

18-9330

No. _____

Supreme Court U.S.

FILED

MAR 28 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS ANTHONY HAMMOND — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thomas Anthony Hammonds
(Your Name)

P.O. Box 3000
(Address)

White Deer, PA 17837
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. The United States Court Of Appeals has entered a decision in conflict with the decisions of the United States Courts of Appeals for the First and Second Circuits on whether New York's Robbery Statute § 160.15 Qualifies as a Crime of Violence under the Career Offender Guideline § 4B1.2. The Supervisory Powers of this Most Honorable Court are Required to Maintain Consistency in the Administration, interpretation and application of federal Law.
2. Whether Hammond the Constitutional Protections under the Due Process Clause and the Ex Post Facto Clause protect Hammond against being Sentenced under a Law that retrospectively increased his Sentenced.
3. Whether the Fourth Circuit Court of Appeals erred in Concluding that New York's Robbery Statute §160.15, irrespective of the Degree of Robbery, is categorically a "Crime of Violence Under U.S.S.G. §4B1.2

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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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 is unpublished.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 is unpublished.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 January 4, 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

New York Penal Law § 160.15.

A person is guilty of robbery in the first degree when he forcibly steals property and when, in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:

- (1) Causes serious physical injury to any person who is not a participant in the crime; or
- (2) Is armed with a deadly weapon; or
- (3) uses or threatens the immediate use of a dangerous instrument; or
- (4) Displays what appears to be a pistol, revolver, shotgun, machine gun or other firearm; except that in any prosecution under this subsection, it is an affirmative defense that such pistol, revolver, rifle, shot gun, machine gun or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged. Nothing contained in this subsection shall constitute a defense to a prosecution for, or preclude a conviction of, robbery in the second degree, robbery in the third degree or any other crime.

U.S.S.G. § 4B1.2.

The term "Crime of Violence" means any offense under federal or State law punishable by imprisonment for a term exceeding one year that --

- (1) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
- (2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

STATEMENT OF THE CASE

On February 21, 2017, a federal grand jury charged Thomas Hammond with one Count of attempted bank robbery and One count of Bank robbery, in violation of 18 U.S.C. § 2113(a). On May 17, 2017, Hammond pleaded guilty to both Counts, without a plea agreement.

When Pleading guilty Hammond admitted the factual basis that described his offenses. On December 30, 2016, Hammond entered a branch of the Fifth Third Bank in Charlotte, North Carolina and handed the teller a note that stated; "You got 2 Seconds! All lose \$100, \$50 and \$20, don't be stupid! Don't get anyone hurt, or killed." The teller hit an emergency button, and Hammond left the bank without taking any of the bank's money.

Within the next 30 minutes, Hammond entered a branch of the Wood-forest National Bank, located inside a Wal-Mart in Charlotte. Hammond again passed the teller a note that said: "Lose \$100, \$50 now! U got 2 seconds! Please don't make me wat[.]" The teller gave Hommond \$1,911. Hammond then left the bank and the Wal-Mart and drove away.

At sentencing, based on prior convictions for North Carolina Common-law robbery and New York first degree robbery, the Court found Hammond was a Career Offender. See U.S.S.G. § 4B1.1. The Career Offender designation resulted in an offense level of 32. After a three level reduction for acceptance of responsibility, a total base offense level of 29; coupled with a Criminal History Category VI, resulted in an applicable guideline range of 151 - 188 months.

Hammond objected to the Career Offender designation on the grounds that neither the New York Robbery nor the North Carolina Common-law Robbery qualified as a "Crime of Violence," under U.S.S.G. § 4B1.2. He also argued the neither prior conviction qualified as a generic robbery.

Absent the Career Offender designation, the total base offense level of 23 and a Criminal History Category of V, would have resulted in an applicable guideline range of 84 - 105 months.

The Sentencing Court overruled the objections and found Hammond was a career-offender with a base offense level of 29, after the three point reduction for acceptance of responsibility; and a Criminal History Category of VI, which yielded an applicable guideline range of 151 - 188 months.

The Sentencing Judge then imposed a Sentence of 168 month, to be followed by a term of three years of Supervised Release. Hammond appealed to the Fourth Circuit Court of Appeals, which held that New York's Robbery statute, irrespective of the degree of the robbery, is a crime of violence under U.S.S.G. §4B1.2. See United States v. Hammond, Case No. 17-4702, Jan. §, 2019 fAtteched herewith.

Hammond claims the Fourth Circuit conclusion that New York's Robbery Statute, irrespective of the degree of the Robbery, is a crime of violence; conflicts with the decision of the First and Second Circuits, which held that; "a New York Robbery Conviction involving forcible stealing, absent other aggravating factors, is no[t] ... necessarily a conviction for a crime of violence within the meaning of the Career-

Offender Guidelines. See United States v. Jones, 830 F.3d 142 (2d Cir. 2016).

