No. 24-5194

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE HENRY PURDY, III, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner is entitled to plain-error relief on his claim that 18 U.S.C. 922(g)(1), which makes it unlawful for a convicted felon to possess a firearm that has traveled in interstate commerce, violates the Second Amendment.

2. Whether, in determining petitioner's sentence, the district court erred by considering a victim's statements to police that were relayed in the Probation Office's presentence report, where petitioner neither disputed the facts set forth in the report nor presented any rebuttal evidence.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (N.D. Tex.):

United States v. Purdy, No. 22-cr-302 (May 3, 2023)

United States v. Purdy, No. 16-cr-196 (May 3, 2023)

United States Court of Appeals (5th Cir.):

United States v. Purdy, No. 23-10501 (May 1, 2024)

United States v. Purdy, No. 23-10502 (May 1, 2024)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A3) is not published in the Federal Reporter but is available at 2024 WL 1905757. The judgment of the district court (Pet. App. B1-B3) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 1, 2024. The petition for a writ of certiorari was filed on July 26, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted on one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (Supp. IV 2022). Pet. App. B1. He was sentenced to 87 months of imprisonment, to be followed by three years of supervised release. Id. at B2. The court of appeals affirmed. Pet. App. A1-A3.

1. On July 30, 2022, police were dispatched to an apartment in Fort Worth, Texas, in response to reports of a domestic disturbance involving a handgun. C.A. ROA 48; Presentence Investigation Report (PSR) ¶ 8. When police arrived, a woman who referred to petitioner as her boyfriend reported that petitioner had "pointed a pistol at her face during an argument and attempted to shoot her." PSR ¶ 9. Petitioner acknowledged a "verbal dispute," but denied taking any other action. PSR ¶ 10. Officers detained petitioner and, during a safety sweep of the apartment, saw a pistol magazine containing ammunition in the living room. PSR ¶¶ 9-10.

In a follow-up interview, the woman elaborated on the details of the domestic dispute: An argument with petitioner had become physical, and as she attempted to call the police, petitioner had pushed her down and knocked the phone from her hand. PSR ¶ 11. When petitioner briefly left the room, she had hidden petitioner's pistol in her back pocket to keep him from obtaining it. Ibid.

Petitioner, however, had quickly returned and choked her, threatened to shoot her and kill her cat, and demanded the pistol, stating, "[d]on't make me knock you out to get the gun." Ibid. She then gave petitioner the pistol, but only after releasing and concealing the magazine, and pushing two rounds of ammunition from the magazine onto a bed. PSR ¶ 12. Petitioner put the pistol to her head and pulled the trigger. Ibid. When nothing happened, petitioner demanded the magazine and ammunition, at which point she fled to an adjacent apartment. Ibid. The victim also reported that petitioner regularly kept the pistol in his apartment and had discharged it two days earlier from the porch. PSR ¶¶ 11-12.

Officers obtained a warrant to search the apartment, where they found a pistol hidden in the kitchen stove and, separately, the pistol's magazine, two live rounds of ammunition, and a spent shell casing. C.A. ROA 48; PSR ¶ 13. During an interview with police, petitioner acknowledged that he was on supervised release after having served a federal prison sentence for bank robbery, and that he had obtained the pistol after serving that term of imprisonment. C.A. ROA 48; PSR ¶ 10.

2. A federal grand jury returned an indictment charging petitioner with one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (Supp. IV 2022). Indictment 1. Petitioner pleaded guilty without a plea agreement. See C.A. ROA 47-48; PSR ¶ 5.

The Probation Office prepared a presentence report that included a description of petitioner's offense conduct based on its independent review of the filings in petitioner's case and additional investigative materials compiled and verified by U.S. Marshals Service officers. PSR ¶ 7. In that description, the Probation Office relayed the statements that the victim had made to police about the domestic disturbance with petitioner, including the statements from her follow-up interview. See PSR ¶¶ 9-12.

The Probation Office observed that "[t]he victim's version of events appeared to be corroborated," in part, by the magazine and ammunition found separate from the pistol, the spent shell casing, reports from neighbors who heard the victim screaming during the altercation, and marks on the victim's body, which were documented in photographs. PSR ¶ 13. The presentence report also noted that officers had arrested petitioner on a state charge of Aggravated Assault with a Deadly Weapon, which remained pending at the time of petitioner's federal sentencing hearing. PSR ¶¶ 13, 60; see C.A. ROA 162.

