No. 19-6979

IN THE SUPREME COURT OF THE UNITED STATES

JOASSAINT JOSIAH ARISTIL, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether carjacking, in violation of 18 U.S.C. 2119, qualifies as a "crime of violence" under 18 U.S.C. 924(c)(3)(A).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A3, at 1-6) is not published in the Federal Reporter but is reprinted at 787 Fed. Appx. 1023.

JURISDICTION

The judgment of the court of appeals was entered on September 17, 2019. The petition for a writ of certiorari was filed on December 16, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Florida, petitioner was convicted of carjacking, in violation of 18 U.S.C. 2119(1), and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii). Pet. App. A1, at 1. The court sentenced petitioner to 121 months of imprisonment, to be followed by four years of supervised release. Id. at 2-3. The court of appeals affirmed petitioner's convictions but vacated his sentence. Pet. App. A3, at 1-6.

1. On February 16, 2018, petitioner approached a woman as she was walking toward her apartment building in Oakland Park, Florida. Factual Proffer 1-2. Petitioner brandished a gun and told the woman to "give [him] everything." Id. at 2. Petitioner took the woman's purse, cell phone, credit cards, and the keys to her Dodge Challenger, which was parked nearby. Ibid. He then got in the Challenger and drove away. Ibid.

Police located the Challenger shortly thereafter and saw petitioner "bail[ ] out" of it, although the police were not able to apprehend him. Factual Proffer 2. A search of the car revealed a loaded .38 caliber revolver on the driver's seat. Ibid. About a week later, police stopped petitioner while he was driving a Kia Optima that had been seen in the vicinity of the carjacking. Id. at 2-3. Police searched the Kia and found keys to the Challenger in the pocket of a jacket in the back seat. Id. at 3. Petitioner's

girlfriend was later shown a surveillance video of the carjacking and identified him as the perpetrator. Ibid. Petitioner eventually confessed to the carjacking and admitted that he had brandished the .38 caliber revolver during the crime. Id. at 3-4.

2. A federal grand jury in the Southern District of Florida charged petitioner with carjacking, in violation of 18 U.S.C. 2119(1), and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii). Indictment 1-2. The Section 924(c) count identified carjacking as the predicate crime of violence. Id. at 2.

Petitioner moved to dismiss the Section 924(c) count on the theory that carjacking is not a crime of violence. D. Ct. Doc. 17, at 2-9 (July 6, 2018) (Motion to Dismiss). Section 924(c)(3) defines a "crime of violence" as a felony offense that either "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A), or, "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. 924(c)(3)(B). Petitioner argued that carjacking does not qualify as a crime of violence under Section 924(c)(3)(A), and that Section 924(c)(3)(B) was unconstitutionally vague in light of this Court's decision in Sessions v. Dimaya, 138 S. Ct. 1204 (2018), which held that the similarly worded definition of a "crime of violence" in

18 U.S.C. 16(b) is void for vagueness, 138 S. Ct. at 1223. See Motion to Dismiss 2-9.

Before the district court ruled on petitioner's motion to dismiss, petitioner entered an unconditional guilty plea to both counts of the indictment. See 7/26/18 Plea Tr. (Tr.) 4-7. In connection with that plea, petitioner stated that he had fully discussed the charges with his attorney -- including the elements of the Section 924(c) offense and any "possible defenses" to that charge -- and had decided to admit his guilt. Tr. 14; see Tr. 4, 11-14. He also specifically acknowledged that carjacking was a crime of violence under Section 924(c). Tr. 5-7.

The district court accepted petitioner's unconditional guilty plea, Tr. 22, and denied as moot his motion to dismiss the Section 924(c) count, 18-cr-60071 Docket Entry No. 25 (Aug. 17, 2018). The court sentenced petitioner to 121 months of imprisonment, consisting of 37 months of imprisonment on the carjacking count and a consecutive term of 84 months of imprisonment on the Section 924(c) count, to be followed by four years of supervised release. Pet. App. A1, at 2-3.

3. The court of appeals affirmed petitioner's convictions, vacated his sentence, and remanded for resentencing. Pet. App. A3, at 1-6. The court determined that carjacking qualifies as a crime of violence under Section 924(c)(3)(A) because it requires proof that the perpetrator used, attempted to use, or threatened to use physical force against the person or property of another.