Hammonds respectfully request this Most Honorable Court grant Certiorari and exercise it's supervisory powers in order to maintain consistency in the administration, interpretation and application of Federal Law.

REASONS FOR GRANTING THE PETITION

It should first be noted that in 1999, at the time Hammond committed the robbery in the States of New York, in violation of New York Penal Law §160.15, the United States Sentencing Guidelines were mandatory. See 18 U.S.C. § 3553(b). Under the then-mandatory Guidelines, the term "Crime of Violence" meant any offense under federal or State law punishable by imprisonment for a term exceeding one year that --

- (1) has an element the use, attempted use, or threatened use of physical force against the person of another; or
- (2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

See U.S.S.G. §4B1.2(1999).

Here, The United States District Court for the Western District of North Carolina, erroneously relied upon the Advisory-Guidelines that were enacted in 2016, in order to conclude that New York's Robbery Statute, irresprctive of the degree of the robbery, categorically qualifies as a crime of violence under U.S.S.G. §4B1.2.

Then the Fourth Circuit Court of Appeals erroneously relied upon the same advisory Guidelines in order to avoid the due process violation under the then-mandatory Guidelines. The law is clear, the Sentencing Guidelines Manual provides that the court shall use the manual in effect on the date of sentencing. U.S.S.G. §1B1.11(a). However, if doing so would violate the Constitution's Ex Post Facto Clause, "the court shall use Guideline Manual in effect on the date that the offense of conviction

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was committed." The problem in this case is that at the time Hammond committed the robbery in the State of New York, the Guidelines were still mandatory, and New York State Robbery under §160.15, did not categorically qualify as a "crime of violence" under the residual clause of U.S.S.G. §4B1.2(a)(2)(1999).

Then in 2005, this Honorable Court invalidated the mandatory Guidelines as Unconstitutional. See United States v. Booker, 543 U.S 220, 125 D. Ct. 738, 160 L. Ed. 2d 621 (2005), which effectively rendered the Guidelines advisory. Then, this Honorable Court invalidated the residual clause in Title 18 U.S.C. §924(c)(2)(B), as unconstitutionally vague. See Johnson v. United States, 135 S.Ct. 2551 (2015) (allegedly vague)

In light of this Court's decision in Johnson, the Sentencing Commission amended the Advisory-Guidelines to include robbery as an enumerated offense under U.S.S.G. §4B1.2(a)(2)(2016).

The question now becomes whether Hammond has any Constitutional rights under the Due Process Clause, or the Ex Post Facto Clause, that will protect him from being sentenced under a law that was not applicable when he committed the robbery offense back in 1999, in the State of New York, when the Guidelines were mandatory? Moreover, does Hammond have a Constitutional right under the Ex Post Facto Clause, not to be sentence under a law that retrospectively increased his sentence?

It is therefore respectfully requested this honorable Court grant Certiorari to determine whether Hammond's rights under the Due Process Clause and the Ex Post Facto Clause protect him from receiving an increased sentence based on a law that was not applicable when he committed the robbery in the States of New York.

The Decision Of The Fourth Circuit Court Of Appeals Conflicts With The Decisions of the First and Second Circuits and The Supervisory Powers of This Honorable Court Are Required To Maintain Consistency In The Lower Courts

The Fourth Circuit Court of Appeals has held that New York Penal Law §160.15 (First Degree Robbery), irrespective of the degree of the offense, is categorically a "crime of violence" under U.S.S.G. §4B1.2. See United States v. Hammond, Case No. 17-4702 (4th Cir. 2019).

This decision conflicts with the decision of the Second Circuit Court of Appeals which held that: "a conviction for first degree robbery in New York is not in every instance a conviction for a crime of violence." See United States v. Jones, 830 F.3d 142 (2d Cir. 2016). See also United States v. Steed, 879 F.3d 440, 448-50 (1st Cir. 2018)(Concluding that New York Second Degree robbery is not a crime of violence under the Guidelines §4B1.2).

It seems like the definition of what constitutes a crime of violence has the federal courts looking to apply their own definition to the term "Crime of Violence." It is therefore respectfully requested this Most Honorable Court use its Supervisory Powers to guide the lower courts and maintain consistency in the administration, interpretation and application of federal law.

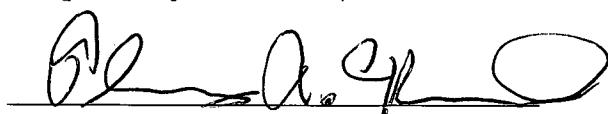
It is therefore respectfully requested this Honorable Court grant Certiorari in order to provide the lower courts with a proper interpretation of the term Crime of violence.

For all the reason set forth herein, Hammond respectfully request this Honorable Court grant Certiorari and Vacate the Judgment of the Fourth Circuit Court of Appeals. Alternatively, it is respectfully requested this Honorable Court grant any other relief that may be deemed appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan G. Hoffman".

Date: MARCH 27, 2019