

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

SULMA MARILYN GALLARDO,

Defendant and Appellant.

Case No. S231260

**SUPREME COURT
FILED**

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The Honorable Thomas I. McKnew, Jr., Judge

Deputy

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ISSUE PRESENTED

This Court has ordered that the issue on review is limited to the following: “Was the trial court’s decision that [appellant’s] prior conviction constituted a strike incompatible with *Descamps v. United States* (2013) 570 U.S. ___ [133 S.Ct. 2276, 186 L.Ed.2d 438], because the trial court relied on judicial fact-finding beyond the elements of the actual prior conviction?”

STATEMENT OF FACTS AND THE CASE

In 2012, appellant aided and abetted Jason Andrews and a second man, identified as Jose, in the commission of the armed robbery of \$66,000 in cash from David Narvez, a financial courier. (2RT 322-339, 342-343, 349, 607.) During the offense, appellant and Andrews followed Narvez in appellant’s vehicle as he left a bank. Jose followed Narvez in a second vehicle, and forced Narvez to stop by cutting in front him and stopping abruptly. Appellant then struck Narvez’s vehicle from behind and pushed it into Jose’s vehicle, preventing Narvez’s escape. (2RT 325-332, 349.) Andrews exited appellant’s vehicle, smashed Narvez’s driver’s side window with a hammer, pointed a semiautomatic handgun at Narvez, and stated, “Give me the fucking money you motherfucker before I kill you.” (2RT 332-335, 342-343, 607.) Narvez handed Andrews two bags of cash. Andrews got back into appellant’s vehicle and she fled. (2RT 338-339.) When police stopped appellant’s vehicle later that day, she was still in the company of Andrews. Police recovered two firearms, marijuana, and a digital scale from appellant’s vehicle. (2RT 633-638.)

In 2014, a Los Angeles County jury found appellant guilty of robbery (Pen. Code, § 211; count I), being an accessory after the fact (Pen. Code, § 32; count II), and transportation of marijuana (Health & Saf. Code, §

11360, subd. (a); count V).¹ The jury found true an allegation that a principal was armed with a firearm during the commission of count I (§ 12022, subd. (a)(1)). (2CT 345-361.)

The information alleged that appellant suffered one prior conviction for assault with a deadly weapon or with force likely to produce great bodily injury (§ 245, subd. (a)(1)), on April 21, 2005, in case number BA273269, and that the prior conviction qualified as a strike offense under the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), as well as a prior serious felony conviction (§ 667, subd. (a)(1)). (1CT 74.) While the jury was deliberating on the substantive offenses, appellant personally waived her right to a jury trial on the prior conviction allegations. (3RT 1502-1503.) The following exchange occurred:

THE COURT: [Appellant], you have been charged with having a prior conviction, that is a conviction in case number BA273269, charge was a violation of Penal Code section 245(a)(1), that conviction date was April 21, 2005 in the Los Angeles County Superior Court. Your counsel has advised that you are willing to waive jury but not admit to the prior. That means that the prior would have to be tried before this Court. If you should be found guilty, the Court - - of any of the charges, the Court more likely than not would remand you, which you are already in custody, and I could try it on the date set for sentencing or we can try it on some other day. . . . Ma'am, do you waive a jury and will then allow this Court to determine whether or not you sustained that judgment?

THE DEFENDANT: Yes.

THE COURT: You knowingly, intelligently, and with the full understanding realize that in so waiving you will not be entitled in any manner whatsoever to a jury trial concerning that prior conviction?

THE DEFENDANT: Yes.

¹ All further unspecified statutory references are to the Penal Code.

THE COURT: All right. Counsel join?

[DEFENSE COUNSEL]: I do, Your Honor.

(3RT 1502-1503.)

After the jury's verdicts, the trial court conducted a court trial with respect to the recidivist allegations. (3RT 1804-1808.) Appellant admitted that she was the individual who had suffered the prior conviction. (3RT 1804-1806.) The trial court examined a minute order from case number BA273269, which demonstrated that appellant had pleaded no contest to violating section 245, subdivision (a)(1). (3RT 1806-1807; 1ACT 1-4.) The trial court also examined the preliminary hearing transcript from case number BA273269, which established that appellant used a knife during the course of her prior offense. (3RT 1807-1808; 1ACT 5-35.) Appellant's victim was the only witness who testified at the preliminary hearing. He testified that appellant pulled a knife on him during a dispute over their children, pointed the knife at him, then struck him once in the head while holding the knife in the hand she used to punch him, cutting his forehead in the process. Appellant did not contest her use of the knife during the preliminary hearing, but instead, through defense counsel's cross-examination of the victim, sought to establish that she had acted in self-defense. (1ACT 8-34.) The trial court overruled defense counsel's hearsay objection to the admission of the preliminary hearing transcript, and found the prior conviction allegations to be true. (3RT 1808.)

