

No. _____

Appeal No. 17-11066-CC

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

CEFALO LEWIS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

April 16, 2018 A.D.

QUESTION(S) PRESENTED

I.

WHETHER THE ELEVENTH CIRCUIT DECISIONS IN FRITTS AND 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'S CASE OR CONTROVERSY REQUIREMENTS ON THE SAME QUESTION OF LAW.

INTERESTED PARTIES

The following are the parties to the proceedings below whom did not appear in the initial-caption of this case:

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ABIGAIL BECKER
MICHAEL CARUSO
DANIEL ECARIUS
BENJAMIN G. GREENBERG
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PETITION FOR WRIT OF CERTIORARI

Cefalo Lewis, respectfully Petition the Supreme Court of the United States for a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in Case No. 17-11066-CC in that Court on March 23, 2018, Lewis v. United States, ___, Fed.App'x ___ (11th Cir. Mar. 23, 2018) (unpublished), which affirmed the judgement on appeal from the United States District Court for the Southern District of Florida (Miami Division).

OPINIONS BELOW

A copy of the unpublished decision of the United States Court of Appeals for the Eleventh Circuit, which denied the judgement for the United States District Court for the Southern District of Florida, is attached and contained in Appendix A and found at ___ Fed.App'x ___ (11th Cir. Mar. 23, 2018). Petitioner did not seek Rehearing En banc with Suggestion for Rehearing En banc in the Court of Appeals.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and PART III OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES. No Petition for Rehearing with Suggestion for Rehearing En banc was filed in the Court of Appeals. The Petition is timely filed pursuant to SUP. CT. R. 13.1. The District Court had jurisdiction (pursuant to 18 U.S.C. §3231) because Petitioner's alleged Constitutional violations occurred within that Court's exclusive jurisdiction. The Court of Appeals had jurisdiction pursuant to 28 U.S.C. §1291 and 18 U.S.C. §3742, which provide that the Court's of Appeals shall have jurisdiction over ALL FINAL decisions of the District Court's of the United States.

STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely upon the following Constitutional provisions, treaties, statutes, rules, ordinances and regulations:

U.S. Const. Amend. VI & XIV

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

All persons born or naturalized in the United States, and subject to jurisdiction thereof, are Citizens of the United States and the state wherein they reside. No state shall make or force any law that shall abridge the privileges or immunities of Citizens of the United States, nor shall any state deprive any persons of life, liberty or property, without Due Process, nor deny to any person within it's jurisdiction the equal protection of laws.

STATEMENT OF THE CASE

Cefalo Lewis, a federal prisoner, filed the instant appeal in the United States District Court (Miami Division) for the Southern District of Florida, following a guilty plea to a single Count ... indictment, that charged him with possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. §§922(g)(1) and 924(e)(1). (DE 31).

In the PSR, the Probation Officer advised Petitioner that he qualified as an Armed Career Criminal, specifying that the following offenses were considered for that designation: 1) armed robbery with a weapon in docket number F98-13529¹; 2) sale or delivery of cocaine w/intent in docket number F01-29233; 3) possession of cocaine w/intent to sell in docket number F04-2447 (PSR ¶21.).

With a total offense level of 31 as an Armed Career Criminal, and a criminal history category of V, Petitioner faced a guideline range of 180-210 months pursuant to §5G1.1(c)(2). (PSR ¶70).

Petitioner, through counsel, filed objections to the PSR, stating based on Johnson v. United States, 135 S.Ct. 2551 (2015), the armed robbery with a weapon conviction should not have been utilized as a predicate offense because it no longer qualified as a crime of violence for purposes of the Armed Career Criminal Act ("ACCA"). (DE 37).

1. This conviction at issue was in Miami-Dade County within the Florida's Third DCA.

On February 23, 2017, the District Court overruled Petitioner's objections to the PSR finding that the ACCA enhancement applied and sentence Mr. Lewis to a term of 180-months imprisonment (DE 44). See Appendix B. On March 8, 2017, Petitioner timely filed a Notice of Appeal (NOA) challenging his conviction and sentence which was assigned Appellate Case No.: 17-11066-CC.

