

No. _____

20-6685

IN THE

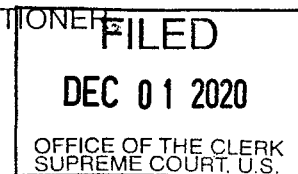
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Peter Terrell Redditt — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

8th Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

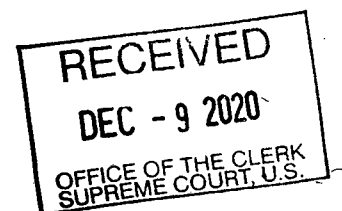
PETITION FOR WRIT OF CERTIORARI

Peter Terrell Redditt
(Your Name)

P.O. Box 1000
(Address)

Oxford, WI 53952
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

It is indisputable that the categorical approach must be used when assessing prior convictions for ACCA purposes. Likewise, courts cannot rewrite a defendant's prior plea agreement to find that he necessarily committed a generic offense. Can a court, however, construe a State statute, against state law to force elements into a prior conviction consistent with the Fifth and Sixth Amendment, to find that a prior conviction necessarily included elements outside of the statute of conviction for ACCA purposes?

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:

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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☒ is unpublished.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 _____ 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☐ is unpublished.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 15, 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. This Court issued an order extending the deadline in all case 60 days for COVID.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

This courts March 2020 order extending the deadline in all cases 60(sixty) days make Petitioner's deadline December 15, 2020. This Petition is timely

[] 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

Page

United States Constitution 5th Amendment 17

United States Constitution 6th Amendment 17

STATEMENT OF THE CASE

(4)

Petitioner, Peter Terrell Redditt pleaded guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Redditt was found, at sentencing, to have sustained 3(three) prior conviction to be classified as Armed Career Criminal. The Armed Career Criminal designation was based on Mr. Redditt's 3(three) prior conviction for aggravated under Minnesota Statute § 609.245, Subd. 1.

Mr. Redditt timely filed a notice of appeal to the Eighth Circuit Court of Appeals. In that appeal, Counsel for Mr. Redditt argued that Minnesota's aggravated robbery convictions no longer qualified as proper ACCA violent felonies in light of the Supreme Court's decision in *Stokeling v. United States*, 139 S.Ct. 544(2019), which was issued after Mr. Redditt's sentencing. The Government responded arguing that because the lesser included offense of simple robbery under Minnesota Statute § 609.24 is necessarily included in aggravated robbery under Minnesota Statute 609.245, Mr.

Redditt's prior convictions are encompassable.

Specifically, the government argued that Minnesota's Simple robbery statute explicitly prohibits--taking personal property from another person while using or threatening the imminent use of force to overcome the person's resistance or to compel acquiescence in the taking. Minn. Stat. § 609.24. And, because the Supreme Court's holding in *Stokely*, that "the elements clause encompasses robbery offenses that require the criminal to overcome the victim's resistance, *Id.* 2019 U.S. LEXIS 6, the inclusion of Simple robbery as a lesser included offense of aggravated robbery under § 609.245, specifically qualifies robbery under § 609.245 as an ACCA predicate offense under the "elements" clause of 924(c). Counsel for Mr. Redditt conceded that Simple robbery is a lesser included offense under aggravated robbery under § 609.245.

Upon conversing with a friend, Mr. Demetrius Charles Edward Darden, Mr. Redditt became aware of the fact that Minnesota's statutes are not identical to other states. Specifically Minnesota's statutes allow for an "actor... be convicted of either the crime charged or an

included offense, 'but not both.' And that the state of Minnesota legislates an included offense as: (1) a lesser degree of the same crime; (2) an attempt to commit the same crime; ... And (4) a crime necessarily proved if the crime charged were proved. Subsequent to finding out this information Mr. Redditt sought leave from the court of appeals to Supplement his claims, the court allowed the Supplement. In his Supplement Mr. Redditt asserted that although simple robbery could hypothetically be viewed as a lesser included offense, once Mr. Redditt was convicted of aggravated robbery under Minnesota Statute § 609.245, he could not be hypothetically also convicted under § 609.24 for simple robbery because Minnesota law expressly prohibited such a conclusion. Mr. Redditt also asserted that because Minnesota's aggravated robbery statute defines first degree aggravated robbery as "robbery" with a weapon, not "simple robbery" with a weapon, it is a lesser degree of the same crime, not necessarily simple robbery, but perhaps, simply robbery "with a weapon. Either way Mr. Redditt pursuant to the states

laws was not and could not be guilty of "simple robbery" under §609.24, consequently, his Armed Career Criminal designation is illegal.

