

No. 20-6323

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IN THE SUPREME COURT OF THE UNITED STATES

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LAMONT ANDRE THOMAS, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 18-22) that robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), does not qualify as a "crime of violence" under 18 U.S.C. 924(c)(3)(A). That contention lacks merit. Every court of appeals that has considered the issue has determined that Hobbs Act robbery qualifies as a crime of violence under Section 924(c)(3)(A), and this Court has repeatedly denied petitions for a writ of certiorari challenging the circuits' consensus on that issue. The petition for a writ of certiorari should be denied.

1. Following a guilty plea, petitioner was convicted on one count of brandishing a firearm during and in relation to a crime

of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2. Judgment 1. The indictment identified Hobbs Act robbery as the predicate crime of violence, Indictment 7, and petitioner acknowledged in his plea agreement that he had committed that predicate offense, Plea Agreement 1-2; see Statement of Facts 2-3. As a condition of his plea agreement, petitioner waived his right to challenge his conviction and any sentence that did not exceed the applicable statutory maximum. Plea Agreement 3-4. The district court accepted petitioner's guilty plea and sentenced him to the statutory minimum 84 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3; see 18 U.S.C. 924(c)(1)(A)(ii).

The court of appeals affirmed. Pet. App. 1-5. As relevant here, petitioner argued on appeal that his Section 924(c) conviction should be vacated on the theory that Hobbs Act robbery is not a crime of violence. Id. at 2. 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 asserted (Pet. App. 2) that Hobbs Act robbery does not "categorically qualify as a crime of violence" in light of this

Court's decision in United States v. Davis, 139 S. Ct. 2319 (2019), which held that the "crime of violence" definition in Section 924(c)(3)(B) is unconstitutionally vague, id. at 2336.

The court of appeals acknowledged that petitioner had "knowingly and voluntarily waived his right to appeal his conviction and sentence" as a condition of his plea agreement, Pet. App. 4, but it nevertheless considered petitioner's claim on the merits, and rejected it. Id. at 4-5. The court explained that petitioner had failed to preserve his claim in the district court and that appellate review was therefore limited to review for plain error. Id. at 4. The court also determined that petitioner's claim was foreclosed by circuit precedent recognizing that Hobbs Act robbery qualifies as a "crime of violence" under Section 924(c)(3)(A), the validity of which was not called into question by Davis. Ibid. (citing United States v. Mathis, 932 F.3d 242, 266 (4th Cir.), cert. denied, 140 S. Ct. 639 and 140 S. Ct. 640 (2019)). Accordingly, the court determined that petitioner could not demonstrate reversible plain error. Id. at 4-5.

2. The court of appeals correctly rejected petitioner's assertion that Hobbs Act robbery is not a crime of violence under Section 924(c). Hobbs Act robbery requires the "unlawful taking or obtaining of personal property" from another "by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property." 18 U.S.C. 1951(b)(1). For

the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Steward v. United States, No. 19-8043 (May 21, 2020), Hobbs Act robbery qualifies as a "crime of violence" under Section 924(c)(3) because it "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). See Br. in Opp. at 6-12, Steward, supra (No. 19-8043).<sup>1</sup>

Petitioner contends (Pet. 18-22) that Hobbs Act robbery does not qualify as a crime of violence under Section 924(c)(3)(A) because Hobbs Act robbery does not require conduct that "results in physical injury" and can be completed by putting the victim in "'fear of injury to property.'" Pet. 19 (citation omitted). Those contentions lack merit for the reasons explained at pages 8 to 12 of the government's brief in opposition in Steward, supra (No. 19-8043). Every court of appeals to have considered the question, including the court below, has recognized that Hobbs Act robbery is a crime of violence under Section 924(c)(3)(A). See id. at 7; see also, e.g., United States v. Melgar-Cabrera, 892 F.3d 1053, 1060-1066 (10th Cir.), cert. denied, 139 S. Ct. 494 (2018). And this Court has consistently declined to review petitions for a writ of certiorari contending that Hobbs Act robbery is not a crime of violence under Section 924(c)(3)(A), see Br. in Opp. at 7-8 &

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<sup>1</sup> We have served petitioner with a copy of the government's brief in opposition in Steward, which is also available from this Court's online docket.

n.1, Steward, supra (No. 19-8043), including in Steward, 141 S. Ct. 167 (2020), and in subsequent cases. See, e.g., Becker v. United States, 141 S. Ct. 145 (2020) (No. 19-8459); Terry v. United States, 141 S. Ct. 114 (2020) (No. 19-1282); Hamilton v. United States, 140 S. Ct. 2754 (2020) (No. 19-8188). The Court should follow the same course here.

3. Even if the question presented warranted review, this case would be an unsuitable vehicle for considering it, for multiple reasons.

First, as explained above, petitioner waived his right to challenge his Section 924(c) conviction as a condition of his guilty plea. Plea Agreement 3-4. This Court has repeatedly recognized that a defendant may validly waive constitutional and statutory rights as part of a plea agreement so long as his waiver is knowing and voluntary, including the right to appeal. See, e.g., Garza v. Idaho, 139 S. Ct. 738, 744-745 (2019). Petitioner knowingly and voluntarily waived his right to appeal in this case and obtained substantial benefits as a result, including the dismissal of other serious charges. Plea Agreement 2; see D. Ct. Doc. 47 (Apr. 21, 2015) (dismissing charges of Hobbs Act robbery and conspiracy to commit Hobbs Act robbery in light of petitioner's plea). That waiver bars relief on petitioner's claim.

Moreover, as the court of appeals explained, petitioner's failure to raise his claim in the district court limits appellate

review to plain error. Pet. App. 4. A defendant is entitled to plain-error relief only if he can show (1) "an error" (2) that is "clear or obvious, rather than subject to reasonable dispute," (3) that "affected [his] substantial rights," and (4) that "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." United States v. Marcus, 560 U.S. 258, 262 (2010) (citation and internal quotation marks omitted). The second element of that standard requires the defendant to show that the alleged error was "so 'plain'" under governing law that a court would be "derelict in countenancing it, even absent the defendant's timely assistance in detecting it." United States v. Frady, 456 U.S. 152, 163 (1982); see Henderson v. United States, 568 U.S. 266, 278 (2013) (explaining that "lower court decisions that are questionable but not plainly wrong (at time of trial or at time of appeal) fall outside the \* \* \* scope" of the plain-error rule). The court of appeals correctly determined that, in light of the uniform and binding precedent holding that Hobbs Act robbery is a crime of violence under 18 U.S.C. 924(c) (3) (A), petitioner cannot satisfy the plain-error standard. Pet. App. 4-5.

The petition for a writ of certiorari should be denied.<sup>2</sup>

Respectfully submitted.

JEFFREY B. WALL  
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JANUARY 2021

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<sup>2</sup> The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.