

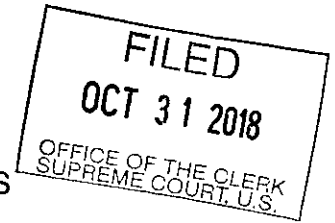
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No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Andrew A. Chavis

(Your Name)

— PETITIONER

vs.

United States

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Andrew A. Chavis

(Your Name)

FMC Rochester

P.O. Box 4000

(Address)

Rochester, MN

55903

(City, State, Zip Code)

n/a

(Phone Number)

QUESTION(S) PRESENTED

WHETHER PRIOR CONVICTION IN ILLINOIS FOR ATTEMPTED ARMED ROBBERY
CATEGORICALLY QUALIFIES AS A CRIME OF VIOLENCE UNDER THE 4B1.1 CAREER
OFFENDER PRE-BOOKER MANDATORY GUIDELINES "POST-JOHNSON"?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 15, 2018.

[] No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 15, 2018, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONST. FIFTH AMEND. DUE PROCESS

PRE-BOOKER USSG 4B1.1 (2003)

PRE-BOOKER USSG 4B1.2(a)(2) (2003)

ILL. ANN. STAT., CH. 38, PAR. 8-4 (a).

STATEMENT OF THE CASE

On May 26, 2016, petitioner Andrew A. Chavis filed a motion challenging his sentence under 28 U.S.C. 2255. On November 20, 2017, the District Court deemed petitioner's 2255 untimely pursuant to 28 U.S.C. 2255(f)(3), stating that because Beckles has effectively made explicit the fact that Johnson's extension to the Pre-Booker Guidelines remains an "open question", the right asserted by the petitioner is distinct from the right newly recognized in Johnson, and therefore petitioner's 2255 motion must be dismissed. On that very same day, the Court declined to issue a Certificate of Appealability, stating that there was no substantial constitutional question for appeal. The Court did not reach the merits of the petitioner's claims. Chavis then filed a timely notice of appeal on June 14, 2018, to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit also declined to issue a COA in light of 28 U.S.C. 2253(c)(2). Chavis then filed a timely motion for Panel Rehearing and Rehearing En Banc due to recent "change of law" in the Seventh Circuit, via, Cross v. United States, 892 F.3d 288 (7th Cir. 2018), where the Seventh Circuit Court of Appeals ruled that Johnson's invalidation of the ACCA's residual clause extends to the identical language in the 4B1.1's Pre-Booker mandatory guidelines. The Court ordered the government to respond to that application by July 13, 2018.

In the government's response, the government contends that Chavis' sentence should be deemed Post-Booker without citing any relevant case law to support that contention. However, the government went further to state that "even" if Chavis' sentence were deemed Pre-Booker, Chavis's claims still fail because "attempted armed robbery" in Illinois would still qualify as a "crime of violence" within the meaning of the guidelines. On August 15, 2018, the Seventh Circuit Court of Appeals denied petitioner's application for a Panel Rehearing and Rehearing En Banc.

REASONS FOR GRANTING THE PETITION

On June 24, 2004, at sentencing, Chavis was designated as a career offender by the Court and sentenced to 420 months imprisonment under the then Pre-Booker mandatory guidelines. 4B1.1. The Court relied on two prior convictions in the State of Illinois 1) possession with intent to distribute cocaine; 2) "attempted armed robbery". The United States Sentencing Guidelines Manual of 2003 expressly designates "robbery" as an enumerated offense in its commentary notes of 4B1.2. At that time robbery was always deemed a crime of violence without resort to the "residual clause" of USSG 4B1.2(a)(2) (2003). However, the (2003) USSG manual and official commentary failed to mention "attempts" or "inchoate" offenses in its category of offenses. Inchoate offenses, such as attempts and conspiracy to commit the listed offenses was not added until (2016), subsequent to Chavis' sentencing and is therefore inapplicable here. Chavis maintains that because the (2003) manual did not contain in its enumerated offenses inchoate offenses such as attempt and conspiracy, it was necessary for the Court to resort to the "residual clause" of the Pre-Booker USSG 4B1.2(a)(2) (2003).

