IN THE

SUPREME COURT OF THE UNITED STATES

JAMAL HAMILTON

2010 - CF3 - 4268

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED

Whether Lynch v. Dimaya, No. 15-1498, 2016 WL 3232911 (U.S. Sept. 29, 2016), to determine whether the identical language in the residual clause of 18 U.S.C. 16(b) is unconstitutionally void after Johnson and whether 18 U.S.C. 16(b) supply the definition of a crime of violence for D.C. Code state law as previously held in United States v. Barahona 2014 D.C. Super. LEXIS 19 (D.C. 2014)?

LIST OF PARTIES

1) Court of Appeals for the District of Columbia

2) The Superior Court of the District of Columbia

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OPINIONS BELOW

The opinion of the United States Court of Appeals appears in Appendix A.

JURISDICTION

The Court of Appeals for the District of Columbia opinion denying Petitioner's appeal was entered on June 28, 2017. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(a).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

D.C. codes, 18 U.S.C. 16(b), and the Fifth and Sixth Amendment of the United States.

STATEMENT OF THE CASE

Petitioner was charged in a seventeen count indictment which he proceeded to trial by jury and later found guilty, in relevent part, to a crime of violence under D.C. Code section 2801, and 4502 labeled as robbery while armed. On June 17, 2011 the Superior Court of the District of Columbia sentenced Petitioner to imprisonment for 252 months, and ten years of supervised release. Petitioner filed a timely notice of appeal, which was denied on February 24, 2014. Petitioner further filed a Petition for rehearing and for rehearing en banc which was denyed on July 2, 2014. Petitioner filed a petition pursuant to D.C. Code 23-110 on September 23, 2014, based on ineffective assistance of counsel which was subsequently denied. Later, Petitioner filed a motion based on Johnson v. United States 135 S. Ct. 2551 (2015), which was made retroactive on collateral review by the Supreme Court in, Welch v. United States ___ U.S. ___, 136 S. Ct. 179, 193 L. Ed. 2d 534 (2016), to set forth his claim that robbery while armed is void for vagueness.

REASONS FOR GRANTING THE PETITION

Prior to this Court's vagueness analysis in, Johnson v. United States 135 S. Ct. 2551 (2015), the District of Columbia Superior Court found in, United States v. Barahona 2014 D.C. Super. LEXIS 19 (D.C. 2014), that classification of a state crime can be tricky and in order to determine whether an offense created by state law is in fact a crime of violence the court looks to 18 U.S.C. 16 to supply the definition. Defining that term to mean either an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, 16(a), or any other offense that is a felony and that, by its nature, involves a substance risk that physical force against the person or property of another may be used in the course of committing the crime, 16(b). Other courts in the D.C. Circuit, prior to Johnson has also utilized the exact vagueness analysis, such as in, Colter v. United States 37 A.3d 282 (D.C. 2012), which held that assault with significant bodily injury is not a crime of violence because it is a less serious offense than most, if not all, on the list of offenses designated as a crime of violence under D.C. Code 23-1331 (4)(2011 Supp.). In terms of firearm offenses under D.C. Code 4504(b), the court in Wheeler v. United States 977 A.2d 973 (D.C. 2009) described the language for 4504(b) and 924(c) as being identical for possession of a firearm during a crime of violence. However, since this Court's analysis of vagueness in Johnson and its constitutional deprivations and warranted relief the D.C. courts in order to prevent relief based on this court's conclusion and retroactive provisions are now claiming ambiguity in their prior analysis as not being consistant with Johnson and overlooking the potential relief through 18 U.S.C. 16(b) possibly being assessable through Lynch v. Dimaya now before this Court. Through the D.C. Circuit, in order to charge Petitioner with, robbery while armed a seper-

