No. 16-199

In the Supreme Court of the United States

JAMES R. DENELSBECK,

***Petitioner*,**

v.

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner had a Sixth Amendment right to a jury trial for a fourth driving-while-intoxicated offense, where the maximum period of incarceration was 180 days and the total criminal and civil fines, fees, and assessments were $5931.

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STATEMENT OF THE CASE

Petitioner was charged in New Jersey municipal court with his fourth driving-while-intoxicated (DWI) offense, careless driving, and failure to observe a traffic signal. Pet. App. B at 67a-68a. Defense counsel requested a jury trial. Pet. App. B at 68a. The municipal prosecutor advised that the State would not seek more than 180 days incarceration if petitioner were convicted of all charges. *Id.* The municipal judge denied petitioner's motion for a trial by jury. *Id.* A bench trial ensued. *Id.*

After the bench trial, petitioner was found guilty of DWI and failure to observe a traffic signal, and acquitted of careless driving. *Id.* He was sentenced to 180 days in jail, a ten-year driver's license suspension, a $1006 fine, $33 in court costs, a $50 Victims of Crime Compensation Board penalty, a $100 DWI surcharge, a $100 Drunk Driving Enforcement Fund surcharge, a $100 Alcohol Education, Rehabilitation and Enforcement Fund fee, a $75 Safe Neighborhoods Services Fund assessment, twelve hours attendance at Intoxicated Driver Resource Center, and a two-year ignition-interlock period following restoration of his license.[1] *Id.* Additionally, petitioner is subject to a $1500 per year insurance surcharge for three years that is applicable to third and subsequent DWI offenses.

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[1] N.J. Stat. Ann. 39:4-50(a)(3) (jail); N.J. Stat. Ann. 39:4-50(a)(3) (license suspension); N.J. Stat. Ann. 39:5-41(d)-(h) (fine); N.J. Stat. Ann. 22A:3-4 (court costs); N.J. Stat. Ann. 2C:43-3.1 (a)(2)(c) (VCCB); N.J. Stat. Ann. 39:4-50(i) (DWI assessment); N.J. Stat. Ann. 39:4-50.8 (DDEF); N.J. Stat. Ann. 39:4-50(b)(Alcohol Education); N.J. Stat. Ann. 2C:43-3.2(a)(1) (Safe Neighborhoods); N.J. Stat. Ann. 39:4-50(b) (IDRC); N.J. Stat. Ann. 17:29A-35(b)(2)(b) (interlock).

Petitioner appealed his convictions to the Law Division and renewed the argument that he was entitled to a jury trial. *Id.* After a de novo trial, the Law Division rejected petitioner's claim that he was entitled to a jury trial and found him guilty. *Id.* The same sentence was imposed. *Id.*

Petitioner filed a notice of appeal and raised the sole issue of whether he was entitled to a trial by jury. *Id.* The Appellate Division rejected petitioner's arguments and affirmed his convictions and sentence. *Id.*

The New Jersey Supreme Court affirmed the Appellate Division's ruling that petitioner was not entitled to a jury trial by a vote of 5-1. Pet. App. A at 1a-66a.

The New Jersey Supreme Court stated that the test for whether an offense is "serious," and therefore entitled the defendant to a jury trial, was set forth in *Blanton v. North Las Vegas*, 489 U.S. 538 (1989). The court concluded that the first part of the test — which holds that any offense for which more than six months' imprisonment is imposed is serious — was not met here because the Legislature has never impose more than six months' imprisonment for third and subsequent DWI offenses. The court next found that the second part of the *Blanton* inquiry — which asks whether this is the "rare situation" where a legislature's imposition of additional penalties makes an offense serious even if fewer than six months' imprisonment is imposed — was also not met. The New Jersey Supreme Court considered the monetary penalties associated with third and subsequent DWI offenses and found that the related fines, fees, penalties, and assessments are not so onerous, when viewed in conjunction with the 180-day period of incarceration, that they "clearly reflect a legislative

determination that the offense in question is a 'serious' one." *Blanton*, 489 U.S. at 544.

While the fees, fines, and assessments upon a third or subsequent DWI conviction total $5931, the New Jersey Supreme Court only considered $1050 to be criminal penalties. Pet. App. A at 25a-26a. The court then noted that $1050 would constitute a "petty" fee under *Blanton*, which cited $5000 as the amount associated with federal "petty" offenses. *Id.* The court rejected any suggestion that total monetary payments over $5000 make a crime with a six month sentence a serious one, reasoning that such a rule ignores the nature and context of the monetary payments and does not account for inflation. Pet. App. A at 26a-27a. Indeed, observed the court, the remaining associated fees are "civil penalties 'are not the penalties associated with crimes.'" Pet. App. A at 26a.

