

19-5061
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

MAY 13 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Akeem Young — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

Akeem Young
(Your Name)

Federal Correctional Institution
Post Office Box 699
(Address)

Estill, South Carolina 29918
(City, State, Zip Code)

(Phone Number)

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QUESTION(S) PRESENTED

Whether the least culpable means of committing a violation under 18 U.S.C. 1951: conspiring to commit a Hobbs Act robbery, qualify as a "crime of violence" under 18 U.S.C. 924(c)(3)(B)?

Whether 18 U.S.C. 924(c)(3)(B) allows for a categorical approach without offending the Fifth Amendment to the United States Constitution?

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:

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- * Descamps v. United States, 133 S.Ct. 2276 (2013)
- * Dimaya v. Lynch, 803 F.3d 1110, 1120 (9th Cir. 2015)
- * Duhart v. United States, 2016 US Dist. LEXIS 122220 (2016)
- * In re Garrett, 908 F.3d 686 (11th Cir. 2018)
- * In re Pinder, 824 F.3d 977 (11th Cir. 2016)
- * Jardines v. United States, No. 16-22604-Civ-Ungaro (SDFLA 2016)
- * Johnson v. United States, 135 S.Ct. 2551 (2015)
- * Ovalles v. United States, 905 F.3d 1231 (11th Cir. 2018)
- * Mann v. United States, 2017 U.S. Dist. LEXIS 38852 (2017)
- * Sessions v. Dimaya, 138 S.Ct. 1204 (2018)
- * United States v. Davis, USSC Case No. 18-431 (certiorari pending)
- * United States v. Albertini, 105 S.Ct. 2897 (2016)
- * United States v. St. Hubert, 909 F.3d 335 (11th Cir. 2018)
- * United States v. Vivas-Ceja, 808 F.3d 719 (7th Cir. 2015)

STATUTES AND RULES

- * 18 U.S.C. 16(b)
- * 18 U.S.C. 924(c)(3)(B)
- * 18 U.S.C. 924(e)(3)(B)
- * 18 U.S.C. 1951(a)
- * 28 U.S.C. 2253
- * 28 U.S.C. 2255(h)

OTHER

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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 February 13, 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).

STATEMENT OF THE CASE

On December 11, 2014, a federal grand jury sitting for the Southern District of Florida indicted Petitioner, AKEEM YOUNG (hereinafter "Mr. Young") with conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) [Count One]; Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) [Count Two]; unlawful discharging of a firearm during the commission of Hobbs Act Robbery, in violation of 18 U.S.C. 924(c)(1)(A) [Count Three]; Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) [Count Four] and unlawful discharging of a firearm during the commission of Hobbs Act robbery, in violation of 18 U.S.C. 924(c)(1)(A) [Count Five]. Mr. Young was arraigned on December 15, 2014, after which time, on March 24, 2015, the Government filed a Criminal Information charging Mr. Young separately with the indicted charges listed supra, except with respect to Count Five, which was changed to possessing and brandishing a firearm (rather than discharging). Two days later, on March 26, 2015, Mr. Young and the Government entered into a plea agreement wherein Mr. Young pleaded guilty to all counts of the Criminal Information.

On June 29, 2015, Mr. Young appeared for sentencing, at which time the district court sentenced Mr. Young to a term of 396 months' imprisonment, consisting of 12 months imprisonment as to Counts 1, 2, and 4, each term to run consecutively with each other; followed by a term of 84 months imprisonment as to Count 3, to run consecutively with the sentence imposed on

Counts 1, 2, and 4; and a term of 300 months' imprisonment as to Count 5, to run consecutive with the sentence imposed on Count 3, followed by a 5-year term of supervised release as to each count to be served concurrently, and a fee of \$1,065.00 for restitution and a \$500.00 assessment. [CR-ECF No. 56].

