

The Supreme Court - June 14, 2021

Today, the Supreme Court of the United States issued the following decisions:

Greer v. United States, Nos. 19-8709, 20-444: Federal statutes criminalize the possession of firearms for individuals in certain categories, such as individuals previously convicted of a felony. In the 2019 case of *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Supreme Court held that, in prosecuting such firearms offenses, the prosecution must not only prove that the individual knew that they possessed a firearm, but also that the individual knew that they were, for example, a felon. Before *Rehaif* was decided, Gregory Greer and Michael Gary were both convicted of felon-in-possession offenses. In Greer's case, the jury convicted him without being instructed that it must find Greer knew he was a felon. And in Gary's case, the judge did not advise Gary that, if he went to trial, a jury would have to find that he knew he was a felon. But neither Greer nor Gary preserved an argument that knowledge of their felon status was required for conviction. Nevertheless, both appealed their convictions, arguing that the errors in their cases were "structural" errors and they were entitled to relief under plain-error review. Today, in an opinion authored by Justice Kavanaugh, the Court unanimously held that *Rehaif* errors are not structural errors that automatically entitle a defendant to relief. Moreover, the Court held, neither Greer nor Gary had made a sufficient showing on appeal that, as is required under plain-error review, the *Rehaif* errors affected their "substantial rights," or in other words, that the outcomes of their proceedings would have been different without the *Rehaif* errors. Justice Sotomayor filed an opinion concurring in part and dissenting in part, arguing that the Court should not have decided in the first instance whether Gary had made a sufficient showing that the error affected his substantial rights.

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Terry v. United States, No. 20-5904: In 1986, Congress passed notoriously disparate penalties for cocaine offenses. The penalties were separated into three levels based upon the amount of cocaine involved in the offense. The first level imposed a mandatory

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minimum of 10 years in prison for offenses involving at least 50 grams of crack cocaine or 5 kilograms of powder cocaine, and the second level imposed a mandatory minimum of 5 years in prison for offenses involving at least 5 grams of crack cocaine or 500 grams of powder cocaine. The third level penalized offenses involving an unspecified amount of either crack or powder cocaine and did not impose mandatory minimums. Soon, the disparate 100:1 ratio between the amount of crack and powder cocaine necessary to trigger the mandatory minimums came under widespread criticism, in large part because black Americans were more likely to be users of crack cocaine and white Americans were more likely to be users of powder cocaine. This criticism was particularly salient in light of other critiques that the extreme 100:1 ratio could not be supported by any rational penal justification. Accordingly, in 2010, Congress passed the Fair Sentencing Act, which reduced the disparities from a 100:1 ratio to an 18:1 ratio by increasing the amount of crack cocaine necessary to trigger the mandatory minimums in first- and second-level offenses. Then, in 2018, Congress passed the First Step Act. The First Step Act allows offenders convicted before the Fair Sentencing Act to seek a reduction of their sentence if they had received a sentence for “a violation of federal statute, the penalties for which were modified” by certain provisions of the Fair Sentencing Act. Today, in an opinion authored by Justice Thomas, the Court unanimously held that offenders sentenced under the third level could not seek a reduced sentence under the First Step Act because the Fair Sentencing Act did not “modif[y]” the penalties for third-level offenses. Justice Sotomayor filed an opinion concurring in part and concurring in the judgment, agreeing with the Court’s interpretation of the First Step Act, but disagreeing with the Court’s “unnecessary, incomplete, and sanitized” description of the history behind the 100:1 ratio.

View the Court's [decision](#).