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

REPLY BRIEF OF THE PETITIONER

ISAIAH DEVON STALLWORTH
Pro se Petitioner
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

PETITIONER'S Original QUESTION: "Whether the Fourth Circuit erred by Concluding that Petitioner had not made the requisite Showing to receive a (COA), when two district Courts held views Contrary to that of the Fourth Circuits"?

THE GOVERNMENT QUESTION: "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).

United States v. Mathis, 932 F.3d 242, 266 (4th Cir. 2019)
United States v. Chea, No. 98-cr-20005, 2019 WL 5061085 (N.D. Cal. Oct. 2, 2019)
Haynes v. United States, No. 16-cv-4106, 2017 WL 368408 (C.D. Ill. Jan. 25, 2017)
United States v. Davis, 139 S. Ct. 2319, 2336 (2019)
United States v. Local 807, 315 U.S. 521 (1942)
United States v. McGlore, 19 F. Supp. 285 (E.D. Pa. 1937)
Nick v. United States, 122 F.2d 660 (8th Cir. 1941)
United States v. Compagna, 146 F.2d 524 (2d Cir. 1944)
Johnson v. United States, 559 U.S. 133 (2010)
United States v. Marin, 961 F.2d 493 (4th Cir. 1993)

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OPINIONS

The opinion of the Court of appeals is not published in the Federal Reporter but was submitted with the originial petition, at Appendix A.

The order of the district Court was submitted with the original petition, at Appendix B.

JURISDICTION

The judgment of the Court of appeals was entered on June 18, 2020. A petition for rehearing was denied on August 18, 2020.

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

On May 16, 2017, Isaiah Devon Stallworth (Herein after 'Mr. Stallworth) was charged in a Sealed Bill of Indictment along with 82 Co-defendants with One Count of Racketeer Influenced Corrupt organization (RICO) Conspiracy, in violation of 18 U.S.C. § 1962 (d) (Count One); One Count of aiding and abetting Hobbs Act robbery, in violation of 18 U.S.C. §§ 1951 and 2 (Count Twenty); One Count of aiding and abetting the use and brandishing of a firearm in furtherance of a Crime of violence, that is Hobbs Act robbery as set forth in Count twenty, in violation of 18 U.S.C. §§ 924(c) and 2 (Count Twenty-One); and one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 (Count Sixty-Six).

On December 28, 2017, Mr. Stallworth begun plea negotiations, at the time Mr. Stallworth agreed to pled guilty to Counts: One, (Rico Conspiracy), and Twenty-One, (§ 924(c) with aiding and abetting Hobbs Act robbery as the predicate crime of violence), in exchange the government agreed to move and have Counts Twenty, and Sixty-Six dismissed. On January 5, 2018, Petitioner pleaded guilty pursuant to the terms of the plea agreement as stated above.

Mr. Stallworth's Sentencing hearing was held on September 6, 2018. The Court Sentenced him to a total term of 111 months imprisonment. Consisting of 27 months on Count one, and 84 months on Count Twenty-One to run Consecutively to each other. Judgment of Conviction was entered on September 26, 2018. Mr. Stallworth did not file a direct appeal.

Mr. Stallworth filed a motion to vacate the Sentence under 28 U.S.C. § 2255 on October 1, 2019, arguing that his Conviction under 18 U.S.C. § 924(c) is invalid under Davis v. United States, 139 S. Ct. 2319 (2019). Mr. Stallworth argued that his "enhancement" of 84 months under § 924(c) was invalid because his predicate offense

Was not a Crime of violence.

The district Court issued an order on November 5, 2019, and Concluded that Mr. Stallworth had not stated a Cognizable Claim under Section 2255. The Court then declined to issue a Certificate of appealability. The Court denied and dismissed Mr. Stallworth's motion. In denying Mr. Stallworth's motion the Court primarily Consider the Fourth Circuit's decision rendered in United States v. Mathis, 932 F.3d 242, 266 (4th Cir. 2019) (Holding that Hobbs Act robbery is a valid § 924 predicate)), Which forecloses relief to Mr. Stallworth.

Mr. Stallworth then filed an informal brief, applying to the Forth Circuit for a Certificate of Appealability in order to appeal the decision of the district Court. That motion was denied. Mr. Stallworth then sought rehearing and rehearing enbanc, however that motion was denied.

Mr. Stallworth then filed a Petition for a Writ of Certiorari. This Supreme Court ordered the government to respond. On March 15, 2021 the goverment responded raising several issues:

1. The government argues - that every Court of appeals that has consider 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.

2. Petitioner's Characterization of his underlying predicate offense as "aiding and abetting a Hobbs Act robbery," is incorrect, and would not affect the Classification of that offense as a Crime of violence in any event.

