

20-6038

No. _____

ORIGINIAL

Supreme Court, U.S.
FILED

SEP 25 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

DARIUS Whitaker — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR the fourth CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARIUS Whitaker
(Your Name)

P.O. Box 1009
(Address)

Welch W.V. 24801
(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Does a OUT OF CIRCUIT Case law CONCLUDING that attempted Hobbs ACT Robbery is a CRIME OF VIOLENCE UNDER 924(C) ELEMENT CLAUSE CONTROL the OPEN QUESTION in the fourth CIRCUIT, OR does a OUT OF CIRCUIT Case law CONCLUDING that attempted Hobbs ACT Robbery is NOT a CRIME OF VIOLENCE UNDER 924(C) CONTROL the OPEN QUESTION in the fourth CIRCUIT?

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:

RELATED CASES

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STATUTES AND RULES

Supreme Court Rule# 10, C

OTHER

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 is unpublished.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 _____ 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 is unpublished.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 is unpublished.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 is unpublished.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 MAY 15, 2020.

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

NONE

STATEMENT OF THE CASE

When petitioner attorney filed his appeal April 17, 2020 in the fourth circuit court of appeals, it were and still is a open question whether attempted Hobbs Act Robbery is a crime of violence under the 924(c) element clause.

Consequently, in answering whether attempted Hobbs Act Robbery is a violent crime under 924(c) element clause in the fourth circuit. The fourth circuit relied on a out of circuit case law of, United States v St. Hubert, 909 F.3d 335 (11th Cir 2018) to answer the question whether attempted Hobbs Act Robbery is a violent crime under 924(c) element clause.

In contrast, the out of circuit second circuit case law of United States v Pica, Lexis # 65751 (2nd Cir 2020) (citing, Davis v United States, 139 S.Ct. 2319 (2019)) has concluded that attempted Hobbs Act Robbery is not a crime of violence under 924(c) element clause, and United States v Hueso v Barnhart, No. 18-6229 (6th Cir 2020) (citing Davis v United States, 139 S.Ct. 2319 (2019)) has determined that attempted Hobbs Act Robbery is not a crime of violence under 924(c) element clause. Also see, United States v Chea, Lexis # 17M651 (9th Cir 2019) (citing, Davis v United States, 139 S.Ct. 2319 (2019)) determining that the whole substantive statute of Hobbs Act Robbery is not a crime of violence under any clause of the 924(c).

REASON FOR GRANTING THE PETITION

The Statement of the Case presents a issue of national importance to grant a CERTIORARI pursuant to Supreme Court Rule #10, c which states; "CERTIORARI will be considered where a federal question conflicts with relevant decisions of this court." A straight forward application of *Davis v United States*, 139 S.Ct. 2319 (2019) deciding that CONSPIRACY to Commit Hobbs ACT Robbery is not a crime of violence under 924(c), will common sense wise conclude that attempt Hobbs ACT Robbery is not a crime of violence under 924(c) element clause, as a attempted Hobbs ACT Robbery is an incomplete crime and no overt act has to be committed, there for not falling in the confines of the 924(c) element clause.

There is currently a circuit split on whether attempted Hobbs ACT Robbery is a crime of violence under 924(c), see *United States v St Hubert*, 919 F.3d 335 (11th Cir 2018) (concluding that attempted Hobbs ACT Robbery, is a crime of violence under 924(c)). In contrast, *United States v Pica*, Lexis# 65751 (2nd Cir 2020) (citing, *Davis v United States*, 139 S.Ct. 2319 (2019)) (concluded that attempted Hobbs ACT Robbery, is not a crime of violence under 924(c)), and *United States v Hueso v Burnhart*, No. 18-6229 (6th Cir 2020) (citing, *Davis v United States*, 139 S.Ct. 2319 (2019)) (concluded that attempted Hobbs ACT Robbery, is not a crime of violence under 924(c)). Also see, *United States v Cheu*, Lexis# 179651 (9th Cir 2019) (concluding that the whole substantive Hobbs ACT Robbery Statute, is not a crime of violence under 924(c)). Petitioner ask that CERTIORARI is considered in this petition. Because *Davis* (2019) supra which determined that CONSPIRACY to Hobbs ACT Robbery were not a crime of violence under 924(c), reasonable could conclude that attempted Hobbs ACT Robbery which is an incomplete crime with no overt act is not a crime of violence under 924(c) as well. It would be probative to this court to grant CERTIORARI in this case, because in the interest of Justice so many defendants stand to face substantial amounts of time rendered by lower courts on convictions of 924(c), based on attempted Hobbs ACT Robbery which is a incomplete crime with no overt act that were completed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darin Whitaker

Date: September 24, 2020