

No. 18-8292

IN THE SUPREME COURT OF THE UNITED STATES

JULIUS GREER, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 20-28) that his conviction for using or carrying a firearm during and in relation to a "crime of violence," in violation of 18 U.S.C. 924(c), is invalid because he did not commit a crime of violence within the meaning of 18 U.S.C. 924(c) (3) (A). Petitioner's claim lacks merit. Petitioner additionally contends (Pet. 13-20) that the courts of appeals are divided on the question whether an asserted violation of the Speedy Trial Act, 18 U.S.C. 3161 et seq., that the defendant did not raise to the district court is forfeited on appeal, or is instead reviewed for plain error. That question does not warrant this Court's review, as petitioner has not shown that any court of

appeals would afford him relief in the circumstances of this case. The petition for a writ of certiorari should be denied.

1. Following a jury trial, petitioner was convicted of robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), and using or carrying a firearm during and in relation to a "crime of violence" (the Hobbs Act robbery), in violation of 18 U.S.C. 924(c)(1)(A). Pet. App. A5; see 645 Fed. Appx. 205, 206. The court of appeals determined that petitioner's Hobbs Act robbery offense qualified as a "crime of violence" under Section 924(c) 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 Pet. App. A5.

In reaching that determination, the court of appeals relied on its earlier decision in United States v. Robinson, 844 F.3d 137 (3d Cir. 2016), cert. denied, 139 S. Ct. 1168 (2019) and 138 S. Ct. 215 (2017). See Pet. App. A5 n.18. Robinson reasoned that "[w]hen the predicate offense, Hobbs Act robbery, and the § 924(c) offense are contemporaneous and tried to the same jury," the "jury's determination of the facts of the charged offenses unmistakably shed light on whether the predicate offense was committed with 'the use, attempted use, or threatened use of physical force against the person or property of another'" under Section 924(c)(3)(A), such that a "'categorical' approach" that looks to the statutory definition of the underlying crime "is not

necessary.” 844 F.3d at 141; see id. at 143-144 (considering jury’s finding that defendant brandished a firearm during a robbery in assessing whether his Section 924(c) conviction involved a “crime of violence”). Judge Fuentes concurred in the judgment in Robinson, finding that “Congress intended for courts to use the categorical approach to determine what is or is not a ‘crime of violence’” under Section 924(c)(3)(A), id. at 147, and that, applying that approach, “Hobbs Act robbery is in fact a ‘crime of violence,’” id. at 151.

The court of appeals in this case also analyzed petitioner’s claim that the district court had violated the Speedy Trial Act. Pet. A2-A4. The court held that the district court had erred in granting one trial continuance requested by the government, but affirmed the conviction nevertheless. Ibid. The court of appeals noted that petitioner “did not object to that continuance” in the district court, and applying plain-error review, found “nothing in the record to suggest that” the erroneous continuance “affected the outcome of this case.” Id. at A3-A4.

2. a. Petitioner contends (Pet. 23-28) that the court of appeals erred by relying on its decision in Robinson and failing to conduct an analysis under Section 924(c)(3)(A) using the categorical approach employed by other circuits. But petitioner’s methodological criticism makes no difference because the same

result would follow in this case under a categorical approach to Section 924(c) (3) (A) .

The Hobbs Act defines robbery to require the “unlawful taking or obtaining of personal property” from another “by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property.” 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, 138 S. Ct. 641 (2018) (No. 17-5704), Hobbs Act robbery qualifies as a crime of violence under Section 924(c) 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).¹ Every court of appeals to consider the issue has so held. See id. at 8. And this Court has repeatedly denied review of that issue, see id. at 5 & n.1, including in both Robinson and Garcia; in other cases from the Third Circuit that have relied on the holding in Robinson;² and in additional cases challenging

¹ We have served petitioner with a copy of the government’s brief in opposition in Garcia.

² See, e.g., Sowell v. United States, No. 18-6913 (Mar. 18, 2019); Foster v. United States, 139 S. Ct. 789 (2019) (No. 18-5655); Griffith v. United States, 138 S. Ct. 1165 (2018) (No. 17-6855); Thomas v. United States, 138 S. Ct. 646 (2018) (No. 17-6025); Galati v. United States, 138 S. Ct. 636 (2018) (No. 17-5229).

other circuits' application of the categorical approach to classify Hobbs Act robbery as a "crime of violence" under Section 924(c) (3) (A).³ The same result is warranted here.

b. Because Hobbs Act robbery qualifies as a crime of violence under Section 924(c) (3) (A), this case does not present any question of whether the alternative definition of a "crime of violence" in 18 U.S.C. 924(c) (3) (B) is unconstitutionally vague. See Pet. App. A4-A5 & n.20 (declining to consider petitioner's argument concerning Section 924(c) (3) (B)). For that reason, this Court should not hold this petition for a writ of certiorari pending the Court's decision in United States v. Davis, No. 18-431 (argued Apr. 17, 2019), in which the Court will decide whether the subsection-specific definition of a crime of violence in Section 924(c) (3) (B) is unconstitutionally vague. See Pet. i, Davis, supra. This Court's resolution of Davis will not affect the correctness of the court of appeals' determination in this case that Hobbs Act robbery qualifies as a crime of violence under Section 924(c) (3) (A), and no "reasonable probability" exists that this Court's reasoning in Davis regarding Section 924(c) (3) (B)

³ See, e.g., Rojas v. United States, No. 18-6914 (Mar. 18, 2019); Desilien v. United States, 139 S. Ct. 413 (2018) (No. 17-9377); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); Robinson v. United States, 138 S. Ct. 1986 (2018) (No. 17-6927); Chandler v. United States, 138 S. Ct. 1281 (2018) (No. 17-6415); Middleton v. United States, 138 S. Ct. 1280 (2018) (No. 17-6343); Jackson v. United States, 138 S. Ct. 977 (2018) (No. 17-6247).

would cause the court of appeals to reconsider the "ultimate outcome" of its decision denying petitioner's claim for relief, Lawrence ex rel. Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam).

3. Petitioner additionally contends (Pet. 13-20) that the courts of appeals disagree about the appellate standard of review for asserted violations of the Speedy Trial Act that were not raised before the district court. Petitioner asserts that some courts treat forfeited Speedy Trial Act claims as unreviewable, whereas other courts apply the plain-error standard. See Pet. 13-15. But any conflict on that issue has no bearing on the outcome of this case; the court of appeals here applied the more defendant-favorable standard and determined that petitioner had failed to demonstrate plain error. See Pet. 18 (arguing that the Third Circuit was "correct in its decision to review [petitioner's] Speed Trial Act claim" but that the court "erred in its application of Fed. R. Crim[.] P. 52(b) and the plain error standard"). Petitioner also argues (Pet. 18-19) that a violation of the Speedy Trial Act is not subject to "Rule 52(b) and the plain error standard," Pet. 19, but he does not cite any court of appeals that has accepted that suggestion. Thus, petitioner provides no reason to believe that he would have received relief in any other circuit.

Petitioner's Speedy Trial Act claim reduces to his contention that the court of appeals improperly applied plain-error review in

the circumstances of this case. See Pet. 19-20. That question is not the subject of any disagreement in the circuits courts, is factbound, and does not warrant this Court's review.

The petition for a writ of certiorari should be denied.⁴

Respectfully submitted.

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Solicitor General

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⁴ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.