Nor did it matter, held the New Jersey Supreme Court, that a DWI offender might face potential additional jail time for failing to meet obligations arising from their conviction. Pet. App. A at 21a-22a. That would be a sanction for a *different* offense. Next, the court concluded that the ten-year license suspension did not convert the offense into a "serious" one because it is not new and "'does not in any sense reflect a significant escalation of the seriousness with which New Jersey's Legislature regards this offense, but rather a shifting social conclusion about what works best with DWI offenders.'" Pet. App. A at 23a. Finally, the court found the ignition-interlock device — much like the license suspension — to be a temporary burden, and completely avoidable if an offender sells, transfers, or no longer has access to his or her vehicle. Pet. App. A at 24a. All told, held the court, although "any additional direct penalties . . . will render third or subsequent DWI offenses 'serious' offenses for the purposes of triggering the right to a

jury trial," the Legislature has not yet made that crime a serious offense. Pet. App. A at 30a.

ARGUMENT

Petitioner alleges merely that the New Jersey Supreme Court misapplied a properly stated rule of law, a complaint that does not warrant this Court's review. *See* Supreme Court Rule 10 (stating that such petitions are "rarely granted"). Petitioner does not dispute that the New Jersey Supreme Court assessed his claim that his fourth DWI was a serious offense and therefore entitled him to a jury trial by stating and applying the correct test: this Court's two-part standard in *Blanton*, 489 U.S. at 543. He merely disagrees with the court's application of that test. He does not contend that application of the *Blanton* standard arises in a context similar to this one with any frequency. And his does not seriously assert a conflict among the lower courts on the issue. In short, petitioner has not remotely made the case for a grant of certiorari. On top of that, his plea for error correction fails on its own terms: the New Jersey Supreme Court correctly found that petitioner's DWI fines, fees, and assessments were not so onerous as to afford him the right to a jury trial.

1. This Court has held that a Sixth Amendment right to a jury trial only attaches for "serious" crimes, and that "'petty crimes or offenses [ ] [are] not subject to the Sixth Amendment jury trial provision.'" *Blanton*, 489 U.S. at 541 (quoting *Duncan v. Louisiana*, 391 U.S. 145, 159 (1968)). In deciding whether a particular offense should be categorized as "petty," a court must consider two factors. First, the most relevant information is the "severity of the maximum authorized penalty." *Id.* The bright-line rule is that "no offense can be deemed 'petty' for purposes of the right to a trial by jury where imprisonment for more than six months is authorized." *Baldwin v. New York*,

399 U.S. 66, 69 (1970). Second, this Court explained that relevant penalties are not limited "solely to the maximum prison term authorized for a particular offense," and that a "legislature's view of the seriousness of an offense also is reflected in the other penalties it attaches." *Blanton*, 489 U.S. at 542. As such, a defendant facing a prison term of six months or less will be entitled to a jury trial "if he can demonstrate that any additional statutory penalties . . . are so severe that they clearly reflect a legislative determination that the offense in question is a serious one." *Id.* Such a finding will only occur "in the rare situation where the legislature packs an offense it deems serious with onerous penalties that nonetheless do not puncture the 6-month incarceration line." *Id.*

2. The New Jersey Supreme Court properly applied the two-part test here. It first applied the bright-line rule that "no offense can be deemed petty for the purposes of the right to a trial by jury where imprisonment for more than six months is authorized." *Baldwin*, 399 U.S. at 69 (1970). With a maximum period of incarceration of 180 days, the court recognized that third and subsequent DWI offenses in New Jersey are not "serious" offenses for purposes of the Sixth Amendment under that prong of *Blanton*. N.J. Stat. Ann. 39:4-50(a)(3); *see also Frank v. United States*, 395 U.S. 147 (1969) (holding that despite the all-inclusive and sweeping language of the Constitution, it has long been established that there is no right to a jury trial in the prosecution of a petty offense); *Duncan*, 391 U.S. 145 (1968) (drawing a line of demarcation between criminal and petty offenses, with the latter being exempt from the mandate of the Sixth Amendment); *Baldwin*, 399 U.S. 66 (1970) (holding that no offense can be deemed petty for purposes of entitlement to a trial by jury where the authorized punishment is imprisonment for more than six months). While offenders were able previously to serve their 180-day jail sentence through community

service, the mandatory jail provision for third and subsequent DWI offenders has never increased to more than 180 days to trigger the right to a jury trial.

Next, the New Jersey Supreme Court considered the monetary penalties and found that the related fines, fees, penalties, and assessments are not so onerous, when viewed in conjunction with the 180-day period of incarceration, that they "clearly reflect a legislative determination that the offense in question is a 'serious' one." *Blanton*, 489 U.S. at 544. The New Jersey Supreme Court noted that of the several financial penalties assessed upon DWI offenders, there has only been an increase of $251 in criminal penalties since 1990. In total, petitioner's financial penalties amounted to $1050. This constitutes a "petty" fee under *Blanton*, because $5000 is the monetary limit for federal "petty" offenses. *Blanton,* 489 U.S. at 544-45; 18 U.S.C. §19; 18 U.S.C. §3571(b)(6) and (7).