The trial court sentenced appellant to a total of 11 years in state prison, comprised of a three-year middle base term in count I, doubled pursuant to the Three Strikes law, plus a consecutive five-year serious-felony conviction enhancement. The trial court stayed the firearm enhancement in count I, stayed imposition of sentence in count II, and imposed a concurrent term of six years in count V (three-year midterm,

doubled pursuant to the Three Strikes law). (3RT 1822-1828; 2CT 386-391; see minute order dated August 25, 2014, and amended abstract of judgment, filed in the Court of Appeal on September 3, 2014.)

Appellant appealed, alleging, among other claims, that the trial court's true finding on the prior conviction allegation violated her federal constitutional right to a jury trial under *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 L.Ed.2d 435]. In an unpublished opinion, the Court of Appeal reversed appellant's conviction in count II, but otherwise affirmed the judgment. (See Opn. at p. 1-12.) The Court of Appeal concluded that appellant had expressly waived any right to a jury trial on the prior conviction allegations (Opn. at p. 7), and that in any event, under *Descamps*, the trial court had properly looked to "extrinsic documents," including the preliminary hearing transcript, consistent with a modified "categorical approach" applicable to a "divisible statute," to determine whether appellant had previously been convicted of assault with a deadly weapon, rather than assault with force likely to produce great bodily injury (Opn. at pp. 9-11).

Appellant filed a petition for rehearing pertaining to the trial court's true finding on the prior conviction allegations, which the Court of Appeal denied.

This Court granted appellant's petition for review.

SUMMARY OF ARGUMENT

Appellant contends that this Court's opinion in *People v. McGee* (2006) 38 Cal.4th 682 must be overruled, and that recidivist enhancements such as the second-strike and prior serious-felony conviction enhancements in this case may not be imposed unless the statute at issue in the earlier conviction satisfies the categorical approach that the United States Supreme Court has applied to federal recidivism statutes, under which a sentencing court's fact-finding is strictly limited to establishing the elements of the

prior offense. (AOB 2-5, 24, 34-35, 51.) It follows, appellant asserts, that the trial court violated her constitutional jury trial right by reviewing the preliminary hearing transcript and determining that she committed a “serious felony” for the purposes of the Three Strikes law because she committed her prior offense by using a deadly weapon, rather than with force likely to produce great bodily injury. (AOB 4-5.) Appellant’s argument fails for three reasons.

First, appellant not only failed to raise her current claims in the trial court, but expressly waived any right to a jury trial—a waiver that should be enforced.

Second, California’s approach to the permissible reach of judicial fact-finding in applying recidivism statutes, articulated in *McGee*, *supra*, 38 Cal.4th at pp. 704-706, was not overruled by *Descamps* or *Mathis*. The Sixth Amendment aspect of *Descamps*’s holding was made in the context of applying the constitutional avoidance doctrine, and *Descamps*’s holding applies only to elements-based sentencing schemes like the one at issue therein, the Armed Career Criminal Act (ACCA) (18 U.S.C. § 924(e)). An elements-based sentencing scheme authorizes an enhancement on the basis of a prior conviction for a specific statutory violation, regardless of the manner in which a prior offense was committed. Contrary to appellant’s assertion, neither *Descamps* nor *Mathis v. United States* (2016) ___ U.S. ___ [136 S.Ct. 2243, 195 L.Ed.2d 604], reached the question of how the Sixth Amendment applies to conduct-based recidivist sentencing schemes like the Three Strikes law, but both cases recognized that legislatures are entitled to enact such statutes. (*Mathis*, *supra*, 136 S.Ct. at p. 2252; *Descamps*, *supra*, 133 S.Ct. at p. 2287.)

