

**In The  
Supreme Court of The United States**

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JARRETT TERRELL EDWARDS,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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Norman Butler\*  
LAW OFFICE OF NORMAN BUTLER  
725 East Trade Street  
Suite 100, Court Arcade Building  
Charlotte, North Carolina 28202  
(704) 335-8686  
butlerlawoffice@aol.com

*\*Counsel of Record for Petitioner  
Jarrett Terrell Edwards*

i. **QUESTIONS PRESENTED**

I. Whether the United States Fourth Circuit Court of Appeals committed error by sentencing the Petitioner as a career offender pursuant to U.S.S.G. § 4B1.1(a).

ii. **LIST OF PARTIES TO PROCEEDING**

United States of America (Respondent)

Jarrett Terrell Edwards (Petitioner)

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NO. \_\_\_\_\_

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\_\_\_\_\_ Term, 2019

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PETITION FOR WRIT OF CERTIORARI  
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Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit rendered in his case on December 6, 2018.

**OPINION BELOW**

The opinion of the United States Court of Appeals for the Fourth Circuit, for which review is sought, is *United States v. Edwards*, No. 17-4189 (4<sup>th</sup> Cir., December 6, 2018) (per curiam) (unpublished). The Fourth Circuit opinion is reproduced in the Appendix.

## **JURISDICTIONAL GROUNDS**

Judgment was rendered in the United States Court of Appeals for the Fourth Circuit on December 6, 2018. The jurisdiction of this Court is invoked under Title 28, United States Code §1254(1).

## **STATUTORY PROVISIONS INVOLVED**

### **U.S.S.G. § 4B1.1(a)**

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

## STATEMENT OF THE CASE

The Petitioner was charged in a four (4) count Bill of Indictment with Armed Bank Robbery, Using and Carrying a Firearm During and in Relation to a Crime of Violence/Possession of a Firearm in Furtherance of a Crime of Violence and Possession of a Firearm by a Convicted Felon in violation of 18 U.S.C. § 2113(a) and (d), 18 U.S.C. § 2; 18 U.S.C. § 924(c)(1)(A)(ii) and 18 U.S.C. § 922(g)(1). (JA 13-16)

The Petitioner pled guilty by Bill of Information pursuant to a written plea agreement to Count One: Hobbs Act Robbery Conspiracy, 18 U.S.C. § 1951(a) and (b)(3) and Count Two: Armed Bank Robbery and Aid and Abet Same, 18 U.S.C. § 2113(a) and (d) (JA 22-24). The plea agreement specifically preserved Petitioner's right to appeal a finding of career offender status. (JA 34) A Plea and Rule 11 hearing was held before United States Magistrate Judge David C. Keesler on October 6, 2016. (JA 51-76).

The Draft Presentence Investigation Report was received electronically by the undersigned on November 23, 2016. (JA 117-136). The PSI Report indicated the Petitioner pled guilty to common law robbery on June 6, 2013 a lesser included offense of the original charge of attempted robbery with a dangerous weapon. (JA 127-128) The Government filed objections to the Draft Presentence Report on December 5, 2016. (JA 137-142) The Government's objection was that the Petitioner was a career offender.

Ms. Jerusha N. Marsh, Senior U.S. Probation Officer, filed a Final

Presentence Investigation Report on December 21, 2016. (JA 162-185) She responded to the objection filed by the Government that the Defendant qualified as a career offender. Ms. Marsh stated the U.S. Probation Office did not believe that Common Law Robbery qualifies as a crime of violence for career offender purposes and therefore no change to the report was recommended. (JA 182) Petitioner filed objections to the Draft Presentence Investigation Report and a Request for a Downward Variance on December 12, 2016. (JA 143-161)

On March 2, 2017, the Petitioner was sentenced by the Honorable District Judge Robert J. Conrad, Jr. to 192 months concurrent on each count. (JA 109) Judge Conrad also ruled that the Petitioner was a career offender. (JA 89) The judgment in this case was filed on March 28, 2017. (JA 108-114) Petitioner filed written Notice of Appeal on March 31, 2017. (JA 115-116)

#### **REASONS FOR GRANTING THE WRIT**

**II. The United States Fourth Circuit Court of Appeals erred in finding that the District Court correctly applied the career offender enhancement to the Petitioner when the predicate offense of common law robbery is not a crime of violence.**

Petitioner's common law robbery conviction is not a crime of violence as defined in U.S.S.G. § 4B1.1(a). A defendant is a career offender if (1) the Defendant was at least 18 years old at the time the defendant committed the instant offense of conviction; (2) the instant offense is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two (2) prior convictions of either a crime of violence or a controlled substance offense. U.S.S.G. § 4B1.1(a). Pursuant to U.S.S.G. § 4B1.2(a), the term "crime of violence" means an

offense under federal or state law punishable by imprisonment of a term exceeding one year, that— (1) has an element, the use, attempted use, or threatened use of physical force against a person of another, or (2) is burglary of a dwelling, arson, or extortion, involves use of an explosive or otherwise involved conduct that presents a serious potential risk of physical injury to another.

