

ORIGINAL

18-8799
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FILED

JAN 17 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ROBERT G. LOCKWOOD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Submitted by,
Robert G. Lockwood (pro se)
#89907-012
Federal Correctional Institution
P.O. BOX 9
Mendota, CA. 93640

Robert G. Lockwood

1-10-19

QUESTIONS PRESENTED

Did the Ninth Circuit Court of Appeals violate the Johnson, Mathis, Descamps, and Dimaya Supreme Court rulings because Prince confirmed that the Bank Robbery Statue has non-violent elements?

Is Bank Robbery a crime of violence even though there are none violent means in the Statue?

If Bank Robbery is not a crime of violence, should Petitioners Firearms arms enhancement for a crime of violence; ☐ be vacated?

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Taylor v. United States, 495 U.S., 575 (1990) at 602	5,10,13.
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United States v. Hopkins, 703 F.2d 1102, 1103 (9th Cir. 1988)	9.
United States v. Reyes-Contreras, No. 16-41218, (5th Cir.)	6.

STATUTES

18 U.S.C. Section 922(g)
18 U.S.C. Section 924(c)(1)(A), and 924(c)(3)(A)(B)
18 U.S.C. Section 924(e)(1)(2)(i)
18 U.S.C. Section 924(e)(1), (e)(2)(B)(ii)
18 U.S.C. Section 16(A)(B)
18 U.S.C. Section 2113(a)(d)
28 U.S.C. Section 2111
28 U.S.C. Section 2255

PETITION FOR WRIT OF CERTIORARI

Petitioner Robert G. Lockwood, respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, a denial on November 7, 2018 No. 17-56097 (Appendix B) of a Request for a Certificate of Appealability; based on his denied Title 28 U.S.C. Section 2255 by the District Court for the Ninth District on July 26, 2017 (Appendix A).

OPINIONS BELOW

The District Court for the Ninth District denial of petitioner's 28 U.S.C. Section 2255 (Second), in Appendix A.

The decision of the Court of Appeals for the Ninth Circuit which denied petitioner's Request For a Certificate of Appealability. Attached as Appendix B.

JURISDICTION

On May 23, 2016, in the United States Court of Appeals For The Ninth District, petitioner filed an Application for Leave to File a Second or Successive Section 2255 motion based on a New Rule of Law under Johnson v. United States, 135 S. Ct. 2551(2015). This motion was timely and granted by the court.

On May 23, 2016 a Motion to Vacate, Set Aside, or Correct a Sentence under 28 U.S.C. Section 2255 was filed in the District Court for the Ninth District. This motion was denied on July 26, 2017 along with a request for a Certificate of Appealability (See Appendix A).

On January 22, 2018 petitioner filed a Certificate of Appealability to the Ninth Circuit to contest the denial of his Section 2255 but was also denied on November 7, 2018 (See Appendix B).

STATUTORY PROVISIONS

28 U.S.C. Section 2111 provides:

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record to errors or defects which do not affect the substantial rights of the parties.

The Fifth Amendment to the U.S. Constitution provides, in pertinent part:

No person shall be... deprived of life, liberty, or property, without due process of the law....

The Sixth Amendment to the U.S. Constitution provides, in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witness against him; and to have the assistance of counsel for his defense.

The due process of the Federal Constitution's Fourteenth Amendment requires the any fact that increases the penalty for a State crime beyond the prescribed statutory maximum-other than the fact of a prior conviction-must be submitted to a jury and proven beyond a reasonable doubt....

STATEMENT OF THE CASE

Petitioner Robert G. Lockwood (pro se) requests that this high court hear his case based on the "crime of violence" argument in which multiple cases through-out the United States have not high-lighted, and agreed on a consensus, for the proper factual basis of the argument to be successful; Constitutional. Legal Defense Attorney's and Courts through-out the country have failed to argue a crucial Supreme Court case that confirms the addition of non-violent means, along with the original violent means, that were amended into the Bank Robbery Statue; thus, changes it to an over-broad, unconstitutional Statue.

The case is Prince.v. United States, 352 U.S., 322, 325 (1957). This case held that the original Bank Robbery Act was passed in 1934 but amended later to add-non-violent elements, and/or means to the Statue. Originally, the Statue only defined the generic version of Bank Robbery by violent means. However, the Attorney General requested that the Act be amended to add several non-violent elements because he was unable to prosecute a case because a man committed Bank Robbery by stealing money while the bank teller was absent. Thus, the Statue was changed to add; "any felony affecting such a bank, in violation of any statue, or larceny."

Therefore, now that Bank Robbery was amended by adding non-violent means, the statue became broader than those of the generic listed offense. Thus, pursuant to Mathis v. United States, U.S., 579 U.S.____, 136 S Ct. 2243, 195 L Ed. 604 (2016), the Statue cannot be used as a predicate for a crime of violence enhancement.

