NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NICHOLS *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 92–8556. Argued January 10, 1994—Decided June 6, 1994

After petitioner Nichols pleaded guilty to federal felony drug charges, he was assessed criminal history points under the United States Federal Sentencing Guidelines, including one point for a state misdemeanor conviction for driving while under the influence (DUI), for which he was fined but not incarcerated. That point increased the maximum sentence of imprisonment from 210 to 235 months. Petitioner objected to the inclusion of his DUI conviction, arguing that because he had not been represented by counsel in that proceeding, considering it in establishing his sentence would violate the Sixth Amendment as construed in *Baldasar* v. *Illinois,* 446 U. S. 222. However, the District Court reasoned that *Baldasar* lacked a majority opinion and thus stood only for the proposition that a prior uncounseled misdemeanor conviction may not be used to create a felony with a prison term. Since petitioner's offense was already defined as a felony, the court ruled that *Baldasar* was inapplicable and sentenced petitioner to a term of imprisonment 25 months longer than it could have been had the DUI conviction not been considered. The Court of Appeals affirmed.

Held: Consistent with the Sixth and Fourteenth Amendments, a sentencing court may consider a defendant's previous uncounseled misdemeanor conviction in sentencing him for a subsequent offense so long as the previous uncounseled misdemeanor conviction did not result in a sentence of imprisonment. Pp. 4–11.

(a) A year after this Court decided that a defendant charged with a misdemeanor has no constitutional right to counsel where no sentence of imprisonment is imposed, *Scott* v. *Illinois,* 440 U. S. 367, a majority of the Court held in *Baldasar* that a

prior uncounseled misdemeanor conviction, constitutional under *Scott,* could not be collaterally used to convert a second misdemeanor conviction into a felony under the applicable Illinois sentencing enhancement statute. However, that *per curiam* opinion provided no rationale for its result, referring instead to three different concurring opinions to support the judgment. This splintered decision has created great confusion in the lower courts. Pp. 4–8.

(b) Five Members of the *Baldasar* Court expressed continued adherence to *Scott.* This Court adheres to that holding today, but agrees with the dissent in *Baldasar* that a logical consequence of the holding is that an uncounseled conviction valid under *Scott* may be relied upon to enhance the sentence for a subsequent offense, even though that sentence entails imprisonment. Enhancement statutes do not change the penalty imposed for the earlier conviction. Reliance on the earlier conviction is also consistent with the traditional understanding of the sentencing process, which is less exacting than the process of establishing guilt. It is constitutional to consider a defendant's past criminal conduct when sentencing, even if no conviction resulted from that behavior, and the state need prove such conduct only by a preponderance of the evidence. *McMillan* v. *Pennsylvania,* 477 U. S. 79, 91. Thus, it must be constitutionally permissible to consider a prior misdemeanor conviction based on the same conduct where that conduct is subject to proof beyond a reasonable doubt. Petitioner's due process contention that a misdemeanor defendant must be warned that his conviction might be used in the future for enhancement purposes is rejected. Such convictions often take place in police or justice courts, which are not courts of record, and thus there may be no way to memorialize any such warning; and it is unclear how expansive the warning would have to be. Pp. 8–10.

979 F. 2d 402, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. SOUTER, J., filed an opinion concurring in the judgment. BLACKMUN, J., filed a dissenting opinion, in which STEVENS and GINSBURG, JJ., joined. GINSBURG, J., filed a dissenting opinion.