The Probation Office recommended enhancing petitioner's offense level by four levels under Sentencing Guidelines § 2K2.1(b)(6)(B) (2021),[1] which applies (inter alia) "if the defendant used or possessed any firearm or ammunition in connection

[1] All references in this brief to the Sentencing Guidelines are to the 2021 edition.

with another felony offense." PSR ¶ 23. The Probation Office determined that the enhancement applied because petitioner had "pointed a pistol at the victim's face and pulled the trigger (with no discharge)" during a physical assault, "thereby committing the felony offense of Aggravated Assault with a Deadly Weapon." Ibid.

Based on a total offense level of 21 and a criminal history category of V, the Probation Office calculated an advisory guidelines range of 70 to 87 months of imprisonment. PSR ¶ 100. The Probation Office noted, however, that an upward departure might be warranted under Sentencing Guidelines § 4A1.3(a) on the ground that petitioner's criminal history category substantially underrepresented the seriousness of his criminal history or the likelihood that he would commit other crimes. PSR ¶ 113. The Probation Office reasoned that petitioner's "extensive and continuous criminal history," his noncompliance with community supervision, and his commission of the instant offense within four months of his release from federal custody created "a heightened likelihood for future recidivism and risk to the community." Ibid. And it observed that those same factors might also warrant an upward variance. PSR ¶ 115.

Petitioner filed written objections in which he objected to "the facts as described in Paragraphs 9-12" of the presentence report, which documented the victim's account of the domestic disturbance, "being used as the basis for an upward departure or variance." C.A. ROA 214. Petitioner argued that because his state

charge remained pending, "[t]he summary of police reports" related to that conduct did "not bear sufficient indicia to overcome [petitioner's] due process rights." C.A. ROA 214-215. He therefore objected to "their consideration for purposes of an upward departure or variance." Id. at 215. In response, the government (among other things) emphasized that officers had interviewed the victim and corroborated her statements. Id. at 217-218. The Probation Office declined to amend the presentence report, observing that the report "merely provided notice to the parties that the Court may have grounds for imposing a sentence above the advisory guideline range" and that the court had broad discretion to consider relevant information in deciding whether to do so. Id. at 241.

3. At the sentencing hearing, the district court overruled petitioner's objections to the presentence report for the reasons stated by the Probation Office. But while the court adopted the report's findings of fact, it explained that "the Court does not intend to depart upward." C.A. ROA 161. Petitioner's counsel then objected for the first time to the four-point enhancement under Sentencing Guidelines § 2K2.1(b)(6)(B), acknowledging that the objection was "not include[d]" in petitioner's filed objections. C.A. ROA 161. The court overruled that objection "as untimely and substantively as well." Ibid. The Court then sentenced petitioner within the guidelines range, to 87 months of imprisonment. Id. at 174-175.

4. The court of appeals affirmed in an unpublished, per curiam opinion. Pet. App. A at 1-3.

On appeal, petitioner argued for the first time that Section 922(g)(1) on its face violates the Second Amendment. Pet. App. A2. The court of appeals rejected that argument, observing that petitioner could not establish plain error because, as the court had previously determined, no precedent compelled the conclusion that Section 922(g)(1) is unconstitutional. Ibid. (citing United States v. Jones, 88 F.4th 571, 573–574 (5th Cir. 2023) (per curiam), cert. denied, 144 S. Ct. 1081 (2024)).

The court of appeals also rejected petitioner's challenge to the district court's consideration of the victim's statements to police, as summarized in the presentence report. Pet. App. A3. The court of appeals explained that sentencing courts may consider any information that bears sufficient indicia of reliability to support its probable accuracy. Ibid. And while it accepted that "'[b]ald, conclusionary statements do not acquire the patina of reliability by mere inclusion in the [presentence report]," it observed that the victim's statements here were "part of a 'detailed and specific' account" that "was corroborated in part by the presence of marks on the victim's body, [petitioner]'s admission that a dispute occurred, and the discovery of a pistol and ammunition in his apartment." Ibid. (citations omitted). The court of appeals thus found that the district court did not clearly err by finding that those statements bore sufficient indicia of

reliability. Ibid. And because petitioner did not present any rebuttal evidence or otherwise demonstrate that the victim's statements were unreliable, the court of appeals observed that the district court was entitled to accept her allegations as true. Ibid. (citing United States v. Harris, 702 F.3d 226, 230 (5th Cir. 2012) (per curiam), cert. denied, 569 U.S. 938 (2013)).