Third, although *Descamps* and *Mathis* undercut *McGee*’s interpretation of *Apprendi* as being generally inapplicable to recidivist sentencing, appellant’s approach is flawed because it overlooks the narrow

nature of the Court's Sixth Amendment rationale in *Descamps* and *Mathis*: judicial fact-finding is limited to the determination of those facts necessarily found beyond a reasonable doubt by a jury or those facts admitted by a defendant when entering a guilty plea. *Descamps* and *Mathis* did not consider the impact of that Sixth Amendment principle on conduct-based recidivism statutes, and a wholesale importation of the holdings in *Descamps* and *Mathis* to the Three Strikes law, a conduct-based statute, would ignore the critical difference between such schemes.

Respondent proposes an approach that distills the core Sixth Amendment principles from *Apprendi* as applied by *Descamps* and *Mathis*, and modifies them so that they take account of the basic difference between the two types of recidivist sentencing schemes. Accordingly, should this Court determine that *Descamps* and *Mathis* diminished the scope of a sentencing court's fact-finding under the conduct-based Three Strikes law, it should limit a trial court's consideration of the record of conviction to determining those facts necessarily found beyond a reasonable doubt by a jury under the circumstances of the particular case, or those facts admitted by a defendant when entering a guilty plea. In the event this Court adopts this approach, it should remand the instant matter to the trial court for a retrial on the prior conviction allegations, as the record does not establish whether appellant admitted that she had been convicted of assault with a deadly weapon, rather than assault with force likely to produce great bodily injury, or that she made any other admissions rendering her prior conviction a serious felony offense, during her prior plea proceeding.

ARGUMENT

THE TRIAL COURT DID NOT ENGAGE IN IMPERMISSIBLE JUDICIAL FACT-FINDING WHEN IT DETERMINED THAT APPELLANT'S PRIOR CONVICTION UNDER FORMER PENAL CODE SECTION 245, SUBDIVISION (A)(1), HAD BEEN FOR ASSAULT WITH A DEADLY WEAPON, RATHER THAN FOR ASSAULT BY FORCE LIKELY TO PRODUCE GREAT BODILY INJURY

Appellant contends that the *Apprendi-Descamps-Mathis* line of cases holds that the Sixth Amendment's jury trial right requires that a criminal defendant's sentence cannot be enhanced under a recidivist sentencing statute, unless a sentencing court's fact-finding is strictly limited to establishing the elements of the prior offense. (AOB 8-51.) Appellant's argument fails for three reasons. First, appellant waived her Sixth Amendment and due process jury trial rights when she expressly gave them up in the trial court in favor of having the trial court make all necessary findings as to the prior conviction allegations. Second, California's approach to the permissible reach of judicial findings in applying recidivism statutes, articulated in *McGee*, was not overruled by *Descamps* or *Mathis*; neither of those cases reached the question of how the Sixth Amendment applies to conduct-based recidivist sentencing schemes like the Three Strikes law or the prior serious-felony conviction enhancement statute (§ 667, subd. (a)(1)). Finally, although *Descamps* and *Mathis* may undercut *McGee*'s interpretation of *Apprendi* as being generally inapplicable to recidivist sentencing, appellant's suggested approach is flawed because it overlooks the narrow nature of the Court's Sixth Amendment rationale in those cases, and it would frustrate the intent of the Legislature and electorate in enacting conduct-based recidivist sentencing schemes. Respondent proposes an alternative approach that distills the core Sixth Amendment principles from *Apprendi* as applied by *Descamps* and

Mathis, and modifies them so that they take account of the basic difference between conduct-based and elements-based recidivist sentencing schemes.

A. Appellant Forfeited Her Claim That Her Sixth Amendment Rights Were Violated by Her Express Waiver of a Jury Trial on the Prior Conviction Allegations and Her Failure to Object on Sixth Amendment Grounds

Prior to the trial on the prior conviction allegations, appellant waived her right to a jury trial on the allegations “in any manner whatsoever.” (3RT 1503.) Defense counsel joined in the waiver. (3RT 1503.) Whatever the scope of a defendant’s Sixth Amendment rights regarding determinations of prior convictions might be, a defendant in appellant’s position has no claim of constitutional error. At a minimum, appellant’s waiver of a jury trial “in any manner whatsoever” concerning her prior conviction (3RT 1502-1503), is inconsistent with preserving her Sixth Amendment jury trial rights.