3. 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.

§2253

(c)(1) Unless a Circuit justice or judges issues a Certificate of Appealability, an appeal may not be taken to the Court of appeals from-

(B) the final order in a proceeding under section 2255.

(2) a Certificate of appealability may issue under Paragraph (1) only if the applicant has made a Substantial Showing of the denial of a Constitutional right.

(3) The Certificate of appealability under paragraph (1) Shall indicate which Specific issue or issues Satisfy the Showing required by Paragraph (2).

The Certificate of appealability (COA) inquiry is not Coextensive with a merits analysis. At the COA Stage, the only question is whether the Applicant has Shown that Jurists of reason Could disagree with the District Court's resolution of his Constitutional Claims or that jurists Could Conclude the issues presented are adequate to deserve encouragement to proceed further. This threshold question Should be decided without full Consideration of the factual or legal bases Adduced in Support of the Claims. When a Court of Appeals Side-Steps the COA process by first deciding the merits of an appeal, An then Justifying its denial of a COA based on its adjudication of the actual Merits, it is in essence deciding an appeal without Jurisdiction.

The Fourth Circuit Court of Appeals were Suppose to limit its examination at the Certificate of appealability Stage to a threshold inquiry into the underlying merit of the Claims, and ask only if the District Court's decision was debatable. A Claim Can be debatable even though every jurist of reason might agree, after the Certificate of appealability (COA) has been granted and the case has received full Consideration, that Mr. Stallworth will not prevail. 28 U.S.C. § 2253 Sets forth a two-step process: an initial determination whether a Claim is reasonably debatable, an then, if it is, an appeal in the normal Course.

Judicial precedent does not mean to Specify what procedures may be appropriate in every Case. But whatever procedures are employed at the COA Stage Should be Consonant with the limited nature of the inquiry.

As previously Stated Mr. Stallworth Submitted an informal brief to the Fourth Circuit Court of Appeals requesting to be granted a Certificate of appealability, due to the fact that reasonable jurist Could find the district Court's assessment of the Constitutional Claim debatable And wrong. Citing two district Courts decisions in United States v. Chea, No. 98-cr-20005, 2019 WL 5061085 (N.D. Cal. Oct. 2, 2019), and Haynes v. United States, No. 16-cv-4106, 2017 WL 368408 (C.D. Ill. Jan. 25, 2017- "holding that Hobbs Act robbery does not Categorically qualify as a Crime Of Violence to Support a 924(c) Conviction". The decisions directly Contradict the Fourth Circuit's decision rendered in United States v. Mathis, 932 F.3d 242, 266 (4th Cir. 2019).

A three judge panel of the Fourth Circuit issued an unpublished opinion Stating: We have independently reviewed the record and Conclude that Stallworth has not made the requisite Showing. Accordingly, we deny Stallworth's motion for a Certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal Contentions are adequately presented in the materials before this Court and argument would not aid the decisional process.

The government was not even given an opportunity to file a brief to State its position. Unpublished opinions like the one above are usually brief - Sometimes as Short as a few words. They are written with less attention to detail than published, precedentaal opinions and often do not provide defendants the appellate analysis they deserve.

Applying the proper appellant analysis Mr. Stallworth can show how it is reasonably debatable whether - Interference with Commerce by threats or violence - qualifies as a "Crime of violence" within the meaining of § 924(c) force clause statutory definition.

§ 924(c)(1)(A) authorizes heightened criminal penalties for using or carrying a firearm "during and in relation to," or possessing a firearm "in furtherance of," any federal "crime of violence or drug trafficking crime". The statute proceeds to define the term "Crime of violence" in two subparts - the first known as the elements clause, and the second the residual clause; (was held to be unconstitutionally vague - see United States v. Davis, 139 S. Ct. 2319, 2336 (2019)).

According to the § 924(c)(3), text a crime of violence is "an offense that is a felony" and "(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

The requirement that crimes be defined with appropriate definiteness, which has been referred to as a fundamental common-law concept, is now generally held to be an essential element of due process of law. The constitutional requirement of definiteness is violated by a criminal enactment that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.

While this rule has been expressed in varying language, the underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. "The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited.

A generally worded statute which is construed to punish conduct which cannot constitutionally be punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the Constitutionally permissible and Constitutionally impermissible applications of the Statute.

18 U.S.C.S. § 1951. Interference with Commerce by threats or Violence

(a) Whoever in any way or degree obstructs, delays, or affects Commerce or the movement of any article or Commodity in Commerce, by robbery or extortion or attempts or Conspires so to do, or Commits or threatens physical violence to any Person or property in furtherance of a plan or purpose to do anything in violation of this Section shall be fined under this title or imprisoned not more the twenty years or both.

