

JULIUS GREER, :

Petitioner

UNITED STATES OF AMERICA :

Robert Epstein, Assistant Federal Defender, Federal Community Defender Office for the Eastern District of Pennsylvania, respectfully requests the granting of the instant application for a 30-day extension of time for filing a petition for writ of certiorari, or until February 25, 2019 (the 30th day falls on Sunday, February 24, 2019), and in support represents the following:

1. Julius Greer was charged under indictment No. 10-cr-00711-1 in federal court in the Eastern District of Pennsylvania with conspiracy to commit robbery which interfered with interstate commerce, in violation of 18 U.S.C. § 1951(a) (Count 1); robbery which interfered with interstate commerce and aiding and abetting, in violation of 18 U.S.C. § 2 (Count 2); carrying and using a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1) and aiding and abetting, in violation of 18 U.S.C. § 2 (Count 3); and convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) (Count 4). Mr. Greer proceeded

to trial and was found guilty on all charges, was sentenced, and subsequently filed notice of appeal.

2. Briefs were filed and on May 16, 2018, the Third Circuit Court of Appeals entered a not precedential Opinion affirming the judgment of the district court. (Attached as Appendix “A”). On September 27, 2018, the Court of Appeals vacated the judgment and reentered judgment in order to allow Mr. Greer to file a timely petition for writ of certiorari. (Order of the Third Circuit Court of Appeals attached as Appendix “B”). The Federal Community Defender Office for the Eastern District of Pennsylvania was also appointed on September 27, 2018.

3. Pursuant to Rule 13.1, Mr. Greer’s petition for writ of certiorari was due on December 26, 2018. That date was subsequently extended until January 25, 2019, pursuant to undersigned counsel’s written 30-day request.

4. Counsel will be unable to complete the petition within the allotted time as counsel has been occupied preparing the petition for writ of certiorari in *Amin De Castro v. United States*, Supreme Court No. 18-7256, filed on January 2, 2019; and the opening brief and joint appendix in *United States v. Musa Turay*, Third Circuit No. 18-2391, filed on January 3, 2019. Counsel has also been occupied preparing the reply brief in *United States v. Hector Cisneros-Ibarra*, Third Circuit No. 18-2087, due on January 24, 2019. Additionally, counsel is reviewing the record for the preparation of the opening brief and joint appendix in

United States v. Tajhan Knox, Third Circuit No. 18-1540, opening brief and joint appendix presently due on January 21, 2019.

5. Counsel requests an additional 30 days to complete the petition for writ of certiorari.

WHEREFORE, for all the foregoing reasons of good cause, Robert Epstein, Assistant Federal Defender, on behalf of the Federal Community Defender Office for the Eastern District of Pennsylvania, and on behalf of Julius Greer, Petitioner, respectfully requests that this Court grant this motion for a 30-day extension of time for filing of the petition for writ of certiorari and order that the petition be filed on or before February 25, 2019.

Respectfully submitted,



ROBERT EPSTEIN
Assistant Federal Defender

APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1996

UNITED STATES OF AMERICA

v.

JULIUS GREER
a/k/a
“POONY”

Julius Greer,
Appellant

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal Action No. 2-10-cr-00711-01)
District Judge: Honorable John R. Padova

Submitted Under Third Circuit LAR 34.1(a)
March 5, 2018

Before: MCKEE, AMBRO, and RESTREPO, Circuit Judges

(Opinion filed: May 16, 2018)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

McKEE, Circuit Judge

Julius Greer appeals from the sentence that was imposed following the Supreme Court's remand of his appeal from his original conviction for Hobbs Act robbery based on the Court's subsequent decision in *Alleyne v. United States*.¹ For the reasons that follow, we will affirm the district court's rejection of the arguments Greer made following that remand.

I.²

Greer raises two issues in this appeal. First, he asserts that the district court erred in denying his motion to dismiss the indictment for a purported Speedy Trial Act violation. Second, he claims that his conviction under 18 U.S.C. § 924(c) must be vacated because Hobbs Act robbery is not a crime of violence under that statute.

A. Speedy Trial Act

The Speedy Trial Act requires that a defendant be tried within seventy days of his indictment, information, or arraignment, whichever is later.³ After seventy days have elapsed, a defendant may move to dismiss the charges against him and the indictment "shall be dismissed."⁴ When ruling on a motion to dismiss an indictment for purported Speedy Trial Act violations, the district court must identify and tally the days included on

¹ 133 S.Ct. 2151 (2013). The Court granted Greer's petition for certiorari after we affirmed his conviction on direct appeal. *See United States v. Greer*, 645 Fed. Appx. 205 (3d Cir. 2016).

² The district court had jurisdiction pursuant to 18 U.S.C. § 3231. We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

³ 18 U.S.C. § 3161(c)(1).

⁴ 18 U.S.C. § 3162(a)(2).

the speedy trial clock and count toward the seventy-day limit.⁵ The district court may, however, exclude certain days from this calculation, including delays that resulted from the pretrial motions and court continuances.⁶

The parties agree that this appeal centers on the district court's exclusion of the thirty-three days that elapsed from May 25, 2011 to June 27, 2011.⁷ The district court ostensibly excluded that time after granting the government's April 28th motion for a continuance.⁸ However, the government sought that continuance because the assigned prosecutor was scheduled to begin another trial on May 9th—the same day Greer's trial was to begin.⁹ That scheduling conflict was presumably resolved by the time the court granted the government's request on May 24th. Accordingly, the court erred in granting the government's continuance request based on a nonexistent scheduling conflict.