REASONS FOR GRANTING THE PETITION

Petitioner Robert G. Lockwood (pro se) pleaded guilty to all counts in a ten-count indictment/information, seven counts of armed bank robbery 18 U.S.C. Section 2113(a)(d) (cnts 1-5,7,9), two counts of firearm enhancements under 18 U.S.C. Section 924(c)(1)(A) (cnts 6,8), and one count of felon in possession of a firearm under 18 U.S.C. Section 922(g) (cnt 10). On September 12, 2011, petitioner was sentenced to 97 months for count 1-5,7,9, and 10, plus a mandatory minimum consecutive 384 month sentence for two counts of Section 924(c)(1)(A) firearm enhancements on count 6 and 8. By operation of law, the first Section 924(c)(1)(A) carried a minimum mandatory 7 year sentence. The second conviction carried a minimum mandatory 25 year sentence.

The reason why this Court should grant this petition is because the defendant Robert G. Lockwood argues that his Sixth Amendment was violated when his sentencing Judge enhanced his sentence based on facts of the case gathered from court records, when only a jury is to decide the facts pursuant to Apprendi v. New Jersey, 530 U.S. 466, 490, Also, because the bank robbery Statue is over-broad it is vague and unconstitutional.

Thus, petitioner submits this petition to request that his sentence be vacated and he be resentenced minus the two Section 924(c)(1)(A) firearm enhancements because he was sentenced to an extra 384 month term under the enhancements for a "crime of violence" that is no longer a "crime of violence."

Petitioner's two counts of Section 924(c)(1)(A)'s were added to his sentence because the District Judge held that since his predicate

bank robbery offense Section 2113(a)(d) were crimes of violence, he shall serve an additional 32 years above the maximum authorized by law. However, as stated, bank robbery can be committed by non-violent means; because it is over-broad and unconstitutional under Johnson, Mathis, Descamps, Dimaya, Taylor, and many more. And since the sentencing judge violated Apprendi when she looked at the facts to determine if violence occurred or not, she was forced to violate his constitutional rights to determine if a crime of violence occurred or not.

But the sentencing Judge also violated his rights by using the over-broad, unconstitutionally vague bank robbery Statue as a predicate for a crime of violence firearm enhancement Section 924(c)(1)(A).

Bank Robbery cannot be used as a predicate for a "crime of violence" firearm enhancement because the Prince case confirms that Bank Robbery is also a non-violent Statue. For example, the second paragraph of the Statue states:

"any bank... with intent to commit in such bank... any felony affecting such bank... or any larceny."

Please see Appendix C for confirmation of the Statue 18 U.S.C. Section 2113(a). The above quotations are in the second paragraph of the Statue and is why the Statue is over-broad. This is because the definition does not even require the presence of a victim, let alone the threat of violent force against that person. The above quoted section goes beyond the generic offense; thus is over-broad. The generic definition of the Statue is in the first paragraph of the Statue which states:

"Whoever, by force or violence, or by intimidation, takes..., from the person..., money...."

The above quoted sentences are the generic definition of the Statute. They are located in the first paragraph of the Statute; and they are violent. However, "intimidation" can and will be argued that it is not violent. But for now we will focus on the terms "force and violence." These definitions are without a doubt, violent. But if you go to the second paragraph, you see the terms "larceny, any felony." These are not violent. So if a defendant is convicted for the non-violent act of larceny inside a bank, she may receive an enhancement for a crime of violence because as ruled in the past, bank robbery is a crime of violence even though there are non-violent means. This is why this Court needs to grant this petition; so to set a precedent because defendants are being issued crime of violence enhancements for Statutes that have non-violent means.

In petitioner's situation, and based on case law under Mathis, also, further argued in the Fifth Circuit under United States v. Reyes-Contreras, No. 16-41218 in which the court reversed a sentence that included a 16-level increase in his sentence under the Sentencing Guideline reference, "to qualify as a crime of violence the statute of conviction must match the generic offense." The court must use the categorical approach and ignore the facts of the case. The court must ask whether the elements of the crime of conviction, and the elements of the generic crime are sufficiently similar; and in bank robbery they are different. The bank robbery Statute lists different means of fulfilling a single offense, some of those different means are not violent.

For example, the second paragraph of the bank robbery statute lists; "any felony affecting such a bank." Any felony can be most anything. Many felonies are non-violent. For example, if a defendant named Jane Doe walks into a bank with an un-loaded firearm tucked away in her purse -- boy-friend problems -- and she grabs a cell phone off the bank managers desk in hopes the resale value will help her with her opiate habit. But a security guard tackles her as she tries to flee; she will be convicted of Armed Bank Robbery 18 U.S.C. Section 2113(a)(d).