ate D.C. Code is joined with the robbery code listed under 23-1331 as a violent offense but that code, 4502, is not listed as one of the crime of violence offenses. The robbery offense listed under D.C. Code 23-1331(4) has no particular description or degree and therefore catagorically assessing the most innocent conduct penalized by a robbery offense would not require physical or violent force capable of causing pain or injury to another person. The label robbery while armed is arbitrary and not listed as a crime of violence under D.C. Code 23-1331(4). The armed portion of Petitioner's charged offense do not list any elements of use such as; brandishing or discharging. The armed portion by itself or joined as robbery while armed would not constitute a crime of violence because at its most innocent conduct would not require physical or violent force capable of causing pain or injury to another person. Therefore, both codes seperately or joined together would require the Court to make a judicial assessment of risk to a judicially imagined ordinary case of a crime rather than to real-world facts or statutory elements. The prosecutor in response to Petitioner's claim enlisted as their support in opposition, predicates of a claim to deny a Johnson claim in, Richardson J. Green 465 S.W. 3d 60, 66 (MO. 2015)(en banc), which had nothing remotely applicable to Petitioner's claim. In Richardson, the inmate had previously plea guilty to two counts of violating section 565.024.1 (3)(a), which states in relevant part, a person commits the crime of involuntary manslaughter in the first degree if he while in an intoxicated condition operates a motor vehicle in this state, and, when so operating, acts with criminal negligence to cause the death of any person not a passenger in the vehicle operated by the defendant. The defendant had admitted that on November 4, 2007, he was driving while his blood alcohol content was in excess of what the law presumes to be impaired. While driving impaired the defendant hit a vehicle, killing two individuals, and permanently injuring two others. The defendant subsequently moved the court for a reduction of his sentence pursuant to section 558.046 which holds that the sentencing court may, upon petition, reduce any term

of sentence if the court determines that the convicted person was convicted of an offense that did not involve violence or threat of violence, or convicted of an offense that involved alcohol or illegal drugs. The court acknowledged the primary rule of statutory interpretation is to give effect to legislative intent as reflected in plain language of the statute. The statute's language in this reference specifically state that a person commits the crime of involuntary manslaughter under section 565.024.1 (3)(a) while in an intoxicated condition operates a motor vehicle in this state, and when so operating, acts with criminal negligence to cause the death of any person not a passenger in the vehicle operated by the defendnat. The court also clarified that section 558.046 is a sentencing reduction statute that Missouri's legislature chose to enact to provide as a mechanism for offenders who have completed alcohol rehabilitation program to have their sentence, probation, or parol reduced for what amounts to good behavior. The court also compared the Federal cases that the defendant used as an example of the term violence and its meaning, including Johnson v. United States, and held that none of the federal cases were based on a sentencing reduction statute, but rather, delt with the imposition of a mandatory minimum sentence for an offender who has three prior convictions for a crime of violence or serious drug offense. The court found that the purpose of the statute and litigation of the federal cases exemplified, held no weight as an example in that litigation, because by contrast, section 558.046 is not a method of increasing the sentence a defendant must serve if his conduct involves violence. The court found that the crime that the defendant was convicted is not subject to the vagueness objections that concerned the United States Supreme Court in Johnson because section 565.024.1 (3) requires as an element that death result from the defendant's driving in an intoxicated condition. The opposition in Petitioner's case also claimed that United States v. Barahona 2014 D.C. Super. LEXIS 19 (D.C. 2014) has no controlling authority over the Court of Appeals for the D.C. Circuit because it is a D.C. Superior court case, but yet, the opposition enlisted an out-

of-state (Missouri) case that has absolutely no bearing on these litigations for their proposition of authority over this case. The Barahona court considered D.C. law and challenges to the vagueness of their statutes. The Barahona court considered and held that the District of Columbia's simple assault statute, D.C. Code 22-404 (2001) criminalizes some acts that fall outside of the catagory of violent, active crimes, and do not cause physical pain or injury to another person or involve a substantial degree of physical force, and does not qualify as a crime of violence under 18 U.S.C. 16(a). The court also held that misdemeanor sexual abuse D.C. Code 22-3006 (2001) criminalize an act that do not necessarily involve the type of physical force comtemplated in 18 U.S.C. 16(a). But yet, both are D.C. Codes and would fall under the definition of 23-1331(4) assault with intent to commit any other offense. As the D.C. courts have come to conclusions of whether an offense qualifies as a crime of violence by assessing the less serious offense held under a divisible statute, the court in Johnson was based on the same evaluation and has lead to determining whether 16(b), 924(c) and other statutes considered under the same divisible provisions suffer from the same unconstitutional vagueness. The ambiguity left in the D.C. courts warrant judicial assessment by the Supreme Court of the United States.

CONCLUSION

Based on the facts in this petition reflecting the records of the lower courts and their ambiguity this Court should grant this petition for Writ of Certiorari.

Date: 9/20/17

Respectfully Submitted,

Jamal Hamilton