However, Greer's counsel did not object to that continuance. Instead, after the court scheduled trial for June 27, 2011, he indicated his consent by stating: "that's fine."¹⁰ Additionally, Greer did not specifically challenge the district court's decision to exclude this time period from its Speedy Trial Act calculation when he moved to dismiss the indictment.¹¹ When, as here, a defendant fails to object to an alleged error, that error

⁵ *Zedner v. United States*, 547 U.S. 489, 507, 126 S.Ct. 1976, 164 L.Ed.2d 749 (2006).

⁶ 18 U.S.C. § 3161(h)(1)(D) & (7)(A).

⁷ Br. for Appellant, 34–37; Br. for Appellee, 16.

⁸ Specifically, in granting the order the District Court wrote that "the failure to grant this continuance would result in a miscarriage of justice, and would unreasonably deny the government continuity of counsel and the reasonable time necessary for effective preparation, taking into account the exercise of due diligence[.]" App. 119.

⁹ App. 59–60.

¹⁰ App. 115.

¹¹ App. 122–23.

is considered “forfeited” and we may review for plain error.¹² Accordingly, we may reverse only if, *inter alia*, “the error ‘seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings.’”¹³ Greer contends that he satisfied this standard because the violation was both “blatant and egregious.”¹⁴ We disagree.

There is nothing in the record to suggest that the district court’s erroneous decision to grant the government’s moot continuance request affected the outcome of this case. Greer does not allege, for example, that he was unable to present evidence or locate witnesses as a result of the delay.¹⁵ In fact, he does not proffer anything to suggest that the delay seriously affected the judicial proceedings. We therefore decline to find plain error and affirm the denial of his motion to dismiss.

B. Hobbs Act Robbery and § 924 Convictions

Greer also contends that his conviction under § 924(c)(3)(B) must be vacated because Hobbs Act robbery is not a “crime of violence.” He advances three arguments in support of this point. First, he claims that his Hobbs Act conviction cannot be considered a crime of violence under § 924(c)(3)(B)’s residual clause because that clause is void for vagueness.¹⁶ Next, he claims that the substantive offense of Hobbs Act robbery does not

¹² *U.S. v. Vampire Nation*, 451 F.3d 189, 203 (3d Cir. 2006) (quoting *U.S. v. Dobson*, 419 F.3d 231, 236 (3d Cir. 2005)).

¹³ *Id.*

¹⁴ Br. for Appellant, 37.

¹⁵ See *Barker v. Wingo*, 407 U.S. 514, 532 (1972) (“If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past.”); *United States v. Young*, 657 F.3d 408, 420 (6th Cir. 2011) (discussing witness unavailability an alleged spoliation of mitigation evidence as a result of a Speedy Trial violation).

¹⁶ Br. for Appellant, 41.

qualify as a crime of violence under § 924(c)(3)(A) because it does not require the “use, attempted use, or threatened use of violent physical force.”¹⁷ Finally, he asserts that conspiracy to commit Hobbs Act robbery does not qualify as a crime of violence under § 924(c)(3)(A) for the same reason.

However, we have already held that Hobbs Act robbery qualifies as a predicate crime of violence under § 924(c)’s elements clause when a defendant is contemporaneously convicted of both crimes.¹⁸ Greer was convicted of Hobbs Act robbery and carrying or using a firearm during the commission of that robbery, and it is therefore clear that the jury found that Greer’s robbery “sprang from the barrel” of a gun.¹⁹ Thus, it qualifies as a crime of violence. Accordingly, we will affirm Greer’s conviction under 18 U.S.C. § 924(c) and need not address Greer’s other two grounds for challenging his Hobbs Act conviction.²⁰

II.

For the foregoing reasons, we will affirm.

¹⁷ *Id.* at 41.

¹⁸ *United States v. Robinson*, 844 F.3d 137, 139 (3d Cir. 2016); *United States v. Galati*, 844 F.3d 152, 154–55 (3d Cir. 2016).

¹⁹ *Robinson*, 844 F.3d at 144.

²⁰ *See Robinson*, 844 F.3d at 141 (holding that we need not address a challenge to the § 924(c)’s residual clause when it is clear that Hobbs Act robbery is a crime of violence under the elements clause).

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17-1996

United States of America

v.

Julius Greer
Appellant

(E.D. Pa. No. 2-10-cr-00711-001)

Present: MCKEE, AMBRO and RESTREPO, Circuit Judges

1. Motion by Appellant to Vacate and Re-Enter the May 16, 2018 Judgment Affirming His Conviction In Order to Allow Timely Supreme Court Review and The Appointment of the Federal Defenders Office to Assist with Such an Important Filing, which the Court may also wish to treat as a Motion to Recall the Mandate.

Respectfully,
Clerk/TMM

ORDER

The foregoing motion is hereby GRANTED. The clerk's office is directed to vacate the judgment entered on May 16, 2018 and reenter judgment to permit the appellant to file a petition for a writ of certiorari. Appellant's request for appointment of counsel is also GRANTED. We direct the clerk to appoint a Federal Defender's Office to represent the appellant.

By the Court,

s/ Theodore A. McKee
Circuit Judge

Dated: September 27, 2018

Tmm/cc: Julius Greer
Federal Defender for the EDPA
Thomas M. Zaleski, Esq.
Susan M. Lin, Esq.