(b) As used in this section –

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his Custody or possession, or the person or property of a relative or Member of his Family or anyone in his Company at the time of the taking or obtaining.

(2) The term "extortion" means the Obtaining of property from another, with his Consent, induced by wrongful use of actual or threatened force, violence, or fear, or under Color of official right.

Initial inquiry into the intended reach of the Hobbs Act necessarily includes the reach of the Anti-Racketeering Act of 1934, the predecessor of the Hobbs Act. The purpose and application of the Anti-Racketeering Act are important for two reasons. First, the language of the two acts are similar. Second, much of the Hobbs Act hearings and debate concentrated on the inclusion of activities found by the Supreme Court in United States v. Local 807 to be outside the purview of the Anti-Racketeering Act of 1934. Therefore, consideration of the scope of the Anti-Racketeering Act helps in determining more precisely the intended reach of the Hobbs Act. Prior to the passage of the Anti-Racketeering Act, broad-based hearings entitled "Investigation of the Matter of So-called Rackets with a View to Their Suppression," were conducted by a Sub-Committee of the Committee on Commerce. While fundamentally concerned with racketeering, the hearings failed to clarify the meaning or scope of the offense and contributed to the amorphous quality of racketeering. George B. McGovern, a labor representative, testified, "The definition apparently as accepted by the committee, is that a racketeer is one group who conspires to do something which is against the interests of man," and the committee agreed. One individual testified that racketeering was "synonomus with organized crime while others were more specific. Judge Skillman, for instance, defined racketeering as the "extortion of money from persons engaged in legitimate business, or otherwise, by the use of force or threats." Many of the examples referred to at the hearings were of direct obstructions of individuals attempting to move goods across state lines in order to market them. The resolution mandating these hearings referred to newspaper accounts of the "so-called 'beer rackets,' 'poultry rackets,' 'milk rackets,' 'food rackets'. . . Other testimony suggested that racketeering was an organized crime rather than a crime performed by an individual, that it included gangs setting up protective societies, payments made to protect against labor disputes, and forcing individuals who tried to bring food into a city from out of state to load the goods onto trucks driven by local drivers. From the variety of ideas expressed at the hearings, it is difficult to derive a notion of what conduct the Anti-Racketeering was meant to reach.

In an early interpretation of the statute, one district Court recognized the difficulty of defining racketeering, and resorted to reading the six parts of the pre-Statute hearings primarily because the act passed without debate. The Court wrote: we did this [read the hearings], not with the thought that the ideas and information Contained therein would be Controlling necessarily on a Court, but inasmuch as racketeering, as at present understood, is a Comparatively modern phrase of peril to the public it was considered that these hearings attended by outstanding figures in the world of law and Criminal investigation, Would throw Considerable light on the evils Sought to be prevented and methods of prevention.

From the hearings, the court relied upon the definition given by the then Assistance Attorney General, Joseph B. Keenan: It is the organized use of threats, Coercion, intimidation, and use of violence to Compel the payment for actual or alleged Services of arbitrary or excessive Charges under the guise of membership does, protection Fees, royalties, or Service rates, the Cloak of blackmail and extortion.

Yet it Conceded, as did Keenan himself, that the definition was much too broad.

The inconclusiveness of the hearings in defining the proscribed activity Can in part be attributed to the fact that the hearings Covered a wide range of additional topics including Kidnapping, problems of Sub-machine guns, jail penalties and their deterrent effect, Parole policies, gun control, and the need for a federal Scotland Yard.

Also, these hearings discussed the local nature of some of these activities and the need to restrict federal involvement in the Control of these areas. For instance, Keenan testified that the basic problem of enforcement Should be regarded as local. Professor John B. Waite of the University of Michigan Stated: Racketeering is Very largely a local crime, and it is only the local authorities that possibly handle it. It is not the Federal government. It has got to be done by local authorities.

Thus, even at this stage the potential for an overcrowded federal court system was noticed. The few cases that were decided after the enactment of the Anti-Racketeering Act, but before the Hobbs Act was passed, provide a view of the activities which the courts and prosecutors deemed within the purview of the Act. The evils included the use by union officials of their positions to threaten labor trouble or violence unless money was paid and also the direct interference by individuals with the movement of trucks carrying goods in interstate commerce for sale or delivery. In United States v. McGlone a union official was charged with threatening to stop the movement of trucks by the victim's company unless money was paid. However, a labor provision within the Act resulted in the defendant's acquittal. In both Nick v. United States and United States v. Compagna, union strikes and violence were threatened by the defendant union officials, the effect of which would have been the prevention of the shipment of films from out of state. In 1942 the Supreme Court decided United States v. Local 807. In this case the defendant, an official of a local truckers union, conspired "to use and did use violence and threats to obtain from the owners" of trucks driven into New York from out of state money equivalent to the union wages for the day.