None of petitioner's fines, penalties, surcharges, or loss of driving privileges tipped the balance for drunk driving offenses which "lie near the line." *Duncan*, 391 U.S. at 161. First, the ten-year suspension of driving privileges deprived defendant of a privilege, not a constitutionally protected right. Those who abuse their driving privilege cannot be heard to complain if the privilege is removed for ten years. Civil penalties, such as loss of license, are not part of the sentence for an offense pursuant to N.J. Stat. Ann. 2C:43-2(d), which states that "[t]his chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such judgment or order may be included in the sentence." The State may encumber that privilege with certain conditions, and may impose conditions for non-abuse of the privilege in order to retain it.

In the same vein, the insurance surcharge burdens the driving privilege, but it does not deprive someone of a freedom or right that lies at the heart of the need for a jury trial. Further, failure to pay the insurance surcharge will not result in a jail sentence; rather, failure to pay results in the continued suspension of driving privileges. Also, the installation of the ignition interlock device is not a punitive consequence, but rather a way to prevent further abuse of the driving privilege by preventing operation of the vehicle when the driver is not sober. The New Jersey Supreme Court concluded that these assessments are "'totally unrelated to any legislative intent to 'pack' the DWI offense,'" and that "the collateral consequences attendant to DWI convictions are limited." Pet. App. A at 13a.

3. Petitioner's reliance on the DWI penalty scheme in other states is unavailing because the sanctions for multiple DWI offenses are far more severe than the penalties in New Jersey. Other states "have concluded that DWI is a serious offense requiring jury trial." Pet. App. A at 29a. New Jersey imposes the shortest sentence for multiple DWI offenses. States that impose a sentence longer than six months in prison grant defendants a right to a jury trial as a matter of state law. There is no dispute that if the New Jersey Legislature required a term of imprisonment longer than six months, there would be a right to a jury trial. The fact that some states have decided to provide jury trials under state statute does not create a conflict among the state courts over the meaning of the U.S. Constitution. Even the *Blanton* Court specifically and aptly "decline[d] petitioner's invitation to survey the statutory penalties for drunken driving in other States. The question is not whether other States consider drunk driving a 'serious' offense, but whether Nevada does." *Blanton*, 489 U.S. at 545, n. 11. New Jersey has yet to make drunk driving a "serious" crime, and the Legislature has carefully

balanced the penalties for third and subsequent DWI offenses to reflect this intention.

4. Nor is there a genuine conflict between New Jersey and the federal circuit courts. While petitioner cites to *Richter v. Fairbanks*, 903 F.2d 1202 (8th Cir. 1990), the Eighth Circuit and the New Jersey Supreme Court's application of the *Blanton* standard are entirely consistent.

In *Richter*, the Eighth Circuit applied the *Blanton* standard to Nebraska's DWI statute, noting that a "clear distinction between a petty and serious offense lies in the 'objective indications of the seriousness with which society regards the offense,' and that the most important objective indication is the 'severity of the maximum authorized penalty.'" *Richter*, 903 F.2d at 1204 (quoting *Blanton*, 489 U.S. at 544). In addition to the maximum period of incarceration, the Eighth Circuit also considered "'any additional statutory penalties . . . so severe that they clearly reflect a legislative determination that the offense in question is a 'serious' one.'" *Id.* The Eighth Circuit determined that "adding the 15-year license revocation to the six month prison term resulted in a penalty severe enough to warrant a jury trial[.]" *Id.* at 1205.

The New Jersey Supreme Court's holding here is consistent with the Eighth Circuit's application of *Blanton*. New Jersey held that a ten-year license suspension "is itself a heavy burden" but did not find the loss of such a privilege as sufficient to pierce the line between petty and serious offenses. *State v. Hamm*, 577 A.2d. 1259, 1269 (1990). The court concluded, however, that the Legislature has reached the line in terms of penalties for third and subsequent DWI offenses. Thus, if the New Jersey Legislature were to increase the period of license suspension to more than ten years — for example, to the fifteen-year period at issue in *Richter* — the New Jersey Supreme

Court would likely grant defendants facing such penalties a right to a jury trial. As a result, the decision in *Richter* is consistent with the decision here, as the same test was properly applied in each case.

* * *

The New Jersey Supreme Court has drawn a bright and appropriate line regarding the mandate of a jury trial for third and subsequent DWI offenders. Without equivocation, the court stated that "the Legislature has increased the penalties associated with repeat DWI offenses to the point where any additional direct penalties . . . will render third or subsequent DWI offenses 'serious' for the purpose of triggering the right to a jury trial." Pet. App. A at 30a. As in *Blanton*, the New Jersey Supreme Court here embraced a spectrum of values on a continuum, recognizing that as the DWI system comes closer to the serious-crime line, there is less room for more penalties without triggering the right to a jury trial. New Jersey has not yet crossed that line. That decision — which does not conflict with the decision of any other state courts of last resort or federal courts of appeal — does not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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