ARGUMENT

Petitioner first contends (Pet. 9-13) that the Court should hold his petition for a writ of certiorari indefinitely until such time as it might decide whether Section 922(g)(1) on its face violates the Second Amendment. This Court has no pending case presenting that question, and it has recently and repeatedly denied petitions raising unpreserved challenges to Section 922(g)(1). It should follow the same course here.

Petitioner further contends (Pet. 13-22) that the district court erred in considering the victim's statements to police that were relayed in the presentencing report. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or of another court of appeals. Although a narrow disagreement exists in the courts of appeals as to whether a bare objection to factual statements in a presentence report requires the government to introduce evidence to support those statements, this Court has repeatedly and recently denied petitions for writs of certiorari raising that issue, and in any event, the disagreement is not implicated here.

1. Petitioner does not seek plenary review of the Second Amendment question in this case, and instead argues (Pet. 9) that the Court should hold the petition "pending resolution of any merits cases presenting that issue." Because no such case is pending in this Court, the petition should be denied.

Petitioner acknowledges (Pet. 8, 12) that he failed to raise his Second Amendment claim in district court. His claim is thus reviewable only for plain error. See Fed. R. Crim. P. 52(b). To prevail under that standard, petitioner must establish (1) "an error" (2) that was "clear or obvious, rather than subject to reasonable dispute," (3) that affected his "substantial rights," and (4) that "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." Puckett v. United States, 556 U.S. 129, 135 (2009) (internal quotation marks omitted). As explained on pages 7-22 in the government's petition for a writ of certiorari in Garland v. Range, 144 S. Ct. 2706 (2024), a copy of which is being served on petitioner, Section 922(g)(1) is consistent with the Second Amendment. Accordingly, petitioner cannot establish that the district court erred, much less clearly or obviously erred, in failing to hold Section 922(g)(1) unconstitutional.

This Court's decision in United States v. Rahimi, 144 S. Ct. 1889 (2024), which upheld the constitutionality of 18 U.S.C. 922(g)(8), further undercuts petitioner's argument that his conviction under 18 U.S.C. 922(g)(1) is clearly or obviously

unconstitutional. The Court in Rahimi reiterated that many statutory prohibitions on firearms, "like those on the possession of firearms by felons," are "presumptively lawful." 144 S. Ct. at 1902 (quoting District of Columbia v. Heller, 554 U.S. 570, 626, 627 n.26 (2008)) (internal quotation marks omitted). And although petitioner disputes (Pet. 10-11) the existence of specific statutory bans on the possession of firearms by felons in the Founding Era, Rahimi explained that "the appropriate analysis" under the Second Amendment does not demand such a "historical twin" and instead "involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." 144 S. Ct. at 1898 (internal quotation marks omitted).

Petitioner's request (Pet. 9-13) to hold his petition until such time as this Court might decide the facial constitutionality of Section 922(g)(1) in another case lacks merit. Petitioner does not argue that he can meet his burden to show that Section 922(g)(1) is clearly unconstitutional under existing law, but instead suggests (Pet. 10) that it "could well be" held unconstitutional in the future. But this Court has not granted certiorari to address the facial constitutionality of Section 922(g)(1), and petitioner's speculation that the Court might eventually do so in some future case provides no sound reason to hold his petition.

Consistent with that view, this Court has denied, rather than held, other recent petitions raising unpreserved challenges to Section 922(g)(1), including the petition for a writ of certiorari in Jones v. United States, 144 S. Ct. 1081 (No. 23-6769), which sought review of the published Fifth Circuit decision on which the court of appeals relied in this case.[2] The same result is warranted here.

2. Petitioner separately contends (Pet. 13-22) that the district court erred by considering the victim's statements to police, as summarized in the presentence report. That contention does not warrant this Court's review.

a. The court of appeals correctly found no reversible procedural error in the district court's sentencing determination. Pet. App. A3.