Id. at 2-4. The court acknowledged that this Court had held in United States v. Davis, 139 S. Ct. 2319 (2019), that the alternative definition of a "crime of violence" in Section 924(c)(3)(B) is unconstitutionally vague, but the court of appeals determined that petitioner's conviction "was not affected by Davis" because his predicate offense qualified as a crime of violence under Section 924(c)(3)(A). Pet. App. A3, at 4; see id. at 2-4.

The court of appeals further determined, for reasons unrelated to petitioner's Section 924(c) claim, that the district court had plainly erred in calculating petitioner's criminal history score under the Sentencing Guidelines. Pet. App. A3, at 4-6; see Gov't C.A. Br. 8-10 (acknowledging error). The court of appeals therefore vacated petitioner's sentence and remanded to the district court with instructions to resentence petitioner under the correct Guidelines range. Pet. App. A3, at 6.

4. On remand, the district court resentenced petitioner to 117 months of imprisonment, consisting of 33 months of imprisonment on the carjacking count and a consecutive term of 84 months of imprisonment on the Section 924(c) count, to be followed by four years of supervised release. Pet. App. A2, at 2-3. Petitioner did not appeal from that judgment.

ARGUMENT

Petitioner contends (Pet. 8-14) that carjacking does not qualify as a crime of violence under 18 U.S.C. 924(c)(3)(A). That

claim does not warrant review. Petitioner relinquished his statutory challenge to his carjacking offense by entering an unconditional guilty plea. In any event, the court of appeals' decision is correct and does not conflict with any decision of this Court or of another court of appeals. The petition for a writ of certiorari should be denied.

1. As an initial matter, petitioner relinquished his challenge to whether carjacking qualifies as a crime of violence by entering an unconditional guilty plea in which he specifically acknowledged that the Section 924(c) offense charged in the indictment was based on a valid predicate. Petitioner had initially moved to dismiss the Section 924(c) count on the theory that carjacking was not a crime of violence under Section 924(c)(3)(A). Motion to Dismiss 2-9. While that motion was pending, however, petitioner entered an unconditional plea admitting his guilt to both the carjacking and Section 924(c) counts. Tr. 4-7.

During his plea colloquy, petitioner repeatedly stated that he was aware of the elements of the Section 924(c) offense, had discussed any "possible defenses" to that charge with his attorney, and had nonetheless decided to plead guilty. Tr. 14; see Tr. 4, 11-14. The district court explained to petitioner that the Section 924(c) count identified carjacking as the predicate crime of violence and specifically asked petitioner whether he "in fact, brandished a firearm in relation to a crime of violence." Tr.

6-7. Petitioner answered, "Yes." Tr. 7. In light of those admissions, the court accepted petitioner's unconditional guilty plea, Tr. 22, and denied his motion to dismiss the Section 924(c) count as moot, 18-cr-60071 Docket Entry No. 25.

Petitioner's guilty plea forecloses his argument here. A defendant who is correctly advised of the elements of a criminal offense, and who enters an unconditional plea of guilty to that offense, necessarily admits that his conduct satisfied those elements. See Brady v. United States, 397 U.S. 742, 748 ("[T]he plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial."). An unconditional guilty plea therefore forecloses any argument by the defendant that is inconsistent with the premise that he committed the crime, or that the government would be able to establish the requisite elements at trial. See United States v. Broce, 488 U.S. 563, 570-571 (1989).

Because petitioner admitted that he committed all of the elements of the Section 924(c) offense charged in the indictment, he has relinquished any argument that his predicate carjacking offense did not qualify as a "crime of violence." See Class v. United States, 138 S. Ct. 798, 805 (2018) ("[A] valid guilty plea relinquishes any claim that would contradict the 'admissions necessarily made upon entry of a voluntary plea of guilty."') (quoting Broce, 488 U.S. at 573-574). Although this Court in Class v. United States, supra, recognized that a defendant who enters an

unconditional guilty plea retains the right to challenge the constitutionality of his statute of conviction, ibid., the Court's decision does not call into question the longstanding rule under which an unconditional guilty plea precludes resurrecting on appeal statutory defenses like the one that petitioner asserts here. As the district court correctly determined, petitioner's unconditional guilty plea -- which included an express admission to the element that he had previously challenged on the ground that he reasserts here -- rendered his challenge moot. Petitioner cannot revive the substance of that motion before this Court.[1]