North Carolina common law robbery is the “felonious, nonconsensual taking of money or personal property from the person or presence of another by means of violence or fear.” *N.C. v. Smith*, 305 N.C. 691, 292 S.E.2d 264, 270 (NC 1982). When considering whether or not a North Carolina common law robbery conviction is a violent felony for purposes of career offender status, the sentencing court must apply the categorical approach. Common Law Robbery is not a divisible crime notwithstanding the fact that it may be accomplished through alternative means. The categorical approach “considers only the conviction itself and not the elements of the offense, nor the particular facts of the crime.” *United States v. Baxter*, 642 F.3d 475, 476 (4th Cir. 2011).

Common law robbery can be committed by alternative means, violence or fear, which are not different elements of distinct crimes but alternative ways to commit the same crime. Common law robbery, therefore, is an indivisible offense, in which the modified categorical approach has no role to play. See *Descamps v. United States*, 133 S.Ct. 2276, 2283-85, 186 L.Ed.2d 438 (2013).

Petitioner pled guilty to common law robbery a lesser included offense of attempted robbery with a dangerous weapon which was the original charge. (JA

128) It is well settled in the Fifth, Sixth, Tenth and Eleventh Circuit that the sentencing court may not rely on the indictment to establish a crime of violence when the defendant was convicted or pled guilty to a lesser included offense.

The government argued to the sentencing court that common law robbery was a crime of violence by using the generic definition of robbery. (JA 82-86) Petitioner disagrees with the government's position. Their argument was not supported by any legal precedent that the "fear" factor of common law robbery has to be so "violent" to cause a person to surrender their property to the perpetrator. Fear is not equivalent and not the same as the use of violence. The government's argument is arbitrary as it requires the sentencing court to determine the specific conduct of the defendant (i.e. whether he used "force" or "fear") in order for the conduct to fit the generic definition of common law robbery.

## CONCLUSION

For the foregoing reasons, the United States Supreme Court should grant this Writ of Certiorari.

This the 6th day of March, 2019.



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NORMAN BUTLER  
Bar Number: 12738  
Attorney for Petitioner  
The Law Office of Norman Butler  
725 East Trade Street, Suite 100  
Charlotte, North Carolina 28202  
Telephone: (704) 335-8686  
Fax: (704) 332-6213  
Email: [butlerlawoffice@aol.com](mailto:butlerlawoffice@aol.com)  
[butlernlaw@aol.com](mailto:butlernlaw@aol.com)

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butlerlawoffice@aol.com

*\*Counsel of Record for Petitioner  
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## Appendix A

In The U.S. Court of Appeals for the Fourth Circuit

No. 17-4189 *U.S. v. Jarrett Terrell Edwards*

Unpublished Opinion

Decided December 6, 2018

**UNPUBLISHED****UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 17-4189**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JARRETT TERRELL EDWARDS,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., District Judge. (3:16-cr-00248-RJC-DSC-1)

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Submitted: September 21, 2018

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Decided: December 6, 2018

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Before NIEMEYER and KEENAN, Circuit Judges, and Norman K. MOON, Senior United States District Judge for the Western District of Virginia, sitting by designation.

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Affirmed by unpublished per curiam opinion.

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Norman Butler, LAW OFFICE OF NORMAN BUTLER, Charlotte, North Carolina, for Appellant. R. Andrew Murray, United States Attorney, Anthony J. Enright, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

**PER CURIAM:**

Jarrett Terrell Edwards appeals his 192-month sentence imposed following his guilty plea to Hobbs Act robbery conspiracy and armed bank robbery, in violation of 18 U.S.C. §§ 1951(a); 2113(a) and (d); and § 2. Edwards challenges the district court's application of the career offender enhancement, *U.S. Sentencing Guidelines Manual* § 4B1.1(a) (2014), arguing that one of the two prior convictions considered as a violent crime, North Carolina common law robbery, is not a "crime of violence." Edwards also challenges the court's denial of his request for a downward variance. The appellate waiver contained in Edwards's plea agreement permits an appeal based on the application of the career offender enhancement, but bars appellate review of the denial of a variance. Because North Carolina common law robbery is a crime of violence under the Guidelines, we affirm.

We first consider the district court's application of the 2014 Guidelines career offender enhancement, U.S.S.G. § 4B1.1(a).<sup>1</sup> "We review *de novo* the question whether a prior state conviction constitutes a predicate felony conviction for purposes of a federal sentence enhancement." *United States v. Valdovinos*, 760 F.3d 322, 325 (4th Cir. 2014).

The district court correctly applied the career offender enhancement to Edwards if: "(1) the defendant was at least eighteen years old at the time the defendant committed the

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<sup>1</sup> The district court applied the 2014 Guidelines due to *ex post facto* concerns. J.A. 83. No party contests that decision, and we note that the outcome of this appeal would not change under the 2016 Guidelines, because, in *United States v. Gattis*, we held that "North Carolina common law robbery categorically qualifies as 'robbery,' as that term is used within § 4B1.2(a)(2)" of the 2016 Guidelines. 877 F.3d 150, 156 (4th Cir. 2014).

instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.” U.S.S.G. § 4B1.1(a).