Congress has provided that "[n]o limitation shall be placed on the information concerning the background, character, and

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[2] See also, e.g., Davis v. United States, 144 S. Ct. 2644 (2024) (No. 23-7419); Staples v. United States, 144 S. Ct. 2643 (2024) (No. 23-7421); Bartolomei v. United States, 144 S. Ct. 2594 (2024) (No. 23-7288); Lyon v. United States, 144 S. Ct. 1400 (2024) (No. 23-7055); EtchisonBrown v. United States, 144 S. Ct. 1356 (2024) (No. 23-6647); Racliff v. United States, 144 S. Ct. 1355 (2024) (No. 23-6278); Aboite v. United States, 144 S. Ct. 1079 (2024) (No. 23-6750); Fulwiler v. United States, 144 S. Ct. 1045 (2024) (No. 23-6635); Smith v. United States, 144 S. Ct. 701 (2024) (No. 23-6218); Porter v. United States, 144 S. Ct. 511 (2023) (No. 23-5876); Easton v. United States, 144 S. Ct. 402 (2023) (No. 23-5742); McCoy v. United States, 144 S. Ct. 296 (2023) (No. 23-5360); Wilson v. United States, 144 S. Ct. 255 (2023) (No. 23-5263); Hickcox v. United States, 144 S. Ct. 237 (2023) (No. 23-5130; Roy v. United States, 144 S. Ct. 234 (2023) (No. 23-5188).

conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. 3661. That provision codifies the "longstanding principle that sentencing courts have broad discretion to consider various kinds of information" to tailor each sentence to the particular defendant involved. Pepper v. United States, 562 U.S. 476, 488 (2011) (quoting United States v. Watts, 519 U.S. 148, 151 (1997) (per curiam)).

Under the Due Process Clause, a criminal sentence may not be based on "materially false" information that the offender did not have an effective "opportunity to correct." Townsend v. Burke, 334 U.S. 736, 741 (1948). Otherwise, however, a sentencing judge is "largely unlimited either as to the kind of information he may consider, or the source from which it may come." United States v. Tucker, 404 U.S. 443, 446 (1972); see Williams v. New York, 337 U.S. 241, 246 (1949) (citing reliance on reports prepared by federal probation officers as "[a] recent manifestation of the historical latitude allowed sentencing judges"). To ensure that a defendant receives due process, the Sentencing Guidelines require that whenever a "factor important to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to present information to the court regarding that factor," and that the court rely on information only if it determines that the "information has sufficient indicia

of reliability to support its probable accuracy." Sentencing Guidelines § 6A1.3(a).

When factual information in a presentence report is not "reasonably in dispute," however, a district court may accept it as true. Federal Rule of Criminal Procedure 32(i)(3)(A) authorizes a district court, without further inquiry, to adopt "any undisputed portion of the presentence report as a finding of fact." Fed. R. Crim. P. 32(i)(3)(A). For "any disputed portion of the presentence report or other controverted matter," the court "must * * * rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing." Fed. R. Crim. P. 32(i)(3)(B).

The district court adhered to those procedural requirements in sentencing petitioner. Although petitioner objected to the use of a "summary of police reports" relaying the victim's statements, C.A. ROA 214, he did not dispute that the presentence report, or the reports it summarized, had accurately recounted the victim's statements to police. Nor did he object to the presentence report's finding that "[t]he victim's version of events appeared to be corroborated, in part, by" evidence found at the crime scene, neighbors' statements, and marks observed on the victim's body. PSR ¶ 13. And he did not offer any evidence to rebut the Probation Office's determination, or even specifically dispute the factual accuracy of the victim's statements. Instead, petitioner

challenged only the reliability of the victim's statements as a matter of law, asserting that such statements did not "bear sufficient indicia [of reliability]," even in the presence of corroborating evidence, because he had not been convicted of the charge to which those statements relate. C.A. ROA 214-215.

The courts below correctly rejected that challenge. As the court of appeals explained, the victim's statements to police were "part of a 'detailed and specific' account" that was corroborated in important respects by other evidence. Pet. App. A3 (quoting United States v. Parkerson, 984 F.3d 1124, 1129 (5th Cir. 2021), cert. denied, 142 S. Ct. 753 (2022)). Indeed, petitioner stipulated before the district court that police had been dispatched "in reference to a domestic disturbance involving [petitioner] and a handgun." C.A. ROA 48. In light of petitioner's failure even to contest the report's finding that the victim's statements were corroborated by other evidence, let alone to present any evidence rebutting the statements, the district court properly considered the statements, as summarized in the police reports, and it did not clearly err in finding by a preponderance of the evidence that the conduct occurred. See United States v. O'Brien, 560 U.S. 218, 224 (2010).

b. Although a narrow disagreement exists in the courts of appeals on whether a bare objection to the factual accuracy of findings in a presentence report requires the government to introduce evidence to support those findings, that conflict is not

implicated in this case and does not warrant the Court's review. This Court has repeatedly and recently denied petitions for writs of certiorari raising substantially the same issue.[3] The same result is warranted here.