The inference to be drawn from the above-mentioned cases is that the Anti-Racketeering Act, as perceived by the prosecutors and some courts, was aimed at threats of labor strikes and violence to affect the stoppage of production by companies, and at direct stoppage of individuals trying to move across state lines to market goods. The fact that these cases involved actual stoppages of companies or individuals moving goods or accepting goods in interstate commerce may have a significant relationship to a specific determination of the kinds of activity within the purview of this Act or the Hobbs Act.

The Court in Local 807 did not uphold the conviction despite the serious danger involved in such activity. The Court questioned whether or not the defendants' purpose was to obtain "the payment and wages by a bona fide employee." It concluded that the activity fell under the labor proviso and was, in effect, a protection of wage demands. The controversy stemming from the Court's substantial limitation of the Anti-Racketeering Act eventually induced Congress to pass the Hobbs Act so as to reach the activities condoned in Local 807.

The 1947 hearings on the effectiveness of the Hobbs Act amendment in suppressing racketeering focussed on the direct obstruction of the interstate movement of non-union dealers who desired to market their goods. This emphasis upon the interstate commerce aspect of the Hobbs Act and its apparent requirement of directness and substantiality lends support to the limitation of both jurisdictional scope and substantive aspect of the Hobbs Act.

Although analysis of the Hobbs Act and its predecessor fails to reveal a clear notion of the Act's objective, the nature of the actions brought and the similarity of the language of both acts are instructive on this point. The Hobbs Act sought to discourage two activities: labor extortion and obstruction of the movement of individuals across state lines for the purpose of marketing their goods.

Hobbs Act robbery is not categorically a crime of violence under the elements clause of §924(c)(3) because the Hobbs Act robbery statute sweeps more broadly than ~~the~~ elements clause's "crime of violence" definition. The plain language of §1951(b)(1) and the legislative history shows that Hobbs Act robbery can be committed by causing fear of future injury to property, which does not involve the "physical force" required for it to qualify as a crime of violence under the elements clause of §924(c)(3) in light of Johnson v. United States, 559 U.S. 133 (2010) (Johnson I).

To determine whether an offense constitutes a "crime of violence" under the force clause, courts must employ the categorical approach. Pursuant to the categorical approach a court focuses on the elements of the prior offense rather than the conduct underlying the conviction. The appellate court must ask whether the elements of the underlying offense necessarily require the use, attempted use, or threatened use of physical force, 18 U.S.C.S. §924(c)(3)(A). When the elements of an offense encompass both violent and nonviolent means of Commission- that is, when the offense may be Committed without the use, attempted use, or threatened use of physical force- the offense is not Categorically a Crime of Violence.

Certain Crime of violence - like Hobbs Act robbery, federal bank robbery, and Carjacking- may be Committed without the use or Attempted use of physical force because they may be Committed merely by means of threats.

Hobbs Act robbery Criminalizes the unlawful taking or obtaining of personal property by means of actual or threatened force, 18 U.S.C.S §1951(b)(1) Hobbs Act robbery does not require an offender to overcome the victim's resistance; instead, this federal Statutory Crime, unlike Common law robbery, may be Committed solely by causing fear of injury - that is, by Conveying a threat - and a threat does not itself Constitute force exerted to overcome the resistance encountered.

Mr. Stallworth's Case does not present a problem for this court proceeding ~~[illegible]~~ in its current posture because as the Fourth Circuit has held in United States v. Marin, 961 F.2d 493 (4th Cir. 1993), "an appeal waiver does not preclude a defendant from Challenging a Sentence based on Constitutionally impermissible factor or a Sentence imposed in excess of the maximum penalty provided by statute.

The Fourth Circuit no Question erred by concluding that Mr. Stallworth had not made the requisite showing to receive a (COA), when he presented two district Court opinions that at least questions its decision in Mathis, which was an opinion by a three judge panel and not the full Court. This Courts review is necessary and of last resort. Mr. Stallworth request that this Court intervene.

Respectfully Submitted,

/s/ [signature]

Date: 3/26/21

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To: Clerk of Court

Mr. Stallworth understands that in accordance with Rule 12.2, An inmate Confined in an institution, if proceeding in forma pauperis and not represented by Counsel, need to file only an original petition and motion.

Here in FCI Bennettsville inmates are restricted to the housing unit due to COVID-19 protocol, therefore Mr. Stallworth has limited access to the Law library and Copy machine. He does not have access to the laws library for the past week. He does not have the means to present a Copy of the enclosed reply-motion to the Government and would like to know if Some type of help can be provided by the Clerk So he can properly Comply with all rules and procedures.

Thanking You in advance.

/s/ [signature]

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