On August 31, 2017, Petitioner filed the initial brief on appeal. On October 10, 2017, the Appellee entered it's brief on behalf of the United States. On March 23, 2018, in a six (6) page "written Opinion." The Eleventh Circuit "affirmed the Judgement & Commitment Order entered in the District Court. See Appendix C. The instant Writ of Certiorari Petition ensued:

Lewis remains in "federal custody."

REASONS FOR GRANTING THE WRIT

This Court should grant review (in this action) to resolve a Judicial split among the Ninth and Eleventh Circuit on the same ... question of law regarding: (1) whether a Florida Robbery conviction under Fla. Stat. §812.13 qualify as a crime of violence under the force clause. The Eleventh Circuit in Lockley and Fritts found that binding precedent forecloses Mr. Lewis's argument that he was improperly sentence under the Armed Career Criminal Act, 18 U.S.C. §924(e), based on a 1998 armed robbery with a weapon conviction 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. And, thus, under these standards "this Court has a DUTY and obligation to resolve a Judicial split² among the Ninth and Eleventh Circuit under Article III's case or controversy on the same question of law. Therefore, gran[t]" of Certiorari is necessary to provide the District Court guidance in applying statute(s) in it's correct interpretation, in order to resolve a Judicial Circuit split, by affording Petitioner the right to due process and the effective assistance of counsel and equal protection of law. Under the Fifth (5th), sixth (6th) and Fourteenth (14th) Amendments to the U.S. Constitution as justice is require(s). And most notably, on April 2, 2018, this Court granted review in Stokeling in order to address this issue of great importance and to resolve this Judicial split among the Ninth and Eleventh Circuit on the same question of law' and in light of these unequivocal fact(s). This Court should hold Petitioner's brief in ABEYANCE pending resolution of this matter in Stokeling.

2. See SUP. CT. R. 10.

ARGUMENT

I.

WHETHER THE ELEVENTH CIRCUIT'S DECISIONS IN FRITTS AND 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'S CASE OR CONTROVERSY REQUIREMENTS ON THE SAME QUESTION OF LAW.

(A). LEWIS PRESENTS A JUDICIAL CIRCUIT SPLIT

In Petitioner's brief, which forms the basis for this appeal. Mr. Lewis ... assert(s) that although he has three (3) prior felony convictions, two (2) apparently are drug priors with the latter being a 1998 armed robbery conviction with a weapon. Case-in-point, the prior Florida robbery conviction under Fla. Stat. §812.13 is not violent" under the force clause. However, the government throughout the course of these proceeding(s) contines to ... suggest(s) that Petitioner was properly sentence as an armed career criminal based on the 98 robbery conviction in violation of Fla. Stat. §812.13. The government argues, on appeal, that Florida armed robbery, Fla. Stat. §812.13, does not categorically qualify as a violent felony under the elements clause of the ACCA, is squarely foreclosed by the Eleventh Circuit's binding precedents in United States v. Fritts, 841 F.3d 937, 939-44 (11th Cir. 2016); United States v. Seabrooks, 839 F.3d 1326, 1340-41 (11th Cir. 2016); Lockley, 632 F.3d at 1245; and Dowd, 451 F.3d at 1255. In reaching this conclusion, the Eleventh Circuit relied on a long-line of precedent, starting with Dowd and recently argue in Baxter, Hart and Williams control the outcome of this case and forecloses Petitioner's