Consistent with the court of appeals' approach here, a majority of the courts of appeals have recognized that, notwithstanding a defendant's objection to the factual accuracy of a finding in a presentence report, a district court may rely on the report "without more specific inquiry or explanation" unless the defendant makes "an affirmative showing [that] the information is inaccurate." United States v. Love, 134 F.3d 595, 606 (4th Cir.) (citation omitted), cert. denied, 524 U.S. 932 (1998); see United States v. Cyr, 337 F.3d 96, 100 (1st Cir. 2003); United States v. Campbell, 295 F.3d 398, 406-407 (3d Cir. 2002), cert. denied, 537 U.S. 1239 (2003); United States v. Lang, 333 F.3d 678,

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[3] See, e.g., Favorite v. United States, 144 S. Ct. 501 (2023) (No. 23-5310); Parkerson v. United States, 142 S. Ct. 753 (2022) (No. 20-8345); Tshiansi v. United States, 139 S. Ct. 2748 (2019) (No. 18-8524); Gipson v. United States, 139 S. Ct. 2636 (2019) (No. 18-7139); Pena-Trujillo v. United States, 583 U.S. 1061 (2018) (No. 17-5532); Williams v. United States, 583 U.S. 1016 (2017) (No. 17-5739); Peru v. United States, 583 U.S. 830 (2017) (No. 16-8398); Gutierrez v. United States, 577 U.S. 1031 (2015) (No. 15-5043); Marroquin-Salazar v. United States, 577 U.S. 843 (2015) (No. 14-9992); Rodriguez v. United States, 568 U.S. 1196 (2013) (No. 12-6838); Navejar v. United States, 565 U.S. 1236 (2012) (No. 11-7052); Bolt v. United States, 562 U.S. 1222 (2011) (No. 10-5738); Moreno-Padilla v. United States, 562 U.S. 1140 (2011) (No. 10-5128); Del Carmen v. United States, 562 U.S. 1091 (2010) (No. 09-11245); Alexander v. United States, 562 U.S. 1066 (2010) (No. 10-5229); Godwin v. United States, 556 U.S. 1132 (2009) (No. 08-7920); O'Garro v. United States, 555 U.S. 1140 (2009) (No. 08-6259).

681 (6th Cir. 2003); United States v. Mustread, 42 F.3d 1097, 1101-1102 (7th Cir. 1994); United States v. McDonald, 43 F.4th 1090, 1095-1096 (10th Cir. 2022); see also United States v. Brown, 52 F.3d 415, 424-425 (2d Cir. 1995), cert. denied, 516 U.S. 1068 (1996).[4] Those decisions reflect the understanding that the presentence report, developed by an officer of the court after a thorough investigation, bears sufficient indicia of reliability that its findings ordinarily cannot be overcome by a bare objection unsubstantiated by any proffer of evidence. See United States v. Caldwell, 448 F.3d 287, 291 n.1 (5th Cir. 2006); Cyr, 337 F.3d at 100; United States v. Coonce, 961 F.2d 1268, 1278-1280 (7th Cir. 1992); Wayne R. LaFave & Jerold H. Israel, Criminal Procedure § 26.6(a), at 1119 (2d ed. 1992) ("[T]he general rule throughout this country [is] that when matters contained in a [presentence] report are contested by the defendant, the defendant has, in effect, an affirmative duty to present evidence showing the inaccuracies contained in the report.") (citation and internal quotation marks omitted).

[4] Contrary to petitioner's contention (Pet. 16-18), neither Brown nor any other Second Circuit decision cited in the petition shows that the Second Circuit is aligned with the minority view on this issue. In all three cases petitioner cites, the Second Circuit upheld the district court's reliance on the presentence report. See Brown, 52 F.3d at 424-425; United States v. Streich, 987 F.2d 104, 107 (2d Cir. 1993) (per curiam); United States v. Helmsley, 941 F.2d 71, 97-98 (2d Cir. 1991), cert. denied, 502 U.S. 1091 (1992).

