

No. _____

IN THE SUPREME COURT OF
THE UNITED STATES

June Term 2019

SAMUEL GRAY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

MOTION FOR ADDENDUM TO WRIT OF CERTIORARI,
PRESENTLY PENDING, IN THIS COURT TO INCLUDE
NEW AUTHORITY IN THE ELEVENTH CIRCUIT THAT
HOBBS ACT ROBBERY IS NOT A CRIME OF VIOLENCE

RECEIVED

JUN 30 2020

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SUPREME COURT, U.S.

Samuel Gray, whose writ of certiorari is awaiting review in the Supreme Court, request permission to file an addendum to the presently filed writ to include new Eleventh Circuit authority that Hobbs Act Robbery is not a crime of violence. To this issue Gray states the following.

On the 24th of March 2020, the Eleventh Circuit, in United States v. Eason, No. 16-15413 (3-24-2020), ruled that Hobbs Act Robbery does not qualify as a crime of violence under the current version of U.S.S.G. §4B1.2(a). The Guidelines define "crime of violence" to mean "any offense under federal or state law, punishable by imprisonment for a term exceeding one year," that either (1) "has an element the use, attempted use, or threatened use of physical force against the person of another" — a definition known as the "element clause" — or (2) is one of a number of listed offenses in the "enumerated clause," which includes robbery. The Eleventh Circuit examined whether a conviction for Hobbs Act Robbery in violation of 18 U.S.C §1951(a) satisfies the Guidelines' "crime of violence" definition.

A person commits Hobbs Act robbery when he:

obstructs, delays, or affects commerce or movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so 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

18 U.S.C. §1951(q) "Robbery" under the Hobbs Act is defined as:

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 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

Applying the categorical approach to answer the question whether a violation of Hobbs Act robbery, 18 U.S.C. §1951(a) compared with the definition of "crime of violence" in U.S.S.G. §4B1.2(a) is a qualifying conviction for enhancement purposes under the guidelines. After careful review the Eleventh Circuit concluded the answer is "no". The Eleventh Circuit determined that Hobbs Act robbery qualifies under neither the Elements Clause nor the Enumerated Clause and that it cannot be captured by the coextensive Hobbs Act extortion. The least of the criminalized acts is not a match for the generic definition of the offense and does not require immediate danger to the person or any danger to the person, present or future. The Eleventh Circuit agrees with both circuits to have addressed this issue. The Sixth and Tenth Circuits have held that Hobbs Act robbery does not satisfy either the enumerated offense or some combination of both offenses. See United States v. O'Connor, 874 F.3d 1147 because Hobbs Act robbery is broader than the generic definition of robbery because it can be violated with threats of force to property, Hobbs Act robbery reaches conduct directed at 'property' because the statute specifically says so, and statutory text cannot be ignored to construct a narrower statute than the plain language supports. Threats to property do not create a danger to person therefore, Hobbs Act robbery is not a categorical match for the enumerated offense of robbery, and the word "property" in the statute cannot be rendered superfluous

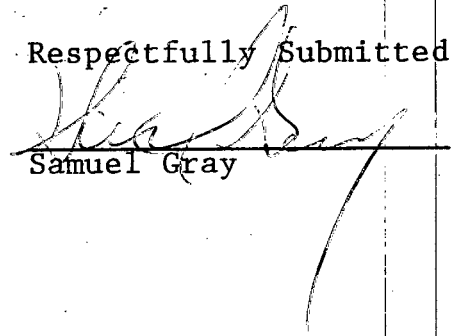
or insignificant.

As a result the Eleventh Circuit concludes that the least of the acts criminalized by the Hobbs Act robbery statute falls outside the scope of enumerated robbery.

Petitioner Gray contends that because the Eleventh Circuit has concluded that Hobbs Act robbery is not a crime of violence that it does not qualify to enhance to a mandatory life sentence under 18 U.S.C. §3559(c). Therefore, the conviction for Hobbs Act robbery, 18 U.S.C. §1951(a) cannot serve as a predicate for his mandatory life sentence under 18 U.S.C. §3559(c) sentencing enhancement and Petitioner's sentence should be vacated and he should be immediately released due to the fact he has served over twenty (20) years of incarceration and more than the guidelines recommendation.

Petitioner wishes to submit that he is on lockdown due to the coronavirus and has no access to the Law Library, Rules of the Court, and no assistance and because of his lack of legal knowledge, pleads with the Court to grant him broad latitude with the filing of this motion.

Respectfully Submitted


Samuel Gray

This 17 day of June 2020