Apprendi rights, like other rights, may be waived. (*Shepard v. United States* (2005) 544 U.S. 13, 24 [125 S.Ct. 1254, 161 L.Ed.2d 205] [“any fact other than a prior conviction sufficient to raise the limit of the possible [] sentence must be found by a jury, *in the absence of any waiver of rights by the defendant*”], italics added; see also *id.* at p. 26, fn. 5 [if a defendant’s *Apprendi* rights apply to proof of prior convictions, a defendant “can waive the right to have a jury decide questions about his prior conviction”].) Here, as the Court of Appeal determined below, because appellant waived any right to a “jury trial ‘in any manner whatsoever’ relating to the prior conviction allegation[s],” she may not assert this claim on appeal. (Opn. at p. 7; see 3RT 1502-1503.)

Although the trial on appellant’s prior conviction allegations occurred a year after *Descamps* was decided, appellant raised no Sixth Amendment objection to the trial court’s determination of the strike allegation in her

case. (3RT 1501-1503, 1801-1827.) Thus, there is no reason to excuse appellant's failure to raise the claim in the trial court. (Cf. *People v. Black* (2007) 41 Cal.4th 799, 812 [excusing failure to raise an *Apprendi* objection because of subsequent clarifying "sea change" in case law]; see also *United States v. Cotton* (2002) 535 U.S. 625, 628-634 [122 S.Ct. 1781, 152 L.Ed.2d 860] [finding that defendant forfeited his *Apprendi* claim by failing to object during trial even though *Apprendi* was not decided until defendant's case was on appeal]; *People v. Tompkins* (2010) 185 Cal.App.4th 1253 [*Apprendi* rights may be forfeited by a defendant's failure to object].) Here, appellant made only hearsay and foundational objections to the introduction of the preliminary hearing transcript (3RT 1808), but these objections went to the scope of the materials to be considered, and not to the trial court's constitutional competence to resolve factual matters (*People v. Demetrulias* (2006) 39 Cal.4th 1, 22 [requiring specific objections to preserve issues for appeal]). Accordingly, she has forfeited any Sixth Amendment claim.

B. *Descamps* and *Mathis* Did Not Overrule This Court's Opinion in *McGee*

1. *McGee*, *Descamps*, and *Mathis*

In *Apprendi*, the United States Supreme Court explained that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Apprendi, supra*, 530 U.S. at p. 490; see also *Almendarez-Torres v. United States* (1998) 523 U.S. 224, 243-247 [118 S.Ct. 1219, 140 L.Ed.2d 350].) This Court has consistently "rejected a narrow or literal application of the [United States Supreme Court's] reference to 'the fact of a prior conviction.'" (*People v. Towne* (2008) 44 Cal.4th 63, 79.)

In *McGee, supra*, 38 Cal.4th 682, this Court found no constitutional impediment to judicial determination that a prior conviction qualifies as a serious felony for purposes of enhanced punishment under the Three Strikes law. This Court's holding was based on its understanding that *Apprendi*'s prior-conviction exception "is not limited simply to the bare fact of a defendant's prior conviction, but extends as well to the nature of that conviction, thereby permitting sentencing courts to determine whether the prior conviction is the type of conviction (for example, a conviction of a 'violent' felony) that renders the defendant subject to an enhanced sentence." (*Id.* at p. 704, italics omitted.)

McGee explained that the sentencing court's inquiry "must be based upon the record of the prior criminal proceeding, with a focus on the elements of the offense." (*McGee, supra*, 38 Cal.4th at p. 706.) However, "[i]f the enumeration of the elements of the offense does not resolve the issue, an examination of the record of the earlier criminal proceeding is required in order to ascertain whether that record reveals whether the conviction realistically may have been based on conduct that would not constitute a serious felony under California law." (*Ibid.*) This "does not contemplate that the court will make an independent determination regarding a disputed issue of fact relating to the defendant's prior conduct, but instead that the court simply will examine the record of the prior proceeding to determine whether that record is sufficient to demonstrate that *the conviction* is of the type that subjects the defendant to increased punishment under California law." (*Ibid.*, internal citation omitted, italics in original.)

The Court also added:

We recognize the possibility that the United States Supreme Court, in future decisions, may extend the *Apprendi* rule in the manner suggested by the court of appeal below. But because in our view there is a significant difference between the

nature of the inquiry and the factfinding involved in the type of sentence enhancement at issue in *Apprendi* and its progeny as compared to the nature of the inquiry involved in examining the record of a prior conviction to determine whether that conviction constitutes a qualifying prior conviction for purposes of a recidivist sentencing statute, we are reluctant to assume, in advance of such a decision by the high court, that the federal constitutional right to a jury trial will be interpreted to apply in the latter context.

