

No. _____

18-8277

IN THE

SUPREME COURT OF THE UNITED STATES

Trevor Ransfer — PETITIONER

(Your Name)

vs.

FILED

FEB 11 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The 11th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Trevor Ransfer

(Your Name)

FCC-Coleman USP II

P.O. Box 1034

(Address)

Coleman, FL. 33521

(City, State, Zip Code)

(Phone Number)

I. QUESTION(S) PRESENTED

A. Should a three-judge panel of the United States Court of Appeals of the Eleventh Circuit's Order Denying A Second Or Successive habeas petition for relief under 28 U.S.C. Section(s) 2255(h) and 2244(b), be considered binding precedent, when binding precedent of that same circuit and sister circuits preclude such actions (Reaching the merits)?

B. Prior to the ruling of the United States Court of Appeals for the Eleventh Circuit in St. Fleur, holding that a Hobbs Act Robbery is categorically a crime of violence (As a case of first impression in that circuit), was Petitioner's conviction for Using/Carrying A Firearm In Relation To A Crime of Violence both unlawful and a non-existent crime in relation to Hobbs Act Robberies?

C. Does robbery under the Hobbs Act categorically qualify as a "crime of violence" under the Elements Clause of 18 U.S.C. 924(c)(3)(A)?

II. LIST OF PARTIES

- A. Trevor Ransfer,
Petitioner;

- B. United States of America,
Olivia Choe, AUSA,
Respondent.

III. TABLE OF CONTENTS

- A. Opinions Below
- B. Jurisdiction
- C. Constitutional And Statutory Provisions Involved
- D. Statement Of The Case
- E. Reasons For Granting Writ
- F. Conclusion

IV. INDEX TO APPENDICES

- A. Appx. A- Motion For Reconsideration in 11th Cir. No. 17-15105-C
- B. Appx. B- Appeal to 11th Circuit C.O.A. No. 17-15105-C
- C. Appx. C- Order adopting Magistrate's R & R No. 16-cv-22255-MOORE
- D. Appx. D- Report & Recommendation No. 16-22255-cv-MOORE
- E. Appx. E- Reply to Motion To Vacate No. 16-22255-cv-MOORE/WHITE
- F. Appx. F- Memorandum of Law No. 16-22255-cv-MOORE/WHITE
- G. Appx. G- 28 U.S.C. 2255 Motion To Vacate No. 16-22255-cv-KMM

V. TABLE OF CONTENTS

A. CASES:

Descamps v. United States, 133 S.Ct. 2276 (2013).....	4
Felker v. Turpin, 116 S.Ct. 2333 (1996).....	5
In re Hubbard, 803 F.3d 1298 (11th Cir. 2015).....	6
In re Pinder, 824 F.3d 977 (11th Cir. 2016).....	5
In re St. Fleur, 824 F.3d 1337 (11th Cir. 2016).....	4-6
Johnson v. United States, 135 S.Ct. 2551 (2015).....	6
S.T.O.F. v. Florida, 517 U.S. 44 (1996).....	6
United States v. Archer, 531 F.3d 1347 (11th Cir. 2008)....	6
United States v. Ransfer, 622 Fed. Appx. 896 (11th Cir. 2015)	4
United States v. Ransfer, 749 F.3d 914 (11th Cir. 2014)....	4
Welch v. United States, 136 S.Ct. 1257 (2016).....	6
United States v. Local 560 of the Int'l Bhd of Teamsters, 780 F.3d 267, 281 (3rd Cir. 1986).....	7
Curtis Johnson, 599 U.S. 133, 139, 130 S.Ct. 1265, 1270 (2010)	7

B. STATUTES AND RULES:

18 U.S.C. 924(c).....	3,4,6,7
18 U.S.C. 924(c)(3)(A).....	5,7,11
18 U.S.C. 1951(a).....	3,4,6

28 U.S.C. 2244(b).....	ii
28 U.S.C. 2255(h).....	ii
28 U.S.C. 1254(1).....	2
28 U.S.C. 2255.....	4,5
28 U.S.C. 2255(h)(2).....	6

IN THE
SUPREME COURT OF THE UNITED STATES
A PETITION FOR WRIT OF CERTIORARI

Petitioner Trevor Ransfer respectfully prays that a Writ of Certiorari is issued to review the judgment below.

A. OPINION BELOW

The opinion of the United States Court of appeals for the Eleventh Circuit appears at Appendix B to the petition and is unpublished.

The opinion of the United States District Court for the Southern District of Florida appears at Appendix C & D to the petition and is unpublished.

B. JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit decided my case was June 29, 2018.

A petition for rehearing was timely filed on _____.

A timely petition for rehearing was denied by the Eleventh Circuit Court of Appeals for the United States on November 14, 2018.

This petition for a Writ of Certiorari follows pursuant to 28 U.S.C. 1254(1).

C. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition involves the application of 18 U.S.C. 924(c) to an 18 U.S.C. 1951(a) Hobbs Act Robbery.

(a) Applying Hobbs Act Robbery as a "crime of violence", for 18 U.S.C. 924(c);

(b) A case of first impression combining 18 U.S.C. 924(c)(1)(A) with an 18 U.S.C. 1951(a) Hobbs Act Robbery;

(c) Fourteenth Amendment right to Due Process of Law; Ex Post Facto Law.

D. STATEMENT OF THE CASE

Procedural Facts

Petitioner Trevor Ransfer was tried and convicted upon multiple counts of violating 18 U.S.C. Section 1951(a) Hobbs Act Robbery, and 18 U.S.C. Section 924(c) Possessing A Firearm In Relation To A Crime Of Violence.

