

Reply Brief

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

DESMOND SHOTWELL, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

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

PETITIONER'S TRAVERSE TO
GOVERNMENT'S BRIEF IN OPPOSITION

BY:



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QUESTION(S) PRESENTED

1. Whether the Eleventh Circuit decision in LOCKLEY conflicts with a recent Ninth Circuit ruling in GEOZOS in holding that none of Florida's Robbery convictions qualify as violent felonies caused a Judicial split among the Circuit's under Article III case or controversy on the same question of law.

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OCTOBER TERM, 2017

No. 17-6540

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OPINION

The Opinion of the Court of Appeals is not yet reported, but judgement is noted in: Shotwell v. United States, ____, Fed.App'x ____ (Sept. 13, 2017)(unpublished).

JURISDICTION

The judgement of the Court of appeals was entered on September 13, 2017. Petitioner did not seek Rehearing En Banc with Suggestion for Rehearing. The Writ of Certiorari Petition was filed on October 17, 2017. The jurisdiction of this Court is invoked under Title 28 U.S.C. §1254(1).

STATEMENT

Desmond Shotwell filed the instant appeal without the benefit of a plea agreement to one-Count indictment charging unlawful possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§922(g)(1) and 924(e)(1). A Pre-sentence Investigation Report ("PSI") was prepared, recommending that Petitioner be classified as an armed career criminal, pursuant to the Armed Career Criminal Act, 18 U.S.C. §924(e) (the "ACCA"), based on any three of his four prior convictions for a violent felony, which in this case were Florida Robbery convictions. As an armed career criminal, Petitioner was subject to a mandatory minimum sentence of 15 years imprisonment, pursuant to 18 U.S.C. §924(e)(1).

Petitioner objected to his classification as an Armed Career Criminal on the ground that Florida robbery was not a violent felony. The District Court overruled Petitioner's objection and sentenced him to the mandatory minimum sentence of 180 months' imprisonment to be followed by a term of two-years Supervised Release. On September 26, 2016, a timely Notice of Appeal (NOA) was filed and assigned Appellate Case No.: 16-15935-CC. On March 9, 2017, Petitioner filed the initial brief on appeal. On April 14, 2017, the Appellee entered it's brief on behalf of the United States. On May 19, 2017, Petitioner submitted a Reply Brief. On September 13, 2017, in an eight (8) page "written Opinion." The Eleventh Circuit "affirmed" the Judgement and Commitment Order entered by the District Court. The Eleventh Circuit in Lockley found that binding Circuit precedent forecloses Petitioner's argument that he was improperly sentenced under the Armed Career Criminal Act, 18 U.S.C. §924(e), based on any three of his four Robbery felony convictions for Armed Robbery in violation of Fla. Stat. §812.13. Additionally, the U.S. Court of Appeals for the Ninth Circuit has reached a contrary conclusion noting: "We hold that

neither robbery, armed robbery, nor use of a firearm in the commission of a felony under Florida law is categorically a "violent felony." We also recognized that this holding puts us at odds with the Eleventh Circuit, which has held, post-Johnson I, that both Florida robbery and (necessarily) armed robbery are "violent felonies" under the force clause. Moreover, under these standards "this Court has a DUTY and obligation to resolve a Judicial split¹ among the Ninth and Eleventh Circuit under ... Article III's case or controversy on the same question of law.

Importantly noted, the government failed to cite to a single Florida case on this issue and, thus, has abandon any attempt to raise these claim(s) in it's "principle brief" on appeal and is precluded from doing so before this Court. And for those reason(s) set forth in more detail, infra, in this appeal REVIEW is necessary to resolve a Judicial Circuit split. By affording Mr. Shotwell the right to due proces[s]" and the effective assistance of counsel and equal protection of law. Under the Fifth (5th), Sixth (6th) and Fourteenth (14) Amendments to the United States Constitution as justice so require(s).

1. See SUP. CT. Rule 10.

ARGUMENT

Petitioner suggest(s) the question presented here is of great public importance that admittedly Warrants review, the government continues to insists that a shallow Circuit conflict exists on the issue. Mr. Shotwell would respectfully DISAGREE.

Morover, not discussed in the government's brief in opposition is the sheer number of ACCA cases in the Eleventh Circuit. Case-in-point, given the wide range of Florida's population around the U.S. (not merely the Eleventh Circuit). This issue has pop-up everywhere, from Alaska to New York.

Nevertheless, given this wide range. Geozos was sentence as an armed career criminal in Achorage, Alaska based upon a prior Florida robbery. Here, Mr. Shotwell assert(s) "if this remote corner of the world is tackling with this issue, then no other corner of the United States are immue from ayoiding this issue.

In any event, "because Court's in other federal jurisdiction have concluded that Florida robberby is not a violent felony. See, e.g., United States v. Lee, 2016 WL 1464118 at **6-7 (W.D.N.Y. 2016) ... Review is also pending in the Eighth Circuit regarding a sentence imposed by a North Dakota District Court in light of Fritts predicated upon a Florida robbery. United States v. Gabriel Lazaro Garcia-Hernandez, Case No. 17-3027, urging the Eighth Circuit to follow the Ninth Circuit's intervening decision in Geozos.

Furthermore, the government's argument presented in it's brief in opposition are identical to that set forth in the Stokeling brief and are not applicable to the fact(s) of this case and should be totally disregarded.

Turning to the case at bar, any decision by this Court here would undoubtly provide useful guidance to the lower Court's on whether minor

CONCLUSION

WEHEREFORE, for the reasons set forth by Desmond Shotwell in his initial brief and reinstatement of those reasons herein, by the following arguments, reasoning, and citations of authority, Grant of Certiorari is appropriate in this case where justice requires this Court to Remand for re-sentencing absent the use of the ACCA's enhancement, Due Process of Law and applicable statutory interpretation.

RESPECTFULLY SUBMITTED,



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