A Panel for the Eighth Circuit denied Mr. Redditt's appeal and affirmed the district court's judgment. The Panel did not mention much less address the Minnesota statute giving rise to Mr. Redditt's supplemental position. Specifically, the Panel merely articulated that Mr. Redditt's position "is foreclosed by our prior decisions" Notwithstanding, Mr. Redditt's argument that the panel could not consistent with this court's holdings in Descamps and Martinez, rewrite his prior plea agreement to include elements expressly excluded from it based on state law, the Panel concluded. "But in Libby, we held that simple robbery is a lesser included offense of first degree aggravated robbery, §80 F.3d at 1013, and we noted that "[n]either party disputes that the elements, as defined in both Minn. Stat. § 609.245, subd. 1 and Minn. Stat. § 609.24, present an indivisible offense." §80 F.3d at 1015. And that, "In Robinson, we confirmed, post-stalking, that first degree aggravated robbery "is defined as simple robbery committed while armed with a dangerous

weapon." 925 F.3d at 998-99. "Thus, binding circuit precedent establishes that Minnesota first degree aggravated robbery is an indivisible offense that includes the lesser included offense of simple robbery. Thus, it is categorically a violent felony under the ACCA.

This timely petition for writ of certiorari follows.

REASONS FOR GRANTING PETITIONS

I. The United States Court of Appeals for the Eighth Circuit "has so far departed from the Excepted and Usual Course of Judicial Proceedings, and has Sanctioned Such a Departure by the Lower Court's, as to Call for an Exercise of this Court's Supervisory Power.

2) This court has concluded "to determine whether a prior conviction is for generic burglary (or other listed crime) courts apply... the categorical approach. They focus solely on whether the 'elements of the crime of conviction sufficiently match the elements of generic burglary, while ignoring the particular facts of the case. See Taylor v. United States, 495 U.S. at 600-601." "Elements" are the "constituent parts" of a crime's legal definition—the things the "prosecution must prove to sustain a conviction. At trial, they are what the jury must find beyond a reasonable doubt to convict the defendant. (Citation omitted); and at a plea hearing, they are what the defendant necessarily admits when he pleads guilty." Mathis, 579 U.S. at Slip Op. 2.

"The threshold inquiry—elements or means?—is

easy in this case, as it will be in many others. Here, a state court decision definitively answers the question: The listed premises in Iowa's burglary law, that Supreme court held, are "alternative methods" of committing one offense, so that a jury need not agree whether the burgled location was a building, other structure, or vehicle. "When a ruling of that kind exist, a Sentencing Judge need only follow what it says." "Id. at Slip Op. 16-17. This court also reasoned that, "the statute on its face may resolve the issue. Id, armed with such alternative sources of state law, federal Sentencing courts can readily determine the nature of an alternatively phrased list. And if state law fails to provide clear answers, federal judges have another place to look: the record of a prior conviction itself." Id.

b) Although the Statutory sections at issue here are distinct and separate offenses, that is, Simple robbery under § 609.24, and aggravated robbery under 609.245, and likewise defined alternatively the Court of Appeals for the Eighth Circuit holds that they are, indeed, a single offense because in *United States v. Libby*, 880 F.3d at 1013 (8th Cir. 2018), "[n]either party

disposes that the element, as defined in both Minn. Stat. § 609.245, Subd. 1 and Minn. Stat. § 609.24, present an indivisible offense. 880 F.3d at 1015. Reaffirming in *Robinson*, 925 F.3d 997, 998-99 (8th Cir. 2019) "first degree aggravated robbery remains a violent felony after stalking because its offense conduct includes simple robbery."

Instead of looking to the states laws to determine whether a defendant's conviction under Minn. Stat. 609.245 required a jury to find beyond a reasonable doubt, or a defendant to admit the elements of Minn. Stat. 609.24, the circuit disregards the states law on the question and reverts to concessions made by counsel in the appellate court, notwithstanding the express prohibition against counsel's concessions by the state legislators. A circumvention of the categorical approach and its constitution under *Pinney* that stand to deprive countless defendants of the benefits of their negotiated plea agreement. *Descamps*, 136 L. Ed. 2d 458.