His appeals to the Eleventh Circuit on two occasions were denied. See United States v. Ransfer, 749 F.3d 914 (11th Cir. 2014) and United States v. Ransfer, 622 Fed. Appx. 896 (11th Cir. 2015).

Petitioner sought relief by Motion To Vacate under 28 U.S.C. 2255, which was denied. See attached Appendices A through G.

Substantive Facts

Petitioner's case stems from using a carrying a firearm in furtherance of a crime of violence. Petitioner has argued to the Eleventh Circuit Court of Appeals, unsuccessfully, that a Hobbs Act Robbery does not classify as a crime of violence. See Descamps, 133 S.Ct. at 281.

However, the Eleventh Circuit Court of Appeals has determined In re St. Fleur, that a Hobbs Act Robbery is categorically a crime of violence under the Elements Clause. See In re St. Fleur, 824 F.3d 1337, 1340 (11th Cir. 2016).

E. REASON(S) FOR GRANTING THE PETITION

A. The Eleventh Circuit Court of Appeals reached the merits of St. Fleur's case upon an application for permission to file a second or successive 28 U.S.C. 2255 motion in "ERROR", and in violation of his own precedent, and precedent of several sister circuits.

The Eleventh Circuit's ruling in In re St. Fleur, 824 F.3d 1337 (11th Cir. 2016), holds that a Hobbs Act Robbery is categorically a crime of violence under the Elements Clause in 18 U.S.C. 924(c)(3)(A).

The Eleventh Circuit's decision was reached on the merits of an Application to File A Second or Successive 2255 Motion To Vacate, and directly conflicts with its own precedent of sister circuits, and the ruling of the United States Supreme Court in the case Felker v. Turpin, 518 U.S. 651, 657, 135 L. Ed. 2d 827, 116 S.Ct. 2333 (1996). In Felker, the Supreme Court stated that Court of Appeals had "30 days to determine whether the application made a *prima facie* showing of satisfying the requirements of Section 2244(b)(3)(C)"; not to reach the merits of the claim.

In In re Pinder, 824 F.3d 977 (11th Cir. 2016), the Eleventh Circuit's dissent stated that deciding the merits of a case upon an application to file a second or successive 2255 motion "would go beyond the gatekeeping task Congress has assigned them under AEDPA." Further, that dissent stated that our "task is simply to determine whether the Movant's motion contains a new rule of

constitutional law made retroactive to cases on collateral review by the Supreme Court that was previously unavailable, 28 U.S.C. 2255(h)(2).

B. Because 18 U.S.C. Section 1951(a) was deemed to be a crime of violence, for the first time, in In re St. Fleur, it was unlawful as applied to Petitioner who was convicted prior to the ruling in St. Fleur, making the conviction to be based upon a non-existent or non-clarified statute or law.

It is axiomatic that federal District Courts are bound by the precedent of their circuit. In re Hubbard, 803 F.3d 1298, 1309 (11th Cir. 2015). Likewise, United States Courts of Appeals are bound by the holdings of United States Supreme Court cases. S.T.O.F. v. Florida, 517 U.S. 44, 67, 116 S.Ct. 1114, 1129, 134 L. Ed. 2d 252 (1996); See United States v. Archer, 531 F.3d 1347, 1352 (11th Cir. 2008).

Article I, Section 9 Clause 3 of the United States Constitution proscribes ex post facto laws. Herein, Petitioner has been serving an enhanced sentence under 18 U.S.C. Section 924(c) for conduct that was proven to be unconstitutional in Johnson and only became lawful when In re St. Fleur was decided in 2016.

Therefore, the findings held under the Residual Clause to be unlawful, in Johnson and Welch, could not support a jury's verdict of guilty under the Elements Clause. St. Fleur determined for the first time, in 2016, that Hobbs Act Robbery was a "crime of violence" to support a 924(c) penalty.

C. Robbery under the Hobbs Act fails to qualify as a crime of violence under 924 (c)(3)(A).

Hobbs Act Robbery does not qualify as a crime of violence under Section 924(c)(3)(A) because it does not require, in every case, the use, attempted use, or threatened use of physical force, capable of causing physical pain or injury as outlined in Curtis Johnson v. United States, 559 U.S. 133, 139, 130 S.Ct. 1265, 1270 (2010).

Robbery under the Hobbs Act could be committed by causing a person to "fear financial harm". For example, the Eleventh Circuit's pattern jury instructions show that a jury can convict a defendant of Hobbs Act robbery so long as it believes the defendant "took the property against the victim's will, by using actual or threatened force, or violence, or causing the victim to fear harm, either immediately or in the future." See 11th Cir. Pattern Jury Instructions 70.3. This "causing the victim to fear harm" can include causing fear of "financial loss", which "includes...intangible right that are a source or element of income or wealth." Id. See also, United States v. Local 560 of the Int'l Bhd of Teamsters, 780 F.2d 267, 281 (3rd Cir. 1986)(noting that "other circuits which have considered this question are unanimous in extending Hobbs Act to protect intangible property").

Since Hobbs Act robbery can be committed without the use, attempted use, or threatened use of physical force, as outlined

in Curtis Johnson, supra. Mr. Ransfer's 924(c) convictions and resulting consecutive sentences are now unlawful.

F. CONCLUSION

Due to the aforementioned reason(s) and facts of law, the petition for a Writ of Certiorari should be granted.

Respectfully submitted this 11th day of ~~January~~^{Feb}, 2019.

Trevor Ransfer
Trevor Ransfer
Reg. No. 97520-004
FCC-Coleman USP II
Coleman, FL. 33521