In Johnson v. United States, 135 S. Ct. 2551, (2015), this Court struck down the "residual clause" of the Armed-Career Criminal Act as Unconstitutionally Vague. Whether that ruling extends to Pre-Booker guidelines is not a question here at this time for that question has already been answered by the Seventh Circuit Court of Appeals, see Cross, 892 F.3d 288 (2018). The government acknowledges

that ruling, however, the government contends that Chavis's prior conviction in Illinois for attempted armed robbery still qualifies as a crime of violence under the "physical force clause" within the scope of 18 U.S.C. 924(e)(2)(B). The government fails to mention this court's ruling in Johnson of (2010), 559 U.S. at 140, where this Court interpreted the "force" clause to mean a level of force "capable of causing physical pain or injury to the person. This interpretation must be incorporated when adopting the categorical approach as required by this Court in Descamps v. United States, 133 S.Ct 2276, (2013), an extension of the ruling by this Court in Taylor dealing with the categorical approach and "indivisible statutes". As cited in 111. Ann. Stat., ch. 38, par. 8-4(a), a person is guilty of attempt if he or she 1) intended to commit the offense; 2) takes any substantial step towards the commission of that offense. Neither "attempt elements" require force at all. No "victim" is required so there need not even be a "person" present against whom force can be used, attempted or threatened. The government attempts to divide attempt and "robbery" so as to direct the Court's attention on the elements of robbery alone, then the government annexes attempt so as to add attempt to those elements of robbery, which will in turn prove "attempted use or threatened use of physical force" against the person, thus, elevating the Court's view that the offense can be committed without a person present. But in fact, the Illinois attempted armed robbery statute is "indivisible" and sets out many alternative means of commission and is much more broader than Illinois' generic robbery.

See People v. Terrell, 99 Ill. 2d 427 (1984) 459 N.E. 2d 1337, No. 57813, where the Supreme Court of Illinois ruled that to obtain a conviction for attempt, the State need only prove the defendant intended to commit a specific offense. People v. Stroner (1983) 96 Ill. 2d 204, 211. People v. Trinkle (1977) 68 Ill. 2d 198, 202.

In Terrell, the defendant's in that case staked out a gas station awaiting for the arrival of the attendant before taking the final step to his plan. A "substantial step" was considered by the Court to have taken place even though the victim was "not" yet present. In People v. Reyes, (1981), 102 Ill. App. 3d. at 820, the defendants were found guilty of attempted armed robbery. While in possession of a rifle, they approached, but did not enter, a drugstore. The "intended" "victims" were in the store. The Court ruled that when a victim of an intended armed robbery is within a building, entry into that building is not required for a finding of attempted armed robbery. The Court further stated that, " a substantial step has been taken when an actor possesses the materials necessary to carry out the crime, at or near the place contemplated for its commission". Again, no "force" required. It is straightforward that in Illinois, the attempt statutes elements, 1) intent to commit a specific offense; 2) any substantial step towards the commission of that offense, does not require "Physical force", "minimal force", "actual force", nor does it even require a victim to be present. as mention in Terrell, where the attendant had not yet arrived at the gas station before the defendants were pursued by local police and apprehended.

Moreso, the government fails to acknowledge the ruling in Mathis v. United States, 136 S. ct. 2243 (2016), another extension of Taylor, where this Court ruled, as it relates to indivisible statutes, that when an indivisible statutes elements are broader and punishes a more swath of conduct than the generic version of burglary, it cannot serve as a qualifying predicate within the scope of 18 U.S.C. 924(e)'s defininition of violent felony. As beforementioned, the evidence shows that attempted armed robbery in Illinois is much broader than generic robbery, and thus cannot serve as a qualifying predicate.

Chavis maintains, that because this grave error took place at the time Chavis's guidelines were mandatory, and because Chavis received a mandatory 360- to life guideline range because of this grave error, that Chavis deserves the right to be resentenced in light of Johnson, because Chavis was not in fact given fair Notice, due a vague counter-part, via, "residual clause", of the 4B1.1 career offender guidelines, that he would be in fact facing such a lengthy term of imprisonment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10 - 30 - 2018