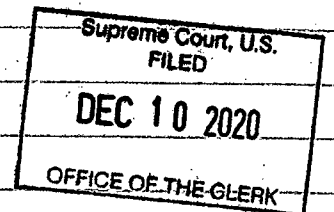


20-6041

ORIGINAL

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BENNETTSVILLE FEDERAL CORRECTIONAL
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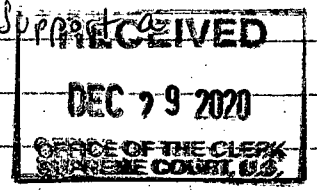
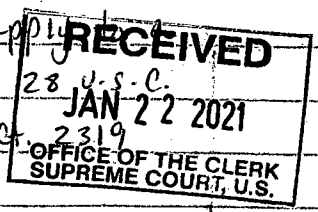
PETITION FOR REHEARING
(Sup. Ct. R. 44.2)

COMES NOW, Petitioner Raymond Lewis Perry, Proceeding pro se, and respectfully files this petition for rehearing of an order issued by this Supreme Court on November 16, 2020 denying a petition for a Writ of Certiorari.

The following grounds for relief will be stated briefly and distinctly below.

QUESTION(S) PRESENTED

- (1) Whether Mr. Perry was afforded due process, having dual citizenship while being charged with offenses under the Hobbs Act and 18 U.S.C. Section 924(c), potentially violating his fundamental rights by failing to charge all of the essential elements of the offenses, placing him in a suspect classification by being alienated from equal protection under the law?
- (2) Whether Section 403 of the First Step Act of 2018, applies to defendant whose sentence was corrected pursuant to 28 U.S.C. Section 2255 in light of United States v. Davis, 139 S. Ct. 2319 (2019)?
- (3) Whether Hobbs Act constitutes a 'Crime of Violence' to support a 924(c) conviction?



A rehearing in this matter is in the interest of justice in light of the serious, and complex nature of the grounds presented.

1. On November 16, 2020, this United States Supreme Court denied a Petition for a Writ of Certiorari.

2. The Case was on Writ of Certiorari after the United States Court of Appeals for the Fourth Circuit affirmed Mr. Perry's appeal in part, and remanded the judgment back to the United States District Court to have an error with the Special Assessment fee corrected.

3. The Case against Mr. Perry arose after a series of armed robberies of local retail establishments occurred in the State of North Carolina, and the City of Virginia Beach, Virginia. Mr. Perry was arrested and charged with various violations under Virginia State law after multiple suspects implicated him in several of the robberies, in the City of Virginia Beach, Virginia.

All charges were screened and reviewed by a Senior Assistant Commonwealth's Attorney who later approved the charges for prosecution. Those offenses were eventually nolle prossed in lieu of federal prosecution.

4. Federal prosecutors filed a Criminal Complaint and Affidavit in support of the Criminal Complaint in the United States District Court for the Eastern District of Virginia, Norfolk Division on February 11, 2011, and charged Mr. Perry with - Possession of a firearm in furtherance of a crime of violence, in violation of Title 18 U.S.C. Section 924(c), and Interference with Commerce by means of robbery, in violation of Title 18 U.S.C. Section 1951(a).

The Criminal Complaint and Affidavit in support of the Criminal Complaint failed to state one of the essential facts necessary to constitute the offense charged under 18 U.S.C. Section 1951(a), specifically an effect on commerce - the central feature of a crime under the statute.

In *Stirone v. United States*, 361 U.S. 212 (1960) the Supreme Court held: "there are two essential elements of a Hobbs Act Crime: Interference with Commerce, and extortion. Both elements have to be charged. Neither is Surplusage and neither can be treated as Surplusage. The Charge that interstate Commerce is affected is critical since the federal government's jurisdiction of this crime rests only on that interference".

Mr. Perry's Criminal Complaint and Affidavit in Support, Alleged facts that would support robbery, absent was any affect the robberies had on Commerce. In accordance with the Federal rules of Criminal procedure, a Complaint requesting an arrest warrant must contain "essential facts constituting the offense charged". See Federal Rules of Criminal Procedures Rule 3.

The magistrate judge had a duty to investigate whether the Criminal Complaint alleged probable cause for the Commission of an offense.

5. The Criminal Complaint and Affidavit in Support based on misleading and inaccurate information, was the basis for Special Agent Jason Collins. Subsequent inculpatory grand jury testimony, and on March 17, 2011 the Grand Jury returned and filed in open Court an 8 Count indictment. Count 1, Charged - Conspiracy to interfere with Commerce by means of robbery, in violation of 18 U.S.C. Section 1951(a). Counts 3, 5 and 7 Charged - Interference with Commerce by means of robbery, in violation of 18 U.S.C. Section 1951(a). Counts 2, 4, 6 and 8 Charged - Use, Carry a firearm in furtherance of a Crime of violence, Alleged in Counts 1, 3, 5 and 7, for which he may be charged for in the Court of the United States, in violation of 18 U.S.C. Section 924(c).

The Four Counts alleging violations of 18 U.S.C. Section 1951(a) failed to allege an affect the robberies had on Commerce. The indictment must be a plain, concise, and definite written statement of the

essential facts constituting the offense charged.

As previously stated the indictment on four counts charged offenses under 18 U.S.C. Section 1951(a), Conspiracy to interfere with Commerce by means of robbery, and Interference with Commerce by means of robbery. Each count lists robbery as a means, instead of as an element of the offense.

6. A five-day jury trial commenced on June 16, 2011, and on June 21, 2011 Mr. Perry was convicted on all eight counts.

7. On October 3, 2011, the United States District Court Judge sentenced Mr. Perry to serve an 1160 months term of imprisonment. 960 months of that term was mandatory based on a stacking provision of 18 U.S.C. Section 924(c)(1)(C).

8. Mr. Perry filed an appeal that was ultimately denied.

9. Mr. Perry filed a motion pursuant to 28 U.S.C. section 2255, and that motion was denied.

A timely noticed of appeal was filed and was later denied.

A timely writ of Certiorari was filed that was denied.

Mr. Perry filed for rehearing and that was later denied as well.

10. Then in April of 2016 Mr. Perry filed a motion to the United States District Court for the Fourth Circuit requesting permission to file a second or successive 2255. That motion was granted.

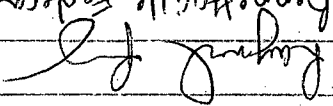
11. Mr. Perry then filed his second 2255 motion that was granted, however the district court did not set the original judgment aside in accordance with the text of the 2255 statute or to amend the judgment by correcting

the sentence. The Court vacated Count 2, in light of this Court's decision in United States v. Davis, 139 S. Ct. 2319 (2019), and reduced Count 4 from 300 to 24 months imprisonment to reflect Count 4 not being a second or subsequent conviction under 941(c) but first. Counts 6 and 8 were not changed although Count 4 was. But Count 4 became the predicate to Count 6 and 8 so that Mr. Perry's sentence could be still stacked, a provision that had been repeated prior to Mr. Perry's section 2255 even being granted. Clearly Mr. Perry did not receive equal and fair treatment. Furthermore the district also denied Mr. Perry's argument the Hobbs Act did not contribute a crime of violence. But in regards to Mr. Perry's indictment clearly robbery was charged as a means instead of an element of the offense, so how is it now that the elements are the only thing relevant to the categorical approach in determining whether the offense qualify as a crime of violence, that robbery becomes an element of the offense rather than a means as the grand jury charged?

Conclusion

Mr. Perry case is very complex, however a rehearing is warranted. In the interest of justice, a rehearing tightly and squarely focused on the points presented merits a different rule of law, is a matter of fundamental fairness.

Respectfully Submitted


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Certificate of Good Faith By Petitioner

I, Raymond Lewis Perry, certify that this petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44 of the Rules of this Court.

Raymond Lewis Perry

I declare under the penalty of perjury that the foregoing is true and correct.

Corrected and resubmitted on January 8, 2021

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