

No. 18-6009

IN THE SUPREME COURT OF THE UNITED STATES

EMILE MYRTHIL, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 8-12) that the court of appeals erred in rejecting his claim that the definition of a "crime of violence" in 18 U.S.C. 924(c) (3) (B) is unconstitutionally vague. Petitioner also contends (Pet. 13-17) that this Court should grant review to determine whether attempted robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), is a "crime of violence" under 18 U.S.C. 924(c) (3). The petition for a writ of certiorari should be denied.

As relevant here, petitioner pleaded guilty to one count of possessing a firearm in furtherance of a "crime of violence," in

violation of 18 U.S.C. 924(c)(1)(A)(iii). Pet. App. A3, at 1. The indictment specified that the underlying crimes of violence were attempted Hobbs Act robbery, in violation of 18 U.S.C. 1951(a), and conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a). Indictment 1-3; see Pet. App. A3, at 1. Petitioner admitted at his plea hearing to participating in an attempted armed robbery of a fast-food restaurant with three others, one of whom discharged a firearm at a police officer who responded to the scene. Plea Tr. 9-13.

The question whether attempted Hobbs Act robbery is a crime of violence (Pet. 13-17) does not warrant review. The Hobbs Act defines robbery to require the "taking or obtaining" of personal property from another "by means of actual or threatened force, or violence, or fear of injury." 18 U.S.C. 1951(b)(1). For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Garcia v. United States, cert. denied, No. 17-5704 (Jan. 8, 2018), Hobbs Act robbery qualifies as a crime of violence under Section 924(c)(3)(A) because it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. 924(c)(3)(A); see Br. in Opp. at 7-10, Garcia, supra (No. 17-5704). Every court of appeals that has considered the issue, including the Eleventh Circuit, has so held. Br. in Opp. at 8, Garcia, supra (No. 17-5704). And this Court has repeatedly denied

review of that issue, see id. at 5 & n.1, including in Garcia, supra, and more recent cases. See, e.g., Ragland v. United States, cert. denied, No. 17-7248 (May 14, 2018); Chandler v. United States, cert. denied, No. 17-6415 (Mar. 19, 2018); Middleton v. United States, cert. denied, No. 17-6343 (Mar. 19, 2018); Jackson v. United States, cert. denied, No. 17-6247 (Feb. 20, 2018).

Likewise, for the reasons stated in the government's brief in opposition to the petition for a writ of certiorari filed in Ragland, supra (No. 17-7248), attempted Hobbs Act robbery qualifies as a crime of violence under Section 924(c)(3)(A) because it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. 924(c)(3)(A); see Br. in Opp. at 6-9, Ragland, supra (No. 17-7248).¹ Every court of appeals that has considered the issue, including the Eleventh Circuit, has so held. Br. in Opp. at 7, Ragland, supra (No. 17-7248). This Court has repeatedly denied review of that issue, including in the case that petitioner identifies (Pet. 6) as presenting the "same or related questions." See St. Hubert v. United States, 139 S. Ct. 246 (2018) (No. 18-5269); see also, e.g., Ragland, supra (No. 17-7248); James v. United States, cert. denied, No. 17-6295 (Mar. 19, 2018). The same result is appropriate here.

¹ We have served petitioner with copies of the briefs in opposition in both Ragland and Garcia.

Because attempted Hobbs Act robbery qualifies as a crime of violence under Section 924(c) (3) (A), no reason exists to consider in this case whether the alternative definition of a "crime of violence" in 18 U.S.C. 924(c) (3) (B) is unconstitutionally vague. See Pet. 8-12. Petitioner's Section 924(c) count identified attempted Hobbs Act robbery and conspiracy to commit Hobbs Act robbery as predicate crimes of violence. Although the government has filed a petition for a writ of certiorari seeking review of the question whether Section 924(c) (3) (B) is unconstitutionally vague, in a case in which the specified "crime of violence" was a conspiracy to commit Hobbs Act robbery, see Pet. at 1, 11-12, United States v. Davis, No. 18-431 (filed Oct. 3, 2018), holding this petition for Davis would be unwarranted because petitioner's Section 924(c) conviction was independently supported by the crime of violence of attempted Hobbs Act robbery. As the court of appeals correctly explained, a "conviction and sentence under § 924(c) requires" only that the firearm be possessed in furtherance of one crime of violence, "not two." Pet. App. A1, at 7; see 18 U.S.C. 924(c) (1) (A).²

² The government waives any further response to the petition unless this Court requests otherwise.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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