Mr. Young did not pursue a direct appeal from the judgment of conviction below, however, on June 20, 2016, filed a Motion to Vacate, Set Aside or Correct Sentence in the district court, pursuant to 28 U.S.C. §2255, seeking to have his convictions and sentences vacated on the ground that (1) a Hobbs Act robbery fails to qualify as a "crime of violence" under 18 U.S.C. §924(c)'s use-of-force clause; and (2) 18 U.S.C. §924(c)'s residual clause is indistinguishable from the Armed Career Criminal Act's ("ACCA's") residual clause -- which was rendered invalid in Johnson v. United States, 576 U.S. ___, 135 S.Ct. 1257, 194 L.Ed.2d 387 (2015).

By order dated June 23, 2017, the district court denied Mr. Young's §2255 Motion [CV-ECF No. 15]. Mr. Young pursued an appeal of this denial to the United States Court of Appeals for the Eleventh Circuit, however, on February 13, 2019, the Eleventh Circuit declined to issue a certificate of appealability, pursuant to 28 U.S.C. §2253, on the grounds that the residual clause in §924(c) is not unconstitutionally vague as long as courts applied a conduct-based approach that accounts for the actual facts of the companion offense's commission, citing Ovalles v. United States, 905 F.3d 1231, 1234 n.1 (11th Cir.

2018)(en banc).

Specifically, the Eleventh Circuit cited Ovalles and other Eleventh Circuit precedent holding that any proposed vagueness challenge to §924(c)(3)(B)'s residual clause under Johnson and Sessions v. Dimaya, 138 S.Ct. 1204, 1211 (2018), like any identical challenge by any federal prisoner, could not satisfy the statutory requirements of §2255(h). See In re Garrett, 908 F.3d 686, 688-90 (11th Cir. 2018). The Eleventh Circuit further explained that neither Johnson nor Dimaya supplies any rule of constitutional law -- new or old -- retroactive or nonretroactive -- previously unavailable or otherwise -- that can support a vagueness-based challenge to the residual clause of §924(c).

The Eleventh Circuit even went further to somehow decide that the conduct-based approach is a rule of statutory interpretation and not a rule of constitutional law, citing United States v. St. Hubert, 909 F.3d 335, 344-45 (11th Cir. 2018).

Mr. Young now brings the instant Petition for Writ of Certiorari, seeking issuance of a writ of certiorari in this case, consistent with a pending Petition for Writ of Certiorari pending before this Honorable Court in the matter of United States v. Davis, U.S. Supreme Court Case No. 18-431, which likewise questions the constitutionality of Title 18, United States Code, Section 924(c)(3)(B).

REASONS FOR GRANTING THE PETITION

Hobbs Act robbery, as governed by Title 18, United States Code, Section 1951(a), categorically fails to constitute a "crime of violence" under Title 18, United States Code, Section 924(c)(3)(A)'s force clause because it can be accomplished by "fear" which does not require (1) an intentional threat; or (2) violent physical force. The residual clause of Section 924(c), just like the residual clause of Title 18, United States Code, Section 16(b) and Title 18, United States Code, Section 924(e)(3)(B), is void for vagueness.

Mr. Young's conviction for Hobbs Act robbery can only be a qualifying crime of violence if it satisfies the elements clause of Section 924(c), which it cannot do under the categorical approach. Therefore, the 84 month and 300 month punishment consecutively added to Mr. Young's substantive sentence must be deemed invalid post-Johnson and post-Dimaya because the Hobbs Act robbery underlying no longer satisfies the crime of violence standards of Section 924(c).

A. MR. YOUNG'S 924(c) CONVICTIONS AND SENTENCES ARE ILLEGAL BECAUSE HOBBS ACT ROBBERY IS NOT A QUALIFYING PREDICATE CRIME OF VIOLENCE UNDER 18 U.S.C. 924(c)(3):

Mr. Young maintains that he is actually innocent of his two convictions and sentences imposed under 18 U.S.C. 924(c) because his Hobbs Act robbery convictions considered "predicate

crimes of violence" under 924(c) are no longer crimes of violence following this Court's holdings in Descamps v. United States, 133 S.Ct. 2276 (2013); Johnson v. United States, 135 S.Ct. 2551 (2015) and Sessions v. Dimaya, No. 15-1498 (2018).

Specifically, Mr. Young argues that the robbery aspect of the Hobbs Act punishes one who in any way or degree obstructs, delays or affects commerce by robbery or attempts or conspires to do so; or who commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of the Hobbs Act. With this in mind, it is implausible to disagree that Hobbs Act robbery does not "categorically" qualify as a crime of violence under the statute because one could put another in "fear of injury, immediate or future, to ... property" without implying or threatening violent force. Of course this is not the "force" of sufficient magnitude that this Court eluded to qualifying as a crime of violence in Johnson.

Following the categorical approach, the "least culpable means" of violating 18 U.S.C. 1951 is to conspire to commit a Hobbs Act robbery, which requires entering a verbal or written agreement to commit a Hobbs Act robbery. This application of the statute does not appear to have as an element the use, attempted use, or threatened use of physical force. It is also worth mentioning that any analysis of Johnson's applicability must be postponed unless and until this Court makes the determination the companion convictions are not crimes of violence under section 924(c)'s use-of-force clause. See United States v.

Albertini, 472 U.S. 675, 680, 105 S.Ct. 2897, 86 L.Ed.2d 526.

To determine whether, under the categorical approach, conspiracy to commit Hobbs Act robbery constitutes a crime of violence, under the elements clause, pursuant to 924(c)(3)(A), cases published since Johnson, as cited by the Eleventh Circuit in In re Pinder, 824 F.3d 977, 979 (11th Cir. 2016)(citing United States v. Vivas-Ceja, 808 F.3d 719, 723 (7th Cir. 2015) and Dimaya v. Lynch, 803 F.3d 1110, 1120 (9th Cir. 2015) indicates that it does not.

When considering the least culpable way of committing a Hobbs Act robbery, the Eleventh Circuit has suggested that a conviction is unlawful where the defendant, in a conspiracy, did no more than agree and plan to commit the robbery, but did not commit an overt act in furtherance thereof. .

Pre-Dimaya, courts in Mr. Young's sentencing district have also held that Hobbs Act robbery conspiracy no longer qualifies as a crime of violence under 924(c)'s elements clause. See, e.g., Mann v. United States, 2017 U.S. Dist. LEXIS 38852 (March 16, 2017); Jardines v. United States, Case No. 16-22604-Civ-Ungaro; Duhart v. United States, 2016 U.S. Dist. LEXIS 122220 (Sept. 9, 2016).

As such, clearly Mr. Young's Hobbs Act robbery conviction does not constitute a crime of violence under the elements clause of 18 U.S.C. 924(c)(3), and cannot be relied upon as a predicate offense to sustain the underlying 924(c) convictions.

B. 18 U.S.C. 924(c) IS UNCONSTITUTIONALLY VAGUE AND DOES NOT ALLOW FOR A CATEGORICAL APPROACH. AN ORDINARY-CASE APPROACH WOULD SHOW THAT MR. YOUNG'S CONDUCT UNDERLYING HIS 924(c) CONVICTION DOES NOT RISE TO THE LEVEL OF A CRIME OF VIOLENCE:

Mr. Young maintains that because 18 U.S.C. 924(c) has been deemed unconstitutionally vague in its residual application, his underlying offense conduct does not rise to the level of a crime of violence, hence, his substantive Hobbs Act robbery conduct cannot serve as a predicate offense to sustain his 924(c) conviction in this case.

Mr. Young notes that the Supreme Court of the United States is currently deciding this question in the matter of United States v. Davis, No. 18-431, and respectfully petitions this Honorable Court to hold this case in abeyance pending an answer to said question, which would have equal application to the merits of Mr. Young's instant certiorari petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Chun Jung

Date: 5/13/2019