines a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final." *Teague*, 489 U.S. at 301.
into two narrow exceptions. Some of the critics of the Court's decision in *Teague* concluded that the Court was placing its concern with the finality of judgments above its concern for constitutional protection of criminal defendants: "While the interests of finality are all well and good, it is a troubling rule indeed which permits one person to be executed and another to stay alive simply because of the date on which a petition for certiorari to the United States Supreme Court is denied." Another author concluded that "[b]y placing too high a value on the finality of state court convictions, the Court has forgotten what had once been the central issue of federal habeas corpus – whether or not a prisoner's conviction is constitutional.

The steps the Court has taken to minimize the role of habeas review are tailored to significantly reduce the avenues of post-conviction relief available to criminal defendants. Similarly, the Court is attempting in the *Custis* decision to achieve finality in judgments by restricting the challenges that a defendant may bring against prior convictions in a collateral forum. The same criticisms made against the reduced availability of habeas review are valid criticisms of the *Custis* decision – the Court is striving to solve logistical problems at the expense of constitutional protection.

If, in fact, the Court is attempting to curtail opportunities

---

220. *Id.* at 305-10. The first exception was for rules that "place, as a matter of constitutional interpretation, certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe" (quoting Justice Harlan in *Mackey v. United States*, 401 U.S. 667, 692 (1971)). The second exception applied only to new procedural rules that were "implicit in the concept of ordered liberty" (quoting Justice Cardozo in *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)). Unless a new rule of criminal procedure fit into one of those two exceptions, the rule would not be applied retroactively to benefit a prisoner seeking habeas review.


for post-conviction relief for criminal defendants that it perceives as excessive, it should address that issue more candidly than it did in *Custis*. While the majority opinion mentions briefly the issues of finality of judgments and ease of administration, it does not identify these issues as primary concerns. Instead the Court shrouds its holding in a lengthy discussion of legislative intent and statutory interpretation of the ACCA.

VII. CONCLUSION

By interpreting the Armed Career Criminal Act in the restrictive manner that it has, the Supreme Court has virtually guaranteed that some defendants' sentences will be increased based on prior unconstitutional convictions. The Supreme Court has interpreted the United States Constitution as prohibiting convictions which result from ineffective counsel224 or from unknowing or involuntary guilty pleas226. Yet, the Court is quite willing to allow prison sentences to be increased based on convictions marred by those errors.

Despite the Court's asserted interpretation of the ACCA, its purpose in *Custis* is not effecting the mandate of the legislature; its true policy is one of expedience. Just as availability of habeas review has been significantly limited in recent years,226 the Court is attempting in *Custis* to curtail what it perceives as excessive opportunity for judicial delay through collateral challenges to prior convictions.

By precluding collateral challenges to prior convictions, the Court effectively declares that significant constitutional protection is unavailable in the sentencing forum. If the Court intends to limit the protection guaranteed by the United States Constitution in the pursuit of expediency, it should at the very least achieve that result. The *Custis* decision appears more likely to result in a greater number of appeals and fewer guilty

226. See generally *Streiker*, supra note 215.
pleas, thus exacerbating the very problem the Court sought to remedy.

* Golden Gate University School of Law, Class of 1996. The author wishes to extend sincere thanks to Brian Albee and Sally Butros Strike for their invaluable assistance in the completion of this note.