(*Id.* at p. 709.)

Six years later, in *Descamps, supra*, 133 S.Ct. 2276, the United States Supreme Court addressed how federal courts are to determine whether a state-court conviction qualifies as a violent felony under a federal recidivist sentencing statute, the ACCA. The issue presented in *Descamps* was whether the federal sentencing court could look beyond the elements of the defendant's California burglary conviction to the record of the state-court proceedings in order to determine whether the burglary conviction satisfied the federal definition of a violent felony. (*Id.* at pp. 2282-2283.) The Court explained the approved approach for determining whether a prior conviction is a crime that qualifies as a predicate offense under the ACCA:

[C]ourts use what has become known as the 'categorical approach': They compare the elements of the statute forming the basis of the defendant's conviction with the elements of the 'generic' crime—*i.e.*, the offense as commonly understood. The prior conviction qualifies as an ACCA predicate only if the statute's elements are the same as, or narrower than, those of the generic offense.

(*Descamps, supra*, 133 S.Ct. at p. 2281.)

The Court then described its approved "variant" method:

We have previously approved a variant of this method—labeled (not very inventively) the 'modified categorical approach'—when a prior conviction is for violating a so-called 'divisible statute.' That kind of statute sets out one or more elements of the offense in the alternative—for example, stating

that burglary involves entry into a building or an automobile. If one alternative (say, a building) matches an element in the generic offense, but the other (say, an automobile) does not, the modified categorical approach permits sentencing courts to consult a limited class of documents, such as indictments and jury instructions, to determine which alternative formed the basis of the defendant's prior conviction. The court can then do what the categorical approach demands: compare the elements of the crime of conviction (including the alternative elements used in the case) with the elements of the generic crime.

(*Descamps, supra*, 133 S.Ct. at p. 2281.) The specific issue in *Descamps* was,

whether sentencing courts may also consult those additional documents when a defendant was convicted under an 'indivisible' statute—*i.e.*, one not containing alternative elements—that criminalizes a broader swath of conduct than the relevant generic offense.

(*Ibid.*)

The Court in *Descamps* concluded that, where a defendant has been convicted under an indivisible statute, a sentencing court may apply only the categorical approach in determining whether that prior offense constituted a predicate under the ACCA, looking only to the elements of the prior offense to determine if they are the same as, or narrower than, the generic offense. (*Descamps, supra*, 133 S.Ct. at pp. 2282-2283.) The Court based its conclusion that the categorical approach should continue to be applied to indivisible statutes under the ACCA on three grounds: (1) the text and history of the ACCA; (2) a desire to "avoid[] Sixth Amendment concerns"; and (3) practical inequities applying the modified categorical approach to all cases. (*Id.* at p. 2287.)

As relevant here, in the second part of its analysis, the Court examined the "categorical approach's Sixth Amendment underpinnings," and stated that its *Apprendi* line of authority "counsel[s] against allowing a sentencing court to 'make a disputed' determination 'about what the

defendant and state judge must have understood as the factual basis of the prior plea,' or what the jury in a prior trial must have accepted as the theory of the crime.” (*Descamps, supra*, 133 S.Ct. at p. 2288, citation omitted.) The Court also criticized the lower court’s decision authorizing federal sentencing courts “to try to discern what a trial showed, or a plea proceeding revealed, about the defendant’s underlying conduct,” noting: “The Sixth Amendment contemplates that a jury—not a sentencing court—will find such facts, unanimously and beyond a reasonable doubt. And the only facts the court can be sure the jury so found are those constituting the elements of the offense—as distinct from amplifying but legally extraneous circumstances.” (*Ibid.*)