A “crime of violence” is an offense punishable by more than a year of imprisonment that “(1) has as an element the use, attempted use, or threatened use of physical force against the person of another [the force clause], or (2) is burglary of a dwelling, arson, or extortion, involves use of explosives [the enumerated clause], or otherwise involves conduct that presents a serious potential risk of physical injury to another [the residual clause].”<sup>2</sup> U.S.S.G. § 4B1.2(a).

There is no dispute that Edwards has at least one of the requisite convictions due to his prior conviction of robbery with a dangerous weapon. In his opening brief, Edwards advances only one argument against the application of the career offender enhancement: his prior offense of North Carolina common law robbery is not a crime of violence despite the inclusion of “robbery” in Application Note 1 of the commentary to § 4B1.2. U.S.S.G. § 4B1.2(a) cmt. (n.1) (2014). “Commentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.”

*Stinson v. U.S.*, 508 U.S. 36, 38 (1993). Edwards does not argue that Application Note 1

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<sup>2</sup> The Sentencing Commission amended U.S.S.G. § 4B1.2(a) effective August 1, 2016, to remove the residual clause from U.S.S.G. § 4B1.2(a) and include robbery in the enumerated clause. *See* U.S.S.G. app. C supp., amdn. 798 (2016).

runs afoul of *Stinson*, so we proceed as if the Application Note is authoritative and robbery is part of the 2014 version of § 4B1.2(a).<sup>3</sup>

Edwards's argument, then, is based on the premise that common law robbery does not match the generic definition of "robbery" as used in the Guidelines. But our precedent holds that North Carolina common law robbery *is* a categorical match with generic robbery. *United States v. Gattis*, 877 F.3d 150, 158 (4th Cir. 2017) (interpreting the 2016 Guidelines). Edwards's common law robbery conviction was therefore a crime of violence, giving him two qualifying convictions and making the career offender enhancement applicable.<sup>4</sup>

We next turn to the district court's denial of a variance. At the threshold, we must address the issue of Edwards's appellate waiver. A defendant may waive his appellate rights pursuant to a plea agreement. *United States v. Manigan*, 592 F.3d 621, 627 (4th Cir. 2010). Appeal of an issue is precluded where an appellate waiver is valid and the issue is within the scope of the waiver. *United States v. Blick*, 408 F.3d 162, 168 (4th

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<sup>3</sup> Even if Edwards had made an argument under *Stinson*, the enhancement would still apply because North Carolina common law robbery is a crime of violence under the residual clause of § 4B1.2(a). See *United States v. Clegg*, 714 F. App'x 227 (4th Cir. 2017); *United States v. Kelly*, 700 F. App'x 220 (4th Cir. 2017); and *United States v. Purgason*, 689 F. App'x 174 (4th Cir. 2017).

<sup>4</sup> After our decision in *Gattis* was released, Edwards filed a supplemental opening brief detailing a due process objection to the use of the categorical approach, which prevents factual inquiries into whether a prior conviction was for a crime of violence. We find this argument meritless and belied by Supreme Court precedent commanding the categorical approach. *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2017); *Johnson v. United States*, 135 S.Ct. 2551, 2557 (2015); *Shepard v. United States*, 544 U.S. 13, 22 (2005).

Cir. 2005). We review the validity and scope of an appellate waiver *de novo*. *Manigan*, 592 F.3d at 626.

Generally, an appellate waiver is valid if “a district court questions a defendant regarding the waiver of appellate rights during the Rule 11 colloquy and the record indicates that the defendant understood the full significance of the waiver.” *United States v. Copeland*, 707 F.3d 522, 528 (4th Cir. 2013). Edwards does not contest the validity of the waiver, and a review of the record indicates the district court ensured that Edwards read the plea agreement, discussed it with counsel, and understood its consequences. J.A. 70–71.

Concerning scope, the waiver covers all rights to contest Edwards’s conviction and sentence, except for claims of ineffective assistance of counsel, prosecutorial misconduct, and the applicability of the career offender enhancement under U.S.S.G. § 4B1.1. J.A. 34. Where similarly broad language has been used, we have held a refusal to grant a variance is within the waiver’s scope. *United States v. Hinnant*, 523 F. App’x 936, 937–38 (4th Cir. 2011). Because the waiver is valid and the court’s denial of Edwards’s request for a downward variance is within the scope of the waiver, review of that determination is precluded.

We dispense with oral argument because the facts and legal contentions are adequately presented in the material before this court and argument would not aid the decisional process.

*AFFIRMED*

## Appendix B

In The U.S. Court of Appeals for the Fourth Circuit

*No. 17-4189 U.S. v. Jarrett Terrell Edwards*

### Judgment

Decided December 6, 2018

FILED: December 6, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-4189  
(3:16-cr-00248-RJC-DSC-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JARRETT TERRELL EDWARDS

Defendant - Appellant

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JUDGMENT

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK