

NO. 19-5217

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IN THE SUPREME COURT OF THE UNITED STATES

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LAVARES DETROEN WATKINS

V.

UNITED STATES OF AMERICA

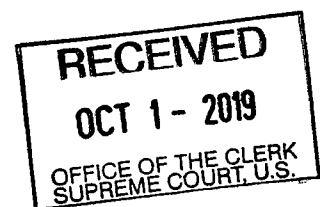
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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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REPLY BRIEF FOR THE PETITIONER

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## QUESTION PRESENTED

Whether the court of Appeals correctly denied a certificate of appealability on Petitioner's untimely claim that he had been unlawfully sentenced under the Armed Career Act of 1994, 18 USC 924 e.

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OPINION BELOW

The decision of court of appeals denying petitioner's motion for Certificate of appealability is reported.

JURISDICTION

THE jurisdiction is invoked under 28 U.S.C. 1254(1).

## \* Argument \*

- (1) Petition contends that Solicitor General's use of his Prior Conviction of third degree robbery for purposes of ACCA enhancement is inappropriate reason being;

The PSI-PSR stipulates under chapter Four enhancement that Petitioner's Three qualifying ACCA violent Predicate Offenses are "1) First-degree Assault, 2) second degree Robbery, and 3) Shooting in an occupied building. Due to the Petitioner's Shooting into an occupied building not being proper for a sentence enhancement Petitioner is no longer under ACCA status.

In light of Johnson, 135 S. Ct 2551 (2015) Petitioner Shooting into an occupied building no longer qualifies as a Violent Felony under the ACCA's Residual clause 18 USC 924(e)(2) B. nor does it qualify under the ACCA's Physical Force. Based on those facts the Petitioner does not have three priors to trigger an ACCA enhancement. Because of the three prior that was used at sentencing is unlawful and trying to add one is unconstitutional.

However the solicitor General's offer of use of Petitioner's additional Prior Conviction for third degree robbery is unwarranted because the government never stipulate that Petitioner's third degree robbery conviction qualified for ACCA enhancement at the time of adopting Petitioner's PSI-PSR during the time of sentencing hearing so adding it now is unlawful. Because the probation office did not specifically identify Petitioner's Alabama third degree robbery as a ACCA predicate as one of the priors for sentence enhancement when classing Petitioner PSI-PSR for sentencing reason, under the sentencing classification when preparing Petitioner's PSI-PSR for the Judge.

IN United State V. Canty the ELEVENTH Circuit held that the government is not entitled to a second chance to offer an additional Prior conviction of a prior that was not use at time of sentencing, Because under Fed. R. P. 32 once giving opportunity when preparing the PSI - PSR only those listed will be used for enhancement see: Booker V. United States,

Here the Solicitor General has offered a second opportunity to present an additional Prior conviction and should be collaterally enstop from doing so, Because the lower court and the appeal court has never addressed this matter and without this additional Prior Petitioner is Free from the ACCA enhancement and the Max is 10 years under 922(g)(1), 924a 2. Petitioner's contends he is being held under Violation of law because 924e is Unconstitutionally Vague therefore Petitioner is being unlawfully held because Petitioner has already served the Max ~~time~~ ~~time~~ under 922(g)(1),

Without the admittance of petitioner's third degree robbery Conviction qualifying for ACCA enhancement Petitioner no longer is a ARM career criminal and the Maximum punishment is zero to 120 months, Time served Already

#### Conclusion

Wherefore this court is left to determine whether the Solicitor General is barred from presenting a New additional Prior, this case would create a (Fundamental miscarriage of Justice) if the Petitioner's Johnson claim is not entertained due to the unconstitutionality of this case.

Petitioner Further prays that this Honorable Court provide instructions regarding his Supplement Brief in light of Rehnif VUS, sup. Ct. No. 17-9560 U.S. 2019 WL552487 June, 21 2019 Thank you for your time and help with this matter

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Respectfully Submitted

LAVARES WATKINS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing  
REPIV Brief was served by mail to the Solicitor General of  
the United States, Room 5616, Department of Justice, 950 Pennsylvania  
Avenue, N.W. Washington, D.C. 20530-0001, on September 27, 2019.

BY: LAVARES WATKINS

MR. LAVARES DETRONE WATKINS