2. In any event, petitioner's claim lacks merit. A person commits carjacking if, "with the intent to cause death or serious bodily harm," he "takes a motor vehicle * * * from the person or presence of another by force and violence or by intimidation." 18 U.S.C. 2119. For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Murray v. United States, No. 18-6569, carjacking categorically qualifies as a crime of violence under Section 924(c) because it "has as an element the use, attempted use, or threatened use of physical force

[1] The government argued on appeal that petitioner had relinquished his challenge to whether carjacking is a crime of violence by entering an unconditional guilty plea. See Gov't C.A. Br. 7 n.3; see also id. at 2 (explaining that petitioner never sought to enter a plea "conditioned on the preservation of any issue"). Although the court of appeals did not reach that issue, and instead rejected petitioner's argument on the merits, this Court may affirm on any ground supported by the record. See, e.g., Lee v. Kemna, 534 U.S. 362, 391 (2002).

against the person or property of another," 18 U.S.C. 924(c)(3)(A). See Br. in Opp. at 6-10, Murray, supra (No. 18-6569).[2] Every court of appeals to have considered the question, including the court below, has so held. See id. at 7 (citing cases); see also, e.g., Estell v. United States, 924 F.3d 1291, 1292-1293 (8th Cir.), cert. denied, 140 S. Ct. 490 (2019); United States v. Jackson, 918 F.3d 467, 484-486 (6th Cir. 2019); Ovalles v. United States, 905 F.3d 1300, 1303-1304 (11th Cir. 2018) (per curiam), cert. denied, 139 S. Ct. 2716 (2019); United States v. Cruz-Rivera, 904 F.3d 63, 65-66 (1st Cir. 2018), cert. denied, 139 S. Ct. 1391 (2019).

This Court has recently and repeatedly denied petitions for a writ of certiorari seeking review of whether carjacking qualifies as a crime of violence under Section 924(c)(3)(A).[3] The Court has also consistently denied petitions raising a related issue under

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[2] We have served petitioner with a copy of the government's brief in opposition in Murray.

[3] See, e.g., Estell v. United States, 140 S. Ct. 490 (2019) (No. 19-6131); Shaw v. United States, 140 S. Ct. 315 (2019) (No. 18-9258); Paul v. United States, 140 S. Ct. 178 (2019) (No. 18-9643); Ovalles v. United States, 139 S. Ct. 2716 (2019) (No. 18-8393); Williams v. United States, 139 S. Ct. 1619 (2019) (No. 18-7470); Murray v. United States, 139 S. Ct. 1291 (2019) (No. 18-6569); Lenihan v. United States, 139 S. Ct. 1230 (2019) (No. 18-7387); Foster v. United States, 139 S. Ct. 789 (2019) (No. 18-5655); Cooper v. United States, 139 S. Ct. 411 (2018) (No. 17-8844); Horne v. United States, 139 S. Ct. 208 (2018) (No. 18-5061); Johnson v. United States, 139 S. Ct. 70 (2018) (No. 17-8632); Leon v. United States, 139 S. Ct. 56 (2018) (No. 17-8008); Stevens v. United States, 138 S. Ct. 2676 (2018) (No. 17-7785); Chaney v. United States, 138 S. Ct. 2675 (2018) (No. 17-7592); Dial v. United States, 138 S. Ct. 647 (2018) (No. 17-6036).

the federal bank robbery statute, 18 U.S.C. 2113, which has operative language similar to the carjacking statute.[4] See Pet. 13 (acknowledging that carjacking and bank robbery require "the same action"). The same result is appropriate here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4] See, e.g., Estell, supra (No. 19-6131); Pastor v. United States, 140 S. Ct. 412 (2019) (No. 19-5812); Mitchell v. United States, 140 S. Ct. 285 (2019) (No. 19-5070); Watson v. United States, 140 S. Ct. 171 (2019) (No. 18-9469); Karahalios v. United States, 140 S. Ct. 73 (2019) (No. 19-5107); Johnson v. United States, 139 S. Ct. 647 (2018) (No. 18-6499); Cadena v. United States, 139 S. Ct. 436 (2018) (No. 18-6069); Patterson v. United States, 139 S. Ct. 291 (2018) (No. 18-5685); Schneider v. United States, 138 S. Ct. 638 (2018) (No. 17-5477); Castillo v. United States, 138 S. Ct. 638 (2018) (No. 17-5471).