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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 Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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GREENLAW *v.* UNITED STATES

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

No. 07–330. Argued April 15, 2008—Decided June 23, 2008

Petitioner Greenlaw was convicted of seven drug and firearms charges and was sentenced to imprisonment for 442 months. In calculating this sentence, the District Court made an error. Overlooking this Court's controlling decision in *Deal* v. *United States*, 508 U. S. 129, 132–137, interpreting 18 U. S. C. §924(c)(1)(C)(i), and over the Government's objection, the District Court imposed a 10-year sentence on a count that carried a 25-year mandatory minimum term. Greenlaw appealed urging, *inter alia*, that the appropriate sentence for all his convictions was 15 years. The Government neither appealed nor cross-appealed. The Eighth Circuit found no merit in any of Greenlaw's arguments, but went on to consider whether his sentence was too low. The court acknowledged that the Government, while it had objected to the trial court's error at sentencing, had elected not to seek alteration of Greenlaw's sentence on appeal. Nonetheless, relying on the "plain-error rule" stated in Federal Rule of Criminal Procedure 52(b), the Court of Appeals ordered the District Court to enlarge Greenlaw's sentence by 15 years, yielding a total prison term of 662 months.

Held: Absent a Government appeal or cross-appeal, the Eighth Circuit could not, on its own initiative, order an increase in Greenlaw's sentence. Pp. 5–17.

(a) In both civil and criminal cases, in the first instance and on appeal, courts follow the principle of party presentation, *i.e.*, the parties frame the issues for decision and the courts generally serve as neutral arbiters of matters the parties present. To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a *pro se* litigant's rights. See *Castro* v. *United States*, 540 U. S. 375, 381–383.

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The cross-appeal rule, pivotal in this case, is both informed by, and illustrative of, the party presentation principle. Under that rule, it takes a cross-appeal to justify a remedy in favor of an appellee. See *McDonough* v. *Dannery*, 3 Dall. 188. This Court has called the rule "inveterate and certain," *Morley Constr. Co.* v. *Maryland Casualty Co.*, 300 U. S. 185, 191, and has in no case ordered an exception to it, *El Paso Natural Gas Co.* v. *Neztsosie*, 526 U. S. 473, 480. No exception is warranted here. Congress has specified that when a United States Attorney files a notice of appeal with respect to a criminal sentence, "[t]he Government may not further prosecute [the] appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General." 18 U. S. C. §3742(b). This provision gives the top representatives of the United States in litigation the prerogative to seek or forgo appellate correction of sentencing errors, however plain they may be. Pp. 5–8.

(b) The Eighth Circuit held that the plain-error rule, Fed. Rule Crim. Proc. 52(b), authorized it to order the sentence enhancement *sua sponte*. Nothing in the text or history of Rule 52(b), or in this Court's decisions, suggests that the plain-error rule was meant to override the cross-appeal requirement. In every case in which correction of a plain error would result in modifying a judgment to the advantage of a party who did not seek this Court's review, the Court has invoked the cross-appeal rule to bar the correction. See, *e.g.*, *Chittenden* v. *Brewster*, 2 Wall. 191; *Strunk* v. *United States*, 412 U. S. 434. Even if it would be proper for an appeals court to initiate plain-error review in some cases, sentencing errors that the Government has refrained from pursuing would not fit the bill. In §3742(b), Congress assigned to leading Department of Justice officers responsibility for determining when Government pursuit of a sentencing appeal is in order. Rule 52(b) does not invite appellate court interference with the assessment of those officers. Pp. 8–10.

(c) *Amicus curiae*, invited by the Court to brief and argue the case in support of the Court of Appeals' judgment, links argument based on Rule 52(b) to similar argument based on 28 U. S. C. §2106. For substantially the same reasons that Rule 52(b) does not override the cross-appeal rule, §2106 does not do so either. P. 10.

(d) *Amicus* also argues that 18 U. S. C. §3742, which governs appellate review of criminal sentences, overrides the cross-appeal rule for sentences "imposed in violation of law," §3742(e). *Amicus'* construction of §3742 is novel and complex, but ultimately unpersuasive. At the time §3742 was enacted, the cross-appeal rule was a solidly grounded rule of appellate practice. Congress had crafted explicit exceptions to the cross-appeal rule in earlier statutes governing sen-

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tencing appeals, *i.e.*, the Organized Crime Control Act of 1970 and the Controlled Substances Act of 1970. When Congress repealed those exceptions and enacted §3742, it did not similarly express in the text of §3742 any exception to the cross-appeal rule. This drafting history suggests that Congress was aware of the cross-appeal rule and framed §3742 expecting that the new provision would operate in harmony with it. Pp. 10–13.

(e) In increasing Greenlaw's sentence *sua sponte*, the Eighth Circuit did not advert to the procedural rules setting firm deadlines for launching appeals and cross-appeals. See Fed. Rules App. Proc. 3(a)(1), 4(b)(1)(B)(ii), 4(b)(4), 26(b). The strict time limits on notices of appeal and cross-appeal serve, as the cross-appeal rule does, the interests of the parties and the legal system in fair warning and finality. The time limits would be undermined if an appeals court could modify a judgment in favor of a party who filed no notice of appeal. In a criminal prosecution, moreover, the defendant would appeal at his peril, with nothing to alert him that, on his own appeal, his sentence would be increased until the appeals court so decreed. Pp. 13–15.

(f) Nothing in this opinion requires courts to modify their current practice in "sentencing package cases" involving multicount indictments and a successful attack on some but not all of the counts of conviction. The appeals court, in such cases, may vacate the entire sentence on all counts so that the trial court can reconfigure the sentencing plan. On remand, trial courts have imposed a sentence on the remaining counts longer than the sentence originally imposed on those particular counts, but yielding an aggregate sentence no longer than the aggregate sentence initially imposed. This practice is not at odds with the cross-appeal rule, which stops appellate judges from adding years to a defendant's sentence on their own initiative. In any event, this is not a "sentencing package" case. Greenlaw was unsuccessful on all his appellate issues. The Eighth Circuit, therefore, had no occasion to vacate his sentence and no warrant, in the absence of a cross-appeal, to order the addition of 15 years to his sentence. Pp. 15–16.

481 F. 3d 601, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. ALITO, J., filed a dissenting opinion, in which STEVENS, J., joined, and in which BREYER, J., joined as to Parts I, II, and III.