argument is mis-placed according to the recent Ninth Circuit ruling in David Geozos v. United States, Case No. 17-35018 2017 WL 3712155 (9th Cir. 2017). In Geozos the panel, concluded: "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 recognize that this holding puts us at odds with the Eleventh Circuit, which held, post-Johnson I, that both Florida robbery and (necessarily) armed robbery are "violent felonies" under the force clause. See United States v. Lockley, 632 F.3d 1238, 1245 (11th Cir. 2011)(robbery); see also United States v. Fritts, 841 F.3d 937, 942 (11th Cir. 2016)("we hold that under Lockely ... a Florida armed robbery conviction under §812.13(a) [sic] categorically qualifies as a violent felony under the ACCA's elements clause."), cert. denied ___ U.S. ___, 137 S.Ct. 2264, ___ L.Ed.2d ___ (2017). The Geozos Court further explained, we are bound by our own precedent --- including Parnell and Strickland -- which may differ from the Eleventh Circuit's interpretation. We think that the Eleventh Circuit, focusing on the fact that Florida robbery requires a use of force sufficient to overcome that resistance' itself is minimal, then the force used to overcome that resistance is not necessarily violent force. See Montsdoca v. State, 84 Fla. 82, 93 So.2d 157, 159 (1922)("The degree of force used is immaterial. All the force that is required to make the offense a robbery is such force as is actually sufficient to overcome the victim's resistance.").

In sum, the panel's final conclusion, none of Florida robbery convictions qualifies as a "violent felony" under the force clause, so the Johnson-II error at Geozos's sentencing was not harmless. See Appendix D. On April 2, 2018, this Court granted review on this very same issue in Stokeling v. United States, U.S., No. 17-5554 (Apr. 2, 2018). This Court should hold Petitioner's brief in ABEYANCE pending

resolution of this Court's ruling regarding this Circuit split under Sup. Ct. Rule 10 on the same question of law.

(B). ARTICLE III'S CASE OR CONTROVERSY

In briefing this single issue regarding the limits that Article III of the U.S. Constitution and the Due Process Clause of the Fifth Amendment places on this Court to decide the law. Mr. Lewis has ... demonstrated in his brief that numerous Florida cases establish that Florida armed robbery does not and can not qualify as a violent felony under the ACCA.

Finally, "with respect" to the recent Ninth Circuit ruling in Geozos. This ruling' unequivocally contradicts each and every Eleventh Circuit decision regarding Florida robbery Statute §812.13 does not qualify as [] "violent felonies" under the force clause and since this Court recently agreed to resolve this split in Stokeling.³ Accordingly, in light of the ABOVE-given (facts) Petitioner respectfully pray(s) that this Honorable Court REVERSE the decision of the District Court and REMAND for Re-sentencing absent the use of the Armed Career Criminal enhancement in USSG Manual §4B1.4.

³. With the recent grant of review in Stokeling, U.S., No. 17-5554 (Apr. 2 2018), this Court should hold Petitioner's brief in ABEYANCE pending resolution of this action.

Lastly, this brief simply highlights some of the legal issue(s) presented for review, it is not intended to be vexatious or create delay in the proceedings and submitted in "good faith" with diligent efforts. Given the "Constitutional nature" of this case. Notably, Mr. Lewis makes three (3) essential final points: (1) this Court recently granted review to resolve the split among the Ninth and Eleventh Circuit on the same question of law in taking into consideration Petitioner's Constitutional rights having been violated⁴ (2) numerous Florida State Court rulings suggest(s) his 98 robbery conviction is not violent and (3) Dowd, Lockely, Fritts and Seabrooks were wrongly decided and are contradicted by Florida law. Moreover, (as previously discussed) Mr. Lewis would benefit from the appointment of counsel. As the Court may recall, on appeal Petitioner was represented by Daniel Ecarius, Esq., Assistant Federal Public Defender (AFPD) at the Federal Public Defender's Office located at 150 West Flagler Street. Suite#1700, Miami, Florida. 33130-1555. Accordingly, in light of these fact[s]" this Court should appoint Counsel from the Criminal Justice Act ("CJA")⁵ panel on the issue presented and to further brief this matter in this Court and/or the appropriate Court of Appeals.

4. See Appendix E.

5. See Title 18 U.S.C. §3006(A).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully Submitted,

Cefalo Lewis

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