No. 20-6563

IN THE SUPREME COURT OF THE UNITED STATES

ISAIAH DEVON STALLWORTH, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether aiding and abetting robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), is a "crime of violence" under 18 U.S.C. 924(c)(3)(A).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (W.D.N.C.):

United States v. Addison, No. 17-cr-134 (Aug. 28, 2018)

Stallworth v. United States, No. 19-cv-495 (Nov. 5, 2019)

Dowdle v. United States, No. 19-cv-614 (pending)

Hanton v. United States, No. 20-cv-249 (pending)

United States Court of Appeals (4th Cir.):

United States v. Campbell, No. 18-4328 (Sept. 25, 2018)

United States v. Sattar, No. 18-4666 (Mar. 4, 2019)

United States v. Haynes, No. 18-4613 (Apr. 22, 2019)

United States v. Hanton, No. 18-4672 (Apr. 22, 2019)

United States v. Coker, No. 18-4521 (May 20, 2019)

United States v. Goins, No. 19-4238 (Oct. 21, 2019)

United States v. Ruff, No. 19-4152 (Dec. 20, 2019)

United States v. Wray, No. 19-4450 (Jan. 28, 2020)

United States v. Lloyd, No. 20-4153 (Mar. 18, 2020)

United States v. Beauchamp, No. 20-4243 (Apr. 20, 2020)

United States v. Atkinson, No. 18-4779 (May 29, 2020)

United States v. Camp, No. 18-4848 (May 29, 2020)

United States v. Moore, No. 19-4093 (May 29, 2020)

United States v. Gutierrez, No. 18-4656 (June 26, 2020)

United States v. Baxton, No. 18-4665 (June 26, 2020)

United States v. Gilmore, No. 18-4855 (June 26, 2020)

United States v. Wilson, No. 18-4566 (Oct. 14, 2020)

United States v. Oliver, No. 20-4140 (pending)

United States Court of Appeals (4th Cir.) (continued):

United States v. Cunningham, No. 20-4144 (pending)

United States v. Huskey, No. 20-4565 (pending)

United States v. Beauchamp, No. 20-4566 (pending)

United States v. Lewis, No. 20-4572 (pending)

United States v. Smith, No. 20-4573 (pending)

United States v. Wray, No. 20-4574 (pending)

Supreme Court of the United States:

Ruff v. United States, No. 19-8049 (Apr. 20, 2020)

Gilmore v. United States, No. 20-5240 (Oct. 5, 2020)

Beauchamp v. United States, No. 20-5769 (Nov. 2, 2020)

Gutierrez v. United States, No. 20-6342 (Jan. 11, 2021)

Baxton v. United States, No. 20-6777 (Feb. 22, 2021)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B1-B3) is not published in the Federal Reporter but is reprinted at 809 Fed. Appx. 179. The order of the district court (Pet. App. A1-A5) is not published in the Federal Supplement but is available at 2019 WL 5790657.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 2020. A petition for rehearing was denied on August 18, 2020 (Pet. App. C1). The petition for a writ of certiorari was filed on

November 16, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Western District of North Carolina, petitioner was convicted on one count of conspiring to engage in racketeering, in violation of 18 U.S.C. 1962(d), 1963(a), and 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). Am. Judgment 1. The district court sentenced petitioner to 111 months of imprisonment, to be followed by three years of supervised release. Id. at 2-3. Petitioner did not appeal his convictions or sentence. In 2019, petitioner filed a motion for postconviction relief under 28 U.S.C. 2255. See 12-cr-134 D. Ct. Doc. 2685 (Oct. 1, 2019) (2255 Motion). The district court denied that motion, Pet. App. A1-A5, and denied petitioner's request for a certificate of appealability (COA), id. at A5. The court of appeals likewise denied a COA. Pet. App. B1-B3.

1. Petitioner is a former member of the United Blood Nation, a street gang that operated in and around Charlotte, North Carolina (among other places). Factual Basis 1-3. The United Blood Nation earned money through a variety of criminal activities, including trafficking drugs and firearms, robbery, and fraud. Id. at 2.

Petitioner was an active participant in the gang's activities and committed several crimes in furtherance of the criminal

enterprise. In 2013, petitioner and two accomplices robbed a cell-phone store at gunpoint. Factual Basis 4. Petitioner entered the store wearing a hockey mask, pointed a firearm at the store's employees, and demanded that they open the safe. Ibid. When the employees were unable to open the safe, petitioner and his accomplices stole $475 from the cash registers and fled. Ibid.