The Eighth Circuit has stated that when a defendant objects to the factual accuracy of a finding in a presentence report, the government must present evidence to prove the disputed fact, even if the defendant's objection is unsupported by any rebuttal evidence. See, e.g., United States v. Poor Bear, 359 F.3d 1038, 1041 (2004). At the same time, however, the Eighth Circuit has emphasized that the defendant must object to fact statements in the presentence report "with specificity and clarity," United States v. Dokes, 872 F.3d 886, 889 (2017) (citation omitted), and has "recognize[d] that the Sentencing Guidelines do not mandate a full evidentiary hearing when a defendant disputes a [presentence report]'s factual representation," United States v. Stapleton, 268 F.3d 597, 598 (2001). The Ninth, Eleventh, and D.C. Circuits also appear to have rejected reliance on disputed factual statements in a presentence report, at least in certain instances. See, e.g., United States v. Flores, 725 F.3d 1028, 1040-1041 (9th Cir. 2013); United States v. Martinez, 584 F.3d 1022, 1027 (11th Cir. 2009); United States v. Price, 409 F.3d 436, 444 (D.C. Cir. 2005).

The court of appeals' unpublished decision in this case does not implicate that narrow conflict. As explained above, see pp. 13-14, supra, petitioner objected not to the reliability of the Probation Office's report -- i.e., that it had reliably recounted the police report or the victim's statements -- but instead to the

reliability of the underlying victim's statements themselves.[5] In addition, petitioner did not object to (or otherwise dispute) the report's finding that other evidence -- including physical evidence and witness reports -- corroborated the victim's statements in important respects. His objection therefore does not implicate any conflict concerning a court's consideration of a presentence report's findings as such, and it is far from clear that any circuit would preclude a sentencing court from considering the accurately reported and corroborated statements of the victim, after affording the defendant an opportunity to raise issues with that evidence. See, e.g., United States v. Bledsoe, 445 F.3d 1069, 1073 (8th Cir. 2006) (recognizing that court could rely on "factual allegations" in presentence report where the defendant "objected not to the facts themselves, but only to the report's recommendation based on those facts") (internal quotation marks omitted); United States v. Warren, 737 F.3d 1278, 1286 (10th Cir. 2013) (recognizing that court permissibly relied on presentence report where defendant's objection did not raise "factual inaccuracies" in the report), cert denied. 572 U.S. 1078 (2014);

[5] Contrary to petitioner's suggestion (Pet. 21), whether the State dismissed the charge of Aggravated Assault with a Deadly Weapon after his federal sentencing hearing says nothing about the reliability of the victim's statements. Petitioner does not represent that the State dismissed that charge for lack of evidence. To the contrary, he indicates (Pet. 7) that the State dismissed that charge once he pleaded guilty to a separate state offense, after the district court in this case sentenced petitioner to 87 months of imprisonment, to run concurrently with any sentence in the state case, C.A. ROA 80.

see also, e.g., Price, 409 F.3d at 444 (D.C. Cir.) (stating that the government's "burden is triggered whenever a defendant disputes the factual assertions in the [presentence] report").

c. In all events, this case would be a poor vehicle for further review because a decision in petitioner's favor would have no practical effect on his sentence. See Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties).

In his objections to the presentence report, petitioner challenged only the "use[]" or "consideration" of the facts alleged by the victim of the domestic dispute "as the basis for an upward departure or variance." C.A. ROA 214-215 (emphasis added). But the district court did not impose an upward departure or variance, and petitioner therefore has no grounds for relief on that basis. While petitioner raised a subsequent oral objection to the four-point enhancement under Sentencing Guidelines § 2K2.1(b)(6)(B), the district court overruled that objection as untimely, as well as meritless. C.A. ROA 161. Petitioner did not challenge that separate ruling on timeliness before the court of appeals, and he does not do so before this Court. That alternative basis for affirmance provides sufficient reason to deny review here. Cf. United States v. Wells, 38 F.4th 1246, 1262 n.12 (10th Cir. 2022) (noting that a finding of untimeliness under Federal Rule of Criminal Procedure 32(f)(1) is sufficient reason to deny a

sentencing objection and that a defendant must successfully challenge such a finding on appeal to obtain review of the merits).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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