As the law currently exists, and since bank robbery is considered a "crime of violence," and due to the fact that Jane Doe had an un-loaded firearm in her purse, she was convicted, and sentenced to an additional 5 years under the "crime of violence" firearm enhancement 18 U.S.C. Section 924(c)(1)(A) which states;

"(c)(1)(A) any person who, during and in relation to any crime of violence..., uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm shall, in addition to the punishment provided for such crime of violence...,

(i) be sentenced to a term of imprisonment of not less than 5 years."

The irony is that she never committed a crime of violence, but still received a firearm enhancement for a crime of violence.

This scenario is not a real event, however, there are many cases through-out the country in which defendants were sentenced to firearm enhancements and have never committed crimes of violence.

In the second paragraph of Section 2113(a) is the alternative means of another element for a bank robbery offense; "Larceny." Larceny is definately not a crime of violence. However, a defendant could still be enhanced for a "crime of violence" for only committing Larceny. The Prince case confirms that Larceny is not a crime of violence because it states that; "The Bank Robbery Act of 1934 was amended accordingly to add other crimes less serious than bank robbery. Two larceny provisions were enacted." The foregone is confirmation that you can commit a supposedly "crime of violence" in the bank robbery statute by mere larceny, but be enhanced above the maximum authorized by law. because the statute is unconstitutionally vague under Johnson v. United States, 135 S. Ct. 2551 (2015)

Pursuant to this Honorable Courts past rulings, when considering whether or not a defendant's prior convictions count as one of the ACCA's enumerated offenses, courts must employ the categorical approach. See Descamps v. United States, 133 S. Ct. at 2283.4. Applying the Descamps approach, to qualify as a categorical match, Federal Bank Robbery must have as an element, "the use, attempted use, or threatened use of physical force against the person." See Section 924(c)(3)(A). However, it is not enough that Federal Bank Robbery simply contain the use, or threatened use of force as an element. Rather a court must focus on the minimum culpable conduct in which the Government would seek to enforce the law under Montcrief v. Holder, 133 S. Ct. 1678, 1684, 185 L Ed. 2d. 727 (2013).

Additionally, the United States Supreme Court made clear that "the phrase 'physical force' mean[t] violent force that is, force capable of causing physical pain or injury to another person." Johnson #1, 599 U.S. at 140.

That being said; if one may be convicted of Federal Bank Robbery under 18 U.S.C. Section 2113(a)(d) without the intentional use, attempted use, or threatened use of violent physical force against the person of another, than it is not a crime of violence under Section 924(c)(3)(A) the Force Clause.

Bank Robbery can be committed without violent force as explained above. However, it may also be a Bank Robbery offense by "intimidation" which does not require an explicit threat, or threat of violence. United States v. Hopkins, 703 F.2d 1102, 1103 (9th Cir. 1988) confirms this. Even without Hopkins, common sense will show this Court that intimidation is, or can be "non violent." For example, if a defendant has a concealed weapon, and states during a bank robbery that if the employee will not give him any funds, he will commit suicide. The Bank employee not wishing him to harm himself, hands over some funds in hopes he will get treatment. This example is an extreme one, but it is still a non-violent action by means of "intimidation."

The Ninth Circuit has defined generic robbery as "aggravated larceny" containing at least the elements of misappropriation of property under circumstances involving immediate danger to the person. See United States v. Becerril-Lopez, 541 F.3d 881, 891 (9th Cir. 2008). Because Bank Robbery may be committed without any person present, 18 U.S.C. Section 2113(a) sweeps more broadly than the generic definition of robbery, and cannot be classified as a crime of violence under the Section 924(c)(3)(A) "force clause."

A. Under Johnson The Section 924(e)(1), (e)(2)(B) is Unconstitutionally Vague, so is Section 924(c)(3)(B)'s Residual Clause.

A lot has happened since the Johnson ruling. The Johnson ruling was based on the Armed Career Criminal Act (ACCA) which imposes a 15 year

mandatory minimum sentence on a defendant convicted of being a felon in possession of a firearm who has three prior state or federal convictions for a violent felony under Section 924(e)(1), (e)(2)(B)(ii). However, this Court ruled that the Residual Clause is unconstitutionally vague. This left the Courts to determine if a predicate for enhancement purposes was violent or not under just the Force Clause of Section 924(e)(1)(2)(i). The ACCA Force Clause states that in order for an ACCA predicate to be valid, the crime must fall under:

"(i) has an element, the use, attempted use of physical force against a person of another."

After the Johnson ruling, Mathis v. United States, 579 U.S. ___, 136 S. Ct. 2243, 195 L. Ed. 2d 604 (2016) came into play and stated that a crime cannot qualify as an ACCA predicate if its elements are broader than those of a listed generic offense. See e.g. Taylor v. United States, 495 U.S., at 602. ACCA requires a sentencing judge to look only to; "the elements of the offense, not to the facts of the defendant's conduct." Taylor 495 U.S. at 601.