From 2015 to 2017, petitioner and several accomplices engaged in a scheme to use counterfeit credit cards and gift cards to steal money from victims' bank accounts and make fraudulent purchases at businesses. Factual Basis 4-5. Petitioner and his accomplices used those cards to fraudulently obtain merchandise worth almost $28,000. Ibid.

2. A federal grand jury in the Western District of North Carolina charged petitioner with conspiring to engage in racketeering, in violation of 18 U.S.C. 1962(d) and 1963(a); robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), relating to petitioner's robbery of the cell-phone store; 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 conspiring to commit wire fraud, in violation of 18 U.S.C. 1349. Indictment 8-72, 96-97, 149-150. The Section 924(c) count identified petitioner's Hobbs Act robbery as the underlying crime of violence. Indictment 96-97.

Petitioner pleaded guilty to the racketeering conspiracy count and the Section 924(c) count. Plea Agreement 1-2; see Factual Basis 4-5. As a condition of his plea agreement,

petitioner waived his right to challenge his convictions or sentence on appeal or on collateral review, except for claims related to ineffective assistance of counsel, prosecutorial misconduct, or retroactive amendments to the Sentencing Guidelines that would reduce his sentence. Plea Agreement 5. In exchange, the government agreed to dismiss the remaining counts of the indictment. Id. at 1. The government also agreed not to oppose a sentence at the bottom of the advisory Guidelines range, id. at 3, which included a three-point reduction in petitioner's offense level based on his acceptance of responsibility, Presentence Investigation Report (PSR) ¶¶ 38-39.

The district court accepted petitioner's guilty plea and sentenced him to 111 months of imprisonment, consisting of 27 months of imprisonment on the racketeering conspiracy count and a consecutive term of 84 months of imprisonment on the Section 924(c) count. Am. Judgment 1-2. As anticipated by petitioner's plea agreement, that sentence was at the bottom of his advisory Guidelines range. See PSR ¶¶ 68-70. Petitioner did not appeal.

3. In 2019, petitioner filed a motion for postconviction relief under 28 U.S.C. 2255, in which he contended that his Section 924(c) conviction should be vacated because racketeering conspiracy is not a crime of violence. 2255 Motion 6-10. 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 that racketeering conspiracy does not qualify as a crime of violence under either provision 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; see 2255 Motion 6-10.

The district court denied petitioner's motion without requesting a response from the government. Pet. App. A1-A5. The court explained that the crime of violence underlying petitioner's Section 924(c) conviction was Hobbs Act robbery, not racketeering conspiracy. Id. at A3-A4; see id. at A3 (stating that petitioner was "simply mistaken regarding which crime was the predicate for his § 924(c) charge"). The court further explained that Hobbs Act robbery is a crime of violence under Section 924(c)(3)(A) because it categorically requires the use, attempted use, or threatened use of physical force. Id. at A4 (citing United States v. Mathis, 932 F.3d 242, 266 (4th Cir.), cert. denied, 140 S. Ct. 639 and 140 S. Ct. 640 (2019)). The court characterized petitioner's particular predicate offense as "aiding and abetting Hobbs Act robbery," but explained that the theory of liability was immaterial because "'an aider and abettor of a Hobbs Act robbery necessarily commits all of the elements of a principal Hobbs Act robbery.'"

Ibid. (citation omitted). The court accordingly determined that petitioner's Section 924(c) conviction was supported by a "valid" predicate crime of violence, and thus petitioner had "not stated a cognizable claim under Section 2255." Pet. App. A5. The court denied petitioner's request for a COA. Ibid.

4. The court of appeals likewise denied a COA, Pet. App. B1-B3, finding that petitioner had not made the "substantial showing of the denial of a constitutional right" necessary to obtain one, id. at B3 (quoting 28 U.S.C. 2253(c)(2)).

ARGUMENT

Petitioner contends (Pet. 5-10) that aiding and abetting Hobbs Act robbery does not qualify as a "crime of violence" under 18 U.S.C. 924(c)(3)(A), and that the court of appeals erred in denying a COA on that claim. Those contentions lack 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. Petitioner's characterization of his underlying predicate offense as "aiding and abetting a Hobbs Act robbery," Pet. 9, is incorrect, and would not affect the classification of that offense as a crime of violence in any event. Moreover, this case would be an unsuitable vehicle for considering the question presented because petitioner waived any challenge to his Section 924(c)

conviction as a condition of his guilty plea. The petition for a writ of certiorari should be denied.