Subsequently, in *Mathis*, the United States Supreme Court considered whether the modified categorical approach may be applied to determine whether a prior conviction constitutes a predicate offense under the ACCA, where the statute defining the prior offense does not list “multiple elements disjunctively, but enumerates various means of committing a single element.” (*Mathis, supra*, 136 S.Ct. at p. 2249.) The Court concluded that the modified categorical approach may not be applied in such instances (*id.* at p. 2248), because “long standing principles, and the reasoning that underlies them,” pertaining to the categorical approach, “apply regardless of whether a statute omits or instead specifies alternative possible means of” committing a single element (*id.* at p. 2251). The Court grounded its holding on the same three considerations identified in *Descamps*: (1) the text of the ACCA; (2) “serious Sixth Amendment concerns” in allowing a sentencing judge to go beyond the elements of a predicate offense; and (3) practical inequities in applying the modified categorical approach to all cases. (*Id.* at pp. 2252-2253.) In describing the application of the categorical approach and its intersection with the Sixth Amendment, the Court held that “a judge cannot go beyond identifying the crime of

conviction to explore the manner in which the defendant committed the offense.” (*Id.* at p. 2252.) Instead, a judge determining whether a crime constitutes a predicate offense under the ACCA “can do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of.” (*Ibid.*)

2. *McGee’s Approach to Determining Conduct-Based Prior Conviction Allegations Has Not Been Overruled by *Descamps* and *Mathis**

Appellant contends that the United States Supreme Court’s post-*Apprendi* decisions effectively overruled *McGee* because the “categorical approach” (or “modified categorical approach”) mandated in *Descamps* and *Mathis* must be applied to all recidivist sentencing statutes, including the Three Strikes law, in order to preserve a defendant’s Sixth Amendment jury trial right. (AOB 8-34.) This contention fails for two reasons. First, the Sixth Amendment aspect of *Descamps*’s holding was made in the context of applying the constitutional avoidance doctrine, and, second, *Descamps*’s holding that a sentencing court may do no more than compare elements in determining the truth of a prior conviction allegation applies only to elements-based sentencing schemes like the ACCA. Contrary to appellant’s assertion, neither *Descamps* nor *Mathis* reached the question of how the Sixth Amendment applies to conduct-based recidivist sentencing schemes like the Three Strikes law, but both opinions recognized that legislatures are entitled to enact such statutes. (*Mathis, supra*, 136 S.Ct. at p. 2252; *Descamps, supra*, 133.S.Ct. at p. 2287.)

The holdings in *Descamps* and *Mathis* resolved issues of statutory interpretation. (*Mathis, supra*, 136 S.Ct. at pp. 2252-2253; *Descamps, supra*, 133 S.Ct. at p. 2288.) *Descamps* recognized a potential conflict with *Apprendi*’s Sixth Amendment jurisprudence and, thus, elected to read the ACCA narrowly to avoid having to reach and resolve that constitutional

question. (*Descamps, supra*, 133 S.Ct. at p. 2288.) *Mathis* went no further than *Descamps*. (*Mathis, supra*, 136 S.Ct. at pp. 2252-2253.) The whole purpose of the United States Supreme Court’s constitutional avoidance canon is to avoid deciding constitutional issues. (*Clark v. Martinez* (2005) 543 U.S. 371, 381 [125 S.Ct. 716, 160 L.Ed.2d 734 [“the canon [of constitutional avoidance] is not a method of adjudicating constitutional questions by other means. . . . Indeed, one of the canon’s chief justifications is that it allows court to *avoid* the decisions of constitutional questions”].)

Under *Descamps*’s three-part analysis, the constitutional aspect was secondary and limited by the Court’s prior statutory construction determination. That is, the “elements-based inquiry” or “categorical approach” was not compelled by Sixth Amendment concerns, but rather resulted primarily from the high court’s interpretation of the federal sentencing statute at issue in *Descamps* and *Mathis*—the ACCA. As *Descamps* explained, the ACCA’s text and legislative history showed that a punishment enhancement was to be based on three prior convictions for an enumerated violent felony, and “‘Congress intended the sentencing court to look only to the fact that the defendant had been convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions.’” (*Descamps, supra*, 133 S.Ct. at p. 2287, citation omitted.) Although Congress could have chosen “to increase a sentence based on the facts of a prior offense,” it did not do so, presumably because “Congress instead meant ACCA to function as an on-off switch, directing that a prior crime would qualify as a predicate offense in all cases or in none.” (*Ibid.*) In *Mathis*, the high court again emphasized that the “categorical approach,” which focuses “solely on whether the elements of the crime of conviction sufficiently match the elements” of an enumerated generic offense under the ACCA, was “central to ACCA’s operation.” (*Mathis, supra*, 136 S.Ct. at p. 2248.)