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

CUSTIS *v.* UNITED STATES

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

No. 93–5209. Argued February 28, 1994—Decided May 23, 1994

After the jury convicted petitioner Custis of possession of a firearm by a felon and another federal crime, the Government relied on his prior state-court convictions for robbery in Pennsylvania and for burglary and attempted burglary in Maryland to support a motion under the Armed Career Criminal Act of 1984, 18 U. S. C. §924(e) (ACCA), which provides for enhancement of the sentence of a convicted firearms possessor who ``has three previous convictions . . . for a violent felony or a serious drug offense.'' Custis challenged the use for this purpose of the two Maryland convictions on the ground, among others, of ineffective assistance of counsel during the state prosecutions, but the District Court held that §924(e)(1) provides no statutory right to challenge such convictions and that the Constitution bars the use of a prior conviction for enhancement only when there was a complete denial of counsel in the prior proceeding. Custis was sentenced to an enhanced term of 235 months in prison, and the Court of Appeals affirmed.

Held:

1. With the sole exception of convictions obtained in violation of the right to counsel, a defendant in a federal sentencing proceeding has no right to collaterally attack the validity of previous state convictions that are used to enhance his sentence under the ACCA. Pp. 4–12.

(a) Congress did not intend to permit collateral attacks on prior convictions under §924(e). The statute's language—which applies to a defendant who has ``three previous convictions'' of the type specified—focuses on the *fact* of the conviction, and nothing therein suggests that the prior final conviction may be subject to attack for potential constitutional errors before it may

be counted. That there is no implied right of collateral attack under §924(e) is strongly supported by §921(a)(20), which provides that a court may not count a conviction ``which has been . . . set aside'' by the jurisdiction in which the proceedings were held, and thereby creates a clear negative implication that courts *may* count a conviction that has *not* been so set aside; by the contrast between §924(e) and other related statutes that expressly permit repeat offenders to challenge prior convictions that are used for enhancement purposes, see, *e.g.,* 21 U. S. C. §851(c); and by *Lewis* v. *United States,* 445 U. S. 55, in which this Court held that one of the predecessors to the current felon in possession of a firearm statute did not allow collateral attack on the predicate conviction. Pp. 4–8.

Syllabus

(b) The right, recognized in *Burgett* v. *Texas,* 389 U. S. 109, and *United States* v. *Tucker,* 404 U. S. 443, to collaterally attack prior convictions used for sentence enhancement purposes cannot be extended beyond the right, established in *Gideon* v. *Wainwright,* 372 U. S. 335, to have appointed counsel. Since *Johnson* v. *Zerbst,* 304 U. S. 458, and running through *Burgett* and *Tucker,* there has been a theme that failure to appoint counsel for an indigent defendant was a unique constitutional defect. None of the constitutional violations alleged by Custis, including the claimed denial of effective assistance of counsel, rises to the level of a jurisdictional defect resulting from the failure to appoint counsel at all. This conclusion is supported by the interest in promoting the finality of judgments and avoiding delay and protraction of the federal sentencing process, and by the relative ease of administering a claim of failure to appoint counsel, as opposed to other constitutional challenges. Pp. 8–12.

2. However, Custis, who was still ``in custody'' for purposes of his state convictions at the time of his federal sentencing under §924(e), may attack his state sentences in Maryland or through federal habeas corpus review. See *Maleng* v. *Cook,* 490 U. S. 492. If he is successful in attacking these state sentences, he may then apply for reopening of any federal sentence enhanced by the state sentences. The Court expresses no opinion on the appropriate disposition of such an application. P. 12.

988 F. 2d 1355, affirmed.

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