

18-9064 ORIGINAL

FILED
APR 26 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Adonijah Lindsay — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
Appeals No. 18-3433

PETITION FOR WRIT OF CERTIORARI

Adonijah Lindsay, # 28375-505

(Your Name)

Federal Correctional Complex
P.O. Box 1031 (Low custody)
Unit A-4

(Address)

Coleman, Florida 33521-1031

(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Question 1

This Court provides that a certificate of appealability should issue whenever jurists of reason would find a district court's resolution of the § 2255 motion debatable. Adonijah Lindsay's challenges the validity of his 18 U.S.C. § 924(c) conviction. The Third Circuit identified that this Court granted certiorari on the same issue. Yet, the Third Circuit did not grant a certificate of appealability. Implicitly, finding that a grant of certiorari was insufficient to show that reasonable jurists could conclude that an issue deserves encouragement to proceed further. Put differently, despite this Court's Rule 10 that provides this Court primarily resolves conflicts in the law or questions of substantial importance, the Third Circuit does not find the question COA-worthy.

Does the Supreme Court's grant of writ of certiorari on the same question of law establish a per se ground for obtaining a certificate of appealability?

Question 2

In *Dimaya v. Sessions*, 138 S.Ct. 1204 (2018), this Court extended the vagueness rule announced in *Johnson v. United States*, 135 S.Ct. 2551 (2015) to statutes other than 18 U.S.C. § 924(e). Title 18 U.S.C. § 924(c) contains substantively identical language to that declared unconstitutional in *Dimaya*. The language contains multiple-layers of uncertainty, thus, like 18 U.S.C. §§ 16(b) and 924(e)(2), the twin text is unconstitutionally vague.

Is the text of 924(c)(3)(B) unconstitutionally vague?

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 February 7, 2019.

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: _____, 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

18 U.S.C. § 924

§ 924(c)(3)(B): For purposes of this subsection the term "crime of violence" means an 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. § 1951

§ 1951(a): Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(1) The term "robbery means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

28 U.S.C. § 2253

§ 2253(c)(2): A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2255

§ 2255(f)(3): A 1-year period of limitation shall apply to a motion under this section. This limitation period shall run from the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.

STATEMENT OF THE CASE

In 2007, the United States indicted Adonijah Lindsay for Hobbs Act robbery and carrying a firearm in furtherance of a crime of violence. (App. "A" at 1). Ultimately, after a guilty plea, the United States District Court imposed a sentence of 205 months.

In 2016, Mr. Lindsay filed a motion to vacate his conviction. At its core, the motion to vacate claimed that the Hobbs Act robbery would not serve as a companion-crime predicate for a 18 U.S.C. § 924(c) conviction. The district court denied relief, essentially finding the § 2255 motion untimely—a facially incorrect rule given the nature of the § 2255 claim, but also relying on the district court's opinion that the Hobbs Act robbery qualified under the elements clause of § 924(e), and in any circumstance § 924(c) been declared unconstitutional by any of the Supreme Court decision related to **Johnson v. United States**, 135 S.Ct. 2551 (2015). The Third Circuit upheld the district court's denial of the § 2255 motion, primarily since its decision in **Robinson v. United States**, 844 F.3d 137 (3d Cir. 2016), held that the categorical approach did not apply to companion-crime predicates as it did to prior-conviction predicates. (App. "A" at 1-2).

On April 18, 2018, the Supreme Court decided **Sessions v. Dimaya**, 138 S.Ct. 1204 (2018)(App. "A" at 1). As a result of that decision and the Third Circuit decision in **Satterfield v. Dist. Atty. of Philadelphia**, 872 F.3d 152, 160-61 (3d Cir. 2017), Mr. Lindsay filed a Rule 60(b) motion seeking to reopen the § 2255 motion denied as untimely and having the district court adjudicate the vagueness challenge to § 924(c) and its attendant actual innocence claim. (App. "A" at 1-2).

The district court denied the Rule 60(b) motion essentially for the same reasons as it denied the § 2255.

Mr. Lindsay timely filed a notice of appeal and applied to the Third Circuit for a certificate of appealability. The Third Circuit denied the certificate of appealability but did so in a manner that indicates jurists of reason would find the district court's decision debatable:

"As appellant notes, the U.S. Supreme Court recently granted certiorari in **United States v. Davis**, No. 18-431 (U. S. Jan. 4, 2019), to address whether the definition of "crime of violence" found in § 924(c)'s residual clause is unconstitutionally vague in the context of a Hobbs Act robbery. If the Supreme Court's ultimate decision in **United States v. Davis**, is favorable to appellant, his pursuit of relief based on it would not be vexatious."

REASONS FOR GRANTING THE WRIT

The Third Circuit recognized that this Court had granted certiorari to resolve a circuit split on the critical question presented by Mr. Lindsay's Rule 60(b) motion: Are 18 U.S.C. § 924(c)(3)(B) companion crimes analyzed using a categorical approach or a conduct based approach? (Appx. "A" at 2)(citing **United States v. Davis**, 2019 WL 98544 (U.S. Jan. 4, 2019)).

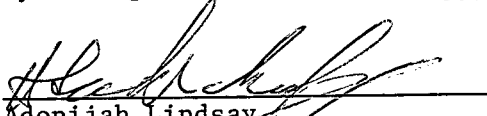
This court granted certiorari to resolve a conflict between the federal circuit courts of appeal. *Id.* By necessary implication, that grant of certiorari means jurists of reason would encourage the question to proceed further and some reasonable circuit judges would disagree with the district court's resolution of the § 2255 motion.

CONCLUSION

This Court should grant certiorari, vacate the Third Circuit's opinion and remand the cause with instructions to the Court of Appeals to grant a certificate of appealability.

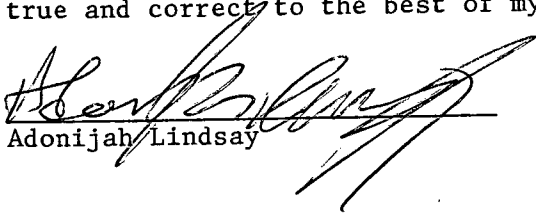
In the process, this Court should announce a rule that, per se, a substantial showing of the denial of a constitutional right occurs when the application requests COA for an issue that received a grant of certiorari from this Court or is the subject of an established circuit split.

Prepared with the assistance of Frank L. Amodeo and respectfully submitted by Adonijah Lindsay on this 24 day of ~~March~~^{April}, 2019:


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VERIFICATION

Under penalty of perjury as authorized by 28 U.S.C. § 1746, I declare that the factual allegations and factual statements contained in this document are true and correct to the best of my knowledge.


Adonijah Lindsay