1. a. The lower courts correctly denied relief in this case. 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) 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).*

b. Petitioner contends (Pet. 9) that the crime of violence underlying his Section 924(c) conviction was "aiding and abetting a Hobbs Act robbery," not the commission of Hobbs Act robbery as a principal. That contention is incorrect. The district court -- without the benefit of government briefing -- characterized petitioner's offense in that manner, Pet. App. A4, presumably because the Hobbs Act robbery count in the indictment identified the statutory violations as 18 U.S.C. 1951 (the Hobbs Act) and 18 U.S.C. 2 (the aiding-and-abetting statute). See Indictment 96.

* We have served petitioner with a copy of the government's brief in opposition in Steward, which is also available from the Court's online docket.

That count, however, alleged that petitioner committed Hobbs Act robbery as a principal, "aided and abetted by others." Ibid. (emphasis added); see ibid. (alleging that petitioner was the one who "took the personal property" of the cell-phone store "against [its] will and by means of actual and threatened force, violence, and fear of immediate and future injury"). In connection with his guilty plea, petitioner admitted that he had committed the robbery and the Section 924(c) offense as a principal by donning a mask, entering the store, brandishing a gun, and stealing money. Factual Basis 4-5.

In any event, as the district court correctly recognized, petitioner's Hobbs Act robbery offense qualifies as a crime of violence under Section 924(c)(3)(A) regardless of whether he was liable for that offense as a principal or an aider and abettor. See Pet. App. A4. When a defendant is charged with an offense under an aiding-and-abetting theory, the government must prove that either the defendant or one of his accomplices committed each of the elements of the underlying offense and that the defendant was "punishable as a principal" for that offense because he took active and intentional steps to facilitate the crime. 18 U.S.C. 2(a); see Rosemond v. United States, 572 U.S. 65, 70-74 & n.6 (2014). Accordingly, because it is necessary for the government to prove that the crime occurred, if the substantive crime "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),

then a conviction for aiding and abetting that crime necessarily includes proof of that force element.

The court of appeals did not err in determining that petitioner had failed to make the "substantial showing of the denial of a constitutional right" necessary to obtain a COA. Pet. App. B3 (quoting 28 U.S.C. 2253(c)(2)). Every court of appeals to have considered the question, including the court below, has recognized that Section 924(c)(3)(A) encompasses Hobbs Act robbery. See Br. in Opp. at 7, Steward, supra (No. 19-8043) (citing cases); see also, e.g., United States v. Mathis, 932 F.3d 242, 265-266 (4th Cir.), cert. denied, 140 S. Ct. 639, and 140 S. Ct. 640 (2019); United States v. Melgar-Cabrera, 892 F.3d 1053, 1060-1066 (10th Cir.), cert. denied, 139 S. Ct. 494 (2018).

Similarly, every court of appeals to have considered the question has determined that aiding and abetting a crime that has a requisite element of the use of force under Section 924(c)(3)(A) and similar provisions qualifies as a crime of violence. See, e.g., United States v. Richardson, 948 F.3d 733, 741-742 (6th Cir.) (aiding and abetting Hobbs Act robbery), cert. denied, 141 S. Ct. 344 (2020); Kidd v. United States, 929 F.3d 578, 581 (8th Cir. 2019) (per curiam) (aiding and abetting armed robbery involving controlled substances), cert. denied, 140 S. Ct. 894 (2020); United States v. García-Ortiz, 904 F.3d 102, 109 (1st Cir. 2018) (aiding and abetting Hobbs Act robbery), cert. denied, 139 S. Ct. 1208 (2019); United States v. Deiter, 890 F.3d 1203, 1214-1216 (10th

Cir.) (aiding and abetting bank robbery), cert. denied, 139 S. Ct. 647 (2018); In re Colon, 826 F.3d 1301, 1305 (11th Cir. 2016) (aiding and abetting Hobbs Act robbery); United States v. McGill, 815 F.3d 846, 944 (D.C. Cir. 2016) (per curiam) (aiding and abetting murder), cert. denied, 138 S. Ct. 57, and 138 S. Ct. 58 (2017); cf. Ortiz-Magana v. Mukasey, 542 F.3d 653, 659 (9th Cir. 2008) ("[T]here is no material distinction between an aider and abettor and principals in any jurisdiction of the United States[.] * * * [A]iding and abetting [a crime of violence] is the functional equivalent of personally committing that offense.").

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 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). This Court has likewise repeatedly denied review of petitions contending that aiding and abetting Hobbs Act robbery is not a crime of violence. See, e.g., Deiter v. United States, 139 S. Ct. 647 (2018) (No. 18-6424); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); Stephens v. United States, 138 S. Ct. 502 (2017) (No. 17-5186). The same course is appropriate here.

