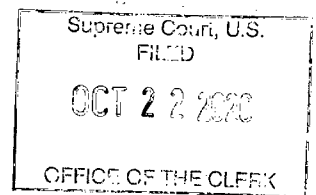


No. 20-6200



IN THE
SUPREME COURT OF THE UNITED STATES

Randall Gray Webb — 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

Randall Gray Webb #30042-057
(Your Name)

Bennettsville Federal Correction Institution
P.O. Box 52020
(Address)

Bennettsville, SC 29512
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the Fourth Circuit erred by not granting Petitioner a Certificate of appealability, although the Standard have been satisfied to recieve one?

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

Section 1851

Section 924(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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 July 23, 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

STATEMENT OF THE CASE

The district Court entered a Judgment against Petitioner imposing consecutive prison sentences of 84 and 300 months upon his guilty plea to Counts Three and Five of his Indictment, which each charged him with carry and use, by brandishing, a firearm, during and in relation to a crime of violence in violation of 18 U.S.C. § 924 (c)(1)(A)(ii).

Petitioner did not appeal, but later did file a letter motion referencing "the Johnson case/Watch case". The Court construed that letter motion as collaterally challenging Petitioner's convictions based on *Johnson v. United States*, — U.S. —, 135 S. Ct. 2551 (2015), and, "pursuant to a General Order Governing Claims Related to Johnson... the office of the Federal Public Defender was appointed to represent petitioner and the letter motion was stayed for a period of 45 days... to permit review by counsel".

Following the expiration of that stay, Petitioner (through counsel) filed a form motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence, as well as a "Motion to Accept the Section 2255 Motion lists on 'ground one which Petitioner argued that he is being held in violation of the Constitution laws, or treaties of the United States: 'As a result of the decision in Johnson... the predicate offense relied upon by the government for conviction is no longer a 'crime of violence'. Each Count of Conviction alleges that Petitioner brandished a weapon in connection with the offense of Interference with Commerce by Threats or violence in violation of 18 U.S.C. § 1951(a). After Johnson, [Interference with Commerce by Threats or violence is not categorically a crime of violence.]

Subsequently, "in accordance with the Supplemental Order entered in *In re: Motions Related to Claims under Johnson*... this case was stayed pending the decision of the Supreme Court in *Brima v. Lynch*..." (Text Order dated Nov. 15, 2016). The Court thereafter extended the stay "pending the Fourth Circuit's decision in... *United States v. Mathis*, 16-46334" (Text Order dated May 8, 2018; accord Text Order dated July 12, 2019), as well as this Supreme Court's decision in "*United States v. Davis*, No. 18-431" (Text Order dated Feb. 14, 2019).

Following decisions in those cases, the Government and Petitioner through Counsel filed a Joint Status Report "requesting that the case be released from abeyance" and the Court per the Magistrate Judge granted that request (Text order dated Nov. 21, 2019).

The magistrate judge then issued a Report and Recommendation, concluding that the Fourth Circuit "has concluded that Hobbs Act robbery constitutes a crime of violence under the force clause of Section 924(c)," relying on *United States v. Mathis*, 932 F.3d 242, 266 (4th Cir. 2019). Therefore the Court held that "it plainly appears from the [Letter Motion and the Section 2255 motion, and the record of prior proceedings that petitioner was not entitled to relief, and recommended that the Section 2255 motion be dismissed pursuant to Section 2255 Rule 4(b), without issuance of a Certificate of appealability. Dated November 21, 2019. (see Petition/ Appendix "B")

On, January 2, 2020, the district Court issued an order adopting the Magistrate Judge's recommendation, and Ordered that petitioner's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 be denied.

The Court further found that neither a substantial issue for appeal concerning the denial of a Constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability has also denied.

Petitioner then filed an Informal brief in the United States Court of Appeals for the Fourth Circuit questioning whether he had satisfied the (COA) standard to proceed forward with his appeal.

The Fourth Circuit issued an unpublished Opinion dated July 23, 2020, concluding that after independently reviewing the record, petitioner had not made the requisite showing; and accordingly denied him a

Certificate of appealability and dismissed the appeal.

Petitioner now files the instant Petition for a Writ of Certiorari.

"Argument"

When the district Court denies relief on the merits, a Prisoner satisfies the standard to receive a Certificate of appealability by demonstrating that reasonable jurists could find the district Court's assessment of the Constitutional Claims debatable or wrong. See *Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017).

Petitioner was denied relief based on the Fourth Circuit's ruling in *United States v. Mathis*, 932 F.3d 242, 2016 (4th Cir. 2019), (Where the Court held that Hobbs Act robbery constitutes a crime of violence under the force clause of Section 924(c)).

However two district Court judges representing two different districts have held opinions contrary to that of the fourth circuit. (See Petition/Appendix 'C'). The opinions of the two judges support Petitioner's position that a reasonable jurist would have found the district Court's assessment of the Constitutional claim, that Hobbs Act would constitute a crime of violence under the force clause of Section 924(c)(3)(A), debatable and wrong.

The Fourth Circuit ruling otherwise without applying the proper approach, whether categorical, modified categorical or some hybrid thereof, would easily violate Petitioner's and similar situated defendants Constitutional rights on multiple different levels.

REASONS FOR GRANTING THE PETITION

Therefore it is of sound reasoning that this Court should grant the instant petition. The Hobbs Act is a statute that was passed in 1946, the issues that prompt Congress to pass the law were not violence within the meaning of section 924(c)(3)'s definition but more so in relation to labor disputes. The Act was merely directed at changing the result in the *Lolay 807* case.

Considering those factors and the recent interpretations of law that has occurred with this Court's jurisprudence, specifically in cases such as *Bescamps v. United States*, 570 U.S. 254, 260-61 (2013); *Johnson v. United States*, 559 U.S. 133 (2010); *Johnson v. United States*, 135 S. Ct. 2551 (2015); *Mathis v. United States*, 136 S. Ct. 2243 (2016); and *United States v. Davis*, 139 S. Ct. 2319 (2019), Courts below have been reassessing the meaning of the statutes that are predicated for section 924(c) purposes. While many of Courts are applying the proper examination lots of Courts are simply holding the convictions of those already sentence to be valid without even so much as giving the statute a thorough examination, leaving the lives of those already incarcerated in limbo for years until this Court give the statute a proper interpretation that's often not consider retroactively applicable. In order to save the lives and show that the Constitution does have more meaning beyond protecting only those that come after the many that have already been incarcerated under a statute that's been used beyond its original meaningful purpose, this Court have the option to not allow the opportunity to pass to apply the proper approach and set the lower Courts on a proper path

forward.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Randall White

Date: 6/24/2020