So in petitioner's situation, even though he claims he did not use physical force in one of his predicates for a Section 924(c) count, it does not matter anyway, because the Judge must only look at the elements, not the facts. So since a Judge must only look at the elements under Apprendi, the elements in the Bank Robbery Statue are over-broad due to the non-violent elements in the Statue such as larceny, and other non violent elements. Why does the ACCA Johnson ruling also apply to the crime of violence argument in the Bank Robbery Statue along with the 924(c)? Because the Sessions v. Dimaya, LEXIS 2497 case constitutes an "aggravated felony" under

the Immigration and Nationality Act (INA), This case has far reaching implications that go beyond immigration alone. This Supreme Court in Dimaya extended its ruling in Johnson v. United States, to hold that the residual clause of 18 U.S.C. 16(b) is unconstitutionally vague. Section 16 defines the term "crime of violence" as used in the INA as well as other Statutes such as Section 924(c)(3)(B) Firearm enhancement. Dimaya shows that the Sec. 924(c) suffers from the same vagueness as the ACCA's residual clause, and is equally unconstitutional.

B. DOES DIMAYA MEAN THAT MY 924(c) CONVICTION IS UNCONSTITUTIONAL?

18 U.S.C. Section 16 defines a "crime of violence" as:

(a) an offense that has an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. Section 924(c)(3) defines a "crime of violence" as:

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

In order to be convicted of a violation of 18 U.S.C. Section 924(c) the possession of a firearm must be either in furtherance of a "crime of violence" or drug trafficking crime. Section 924(c) defines a "crime of violence," -- under Section 924(c)(3) -- identically to Section 16(b). Compare the Section 16(b) crime of violence definition with the Section 924(c)(3)(b) above. They are almost the same. Thus, logically one can conclude that if the residual clause of 16(b) is unconstitutionally vague, then so must be the residual clause of 18 U.S.C. 924(c)(3)(B).

So if the residual clause of Section 924(c)(3)(B) is unconstitutionally vague, then the only other definition for a "crime of violence" under Section 924(c) is the "Force Clause." So the question is; does Section 2113(a)(d) Bank Robbery Statue fall under the Force Clause? No it does not because of the larceny element in the second paragraph, along with "violation of any statue of the United States." Larceny is non-violent, and the violation of any statue could be any felony of non-violent intent. For example, if a defendant entered a bank with a squirt gun, and asked the bank teller for funds, he could be convicted for armed bank robbery under the existing statue. However, this scenario is not violent, because why would the defendant use a squirt gun? Because he did not have any violent intent. He did not use force or violence; did not intimidate anyone. But still would receive a firearm enhancement for a crime of violence. This is why this petition needs to be granted, so defendants will not receive life sentences for entering a bank to committ a non-violent crime. Defendants should still be punished for committing the robbery, however, there are existing laws under Section 2113(a)(d) that a judge under the Sentencing Guidlines can punish a convicted person to a reasonable sentence, instead of a firearm enhancement in which can total to life long sentences for merely using a squirt gun while asking for funds. Under the current laws, if a security guard in a bank finds a 20 dollar bill on the floor, and places it in his pocket while he has an unloaded firearm, he would be convicted of Armed Bank Robbery and sentenced to additional terms, even if he caused no violence.

IN CONCLUSION

This Court's cases such as Johnson, Descamps, Mathis, Taylor, and Dimaya establish three basic reasons for adhering to an elements-only inquiry under Mathis. First the Section 924(c)(3)(A) definition of a "crime of violence" -- the residual clause under 924(c)(3)(B) is not constitutional therefore no longer applies -- indicates that Congress meant for the sentencing judge to ask only whether the defendant had been convicted of crimes falling under certain categories, not what he had done. Second, construing the Section 924(c)(3)(A) Force Clause to allow a sentencing judge to go any further would be a Sixth Amendment* violation because only a jury, not a judge, may find facts that increase the maximum penalty. See Apprendi v. New Jersey, 530 U.S. 466, 490. And third, an elements-focus avoids unfairness to defendants, who otherwise might be sentenced based on statements of non-elemental facts that are prone for error because their proof is unnecessary to a conviction. Descamps v. United States, 570 U.S. ___, ___.

Therefore, under the above argument, and the analysis through-out this petition, petitioner requests that this Supreme Court order the sentencing court to resentence him minus the Section 924(c) counts, because the court enhanced his sentence above the maximum authorized by law under a Bank Robbery Statue that is unconstitutional because it is vague, over-broad; and the sentencing judge violated Apprendi by using facts to determine if the Section 924(c)(1) Firearm enhancements apply to the Section 2113(a)(d) Bank Robbery Statue, instead of a jury.

NOTE: Also includes the Fourteenth Amendment which states that facts that increase the penalty for a state crime beyond the... Maximum must be submitted to a jury.