2. Petitioner observes (Pet. 9-10) that two district courts from other circuits have previously declined to treat Hobbs Act robbery as a crime of violence under Section 924(c)(3)(A), and he argues that the court of appeals was therefore required to grant a COA on the ground that reasonable jurists could debate the merits of his claim. See, e.g., Slack v. McDaniel, 529 U.S. 473, 484 (2000) (explaining that, to satisfy the COA standard, a defendant must show "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong"). Petitioner is incorrect. Both of the decisions on which he relies have been abrogated.

In Haynes v. United States, No. 16-cv-4106, 2017 WL 368408 (C.D. Ill. Jan. 25, 2017), the district court initially concluded that Hobbs Act robbery was not a crime of violence under Section 924(c)(3)(A). See id. at *6-*8. But the court reconsidered that decision less than one month later when the Seventh Circuit recognized that Hobbs Act robbery is a crime of violence under Section 924(c)(3)(A). See Haynes v. United States, 237 F. Supp. 3d 816, 827 (C.D. Ill. 2017) (citing United States v. Anglin, 846 F.3d 954, 964-965 (7th Cir.), vacated on other grounds, 138 S. Ct. 126 (2017)); see also United States v. Rivera, 847 F.3d 847, 848-849 (7th Cir.) ("Hobbs Act robbery indeed qualifies as a 'crime of violence' under § 924(c) because it has as an element the use, attempted use, or threatened use of physical force against the

person or property of another.") (citation and internal quotation marks omitted), cert. denied, 137 S. Ct. 2228 (2017).

Similarly, in United States v. Chea, No. 98-cr-20005, 2019 WL 5061085 (N.D. Cal. Oct. 2, 2019), the district court concluded that Hobbs Act robbery does not categorically qualify as a crime of violence. Id. at *7-*13. But the Ninth Circuit has since abrogated that decision in United States v. Dominguez, 954 F.3d 1251 (2020), rejecting the same arguments on which the district court in Chea relied and "reaffirm[ing] that Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c)(3)(A)." Id. at 1261.

Petitioner accordingly identifies no bona fide dispute among jurists of reason that would have required the court of appeals to treat his claim as sufficiently "substantial" so as to warrant a COA. 28 U.S.C. 2253(c)(2). That is particularly true given that Fourth Circuit precedent foreclosed his claim. See Mathis, 932 F.3d at 265-266.

3. Even if the question presented warranted further review, this case would be an unsuitable vehicle for considering it. As explained, petitioner entered into a plea agreement in which he waived his right to challenge his Section 924(c) conviction on appeal and on postconviction review, subject to limited exceptions that are not applicable here. Plea Agreement 5. 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. See, e.g., Garza v.

Idaho, 139 S. Ct. 738, 744-745 (2019) (waiver of right to appeal); Ricketts v. Adamson, 483 U.S. 1, 9-10 (1987) (waiver of right to raise double jeopardy defense); Town of Newton v. Rumery, 480 U.S. 386, 389, 398 (1987) (waiver of right to file constitutional tort action). Although the lower courts denied petitioner's collateral attack and request for a COA based on binding precedent that foreclosed relief on the merits -- without requesting a response from the government -- that disposition does not foreclose the government from relying on petitioner's waiver in this Court. See, e.g., United States v. New York Tel. Co., 434 U.S. 159, 166 n.8 (1977) ("[A] prevailing party may defend a judgment on any ground which the law and the record permit that would not expand the relief it has been granted.").

Enforcing petitioner's appeal waiver would be particularly appropriate here. Petitioner secured substantial benefits by pleading guilty and waiving his right to challenge his convictions and sentence on appeal or postconviction review, including the dismissal of counts charging him with Hobbs Act robbery (which the factual admissions in his Section 924(c) plea would necessarily also have proved) and conspiracy to commit wire fraud. Plea Agreement 1; see Indictment 96, 149-150. He also received a three-point reduction in his Sentencing Guidelines offense level for acceptance of responsibility, see PSR ¶¶ 38-39, and a commitment that the government would not oppose a sentence at the bottom of the advisory Guidelines range, Plea Agreement 3. The district

court imposed that sentence. Am. Judgment 2; see PSR ¶¶ 68-70 (explaining that petitioner's lowest recommended Guidelines sentence was 27 months of imprisonment on the racketeering conspiracy count and a statutory minimum consecutive term of 84 months of imprisonment on the Section 924(c) count). Under those circumstances, petitioner cannot demonstrate any unfairness in holding him to his bargain.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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