(11)

The Minnesota Statute at issue here provides: A person commits Minnesota first degree aggravated

robbery if he, "while committing a robbery, is armed with a dangerous weapon... or inflicts bodily harm upon another." Minn. Stat. § 609.245, subd. 1. The statute does not define robbery. Petitioner asserts that the definition is categorically broader than the "force clause" of 924(e). The district court and the court of appeals, however, refuse to accept the overbroad nature of the statute in an effort to convert the statute into a proper predicate pursuant to the ACCA, 16(C), 3559(c)(2), and 4B1.1.

The court's believe they found a hook with Minnesota statute § 609.24; the statute provides in part "taking personal property from another person while using or threatening the imminent use of force to overcome the person's resistance or to compel acquiescence in the taking." *Id.* (Simple robbery). The court likes the definition because it is on all-fours with this court's holding in Stokeling, 2019 U.S. LEXIS at 21, that "physical force," or "force capable of causing physical pain or injury," includes the amount of force necessary to overcome a victim's resistance." *Id.* This court explicitly held that "Robbery under Florida law corresponds to that level of force and therefore qualifies as

a "violent felony" under ACCA's element clause." *Id.* 21-22.

The issue with the court of appeals haphazard conclusion, "we held that simple robbery is a lesser included offense of first degree aggravated robbery, is that, the questions posed to a jury in a Minn. Stat. § 609.24 (Simple robbery) prosecution are not posed to a jury in a Minn. Stat. § 609.245, Subd. 1, prosecution. Consequently, whatever the underlying facts or the evidence presented, a defendant charged under Minn. Stat. § 609.245, still would not have been convicted, in the deliberate and considered way the constitution guarantees, of the elements of simple robbery under Minn. Stat. § 609.24. See Descamps, 136 L. Ed. 2d 459. Beyond that, Minn. Stat. § 609.04 (Conviction of Lesser Offense) Subd. 1, provides: Lesser Offense Prosecution, "Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both. An included offense may be any of the following: (1) a lesser degree of the same crime; ... or, (4) a crime necessarily proved if the crime charged were proved." *Id.* Subd. 2, provides: "Conviction;

bar to prosecution. "A conviction or acquittal of a crime is a bar to further prosecution of any included offense, or other degree of the same crime." Id

Although, Petitioner asserts that first degree aggravated robbery is a "other degree of the same crime," and not necessarily an included offense, Petitioner asserts that because he was convicted of "first degree aggravated robbery," he was not also convicted of a lesser included offense as it is expressly forbidden under the States laws. And Consequently, the court of appeals nor the district court maintains the jurisdiction to rewrite a defendant's prior plea agreement nor a States statute to include elements that do not exist within the statute of conviction to "make it categorically applicable."

The Court of Appeals conclusion that "the elements, as defined in both Minnesota statute § 609.245, Subd. 1 and Minn. Stat. § 609.24 present an indivisible offense because no party objected to mere assertion that the two separate and distinct statutory sections were somehow "an" indivisible

offense is conflict with the states codification of the statutes. The State does not define all gradations of robbery pursuant to a single statute such as §609.24 (Robbery), § 609.24(a)(1) (Aggravated robbery), ironically, even then the statute, although divisible between grades of robbery, would be rendered indivisible once the prosecutor "choosing a violation of the divisible statute selects the relevant element from its list of alternatives. Descomps, 186 L. Ed. 2d 458.

Because the categorical approach applies to the statute of conviction, the question is, whether Minn. Stat. 609.245 Subd. 1 is divisible. § 609.24 has no role to play unless § 609.245 expressly articulates that the statutes are to be read together, or at least some other provision of the Minnesota Statutes dictates the same. The Minnesota Statutes however rejects any assertion that a defendant can be "convicted" of a charged crime and an included offense. Consequently, Petitioner nor any other defendant convicted of Aggravated Robbery pursuant to Minnesota Statute §609.245 [] plead guilty to, nor were they found guilty beyond a reasonable doubt of the elements codified at Minn. Stat. 609.24,

the fact that they were convicted of Minn. Stat. 609.245, Subd. 1 withdrew the elements of § 609.24 from consideration. So, unlike Florida's robbery law, the particular statute of conviction in Minnesota does not correspond to the level of force outlined in Stokely, therefore the statute cannot give rise to an ACCA enhancement.

Conclusion

The Court of Appeals for the Eighth Circuit has created a departure regarding application of the categorical and modified categorical approaches. Specifically, they have allowed a parties agreement to stand as a technique for assessing statutes other than the statute of conviction for categorical approach purposes and incorporating elements from other statutes into the statute of conviction. The departure also allows the Court to legislate for the state or at least overrule state statutes.

The departure allows a district court and

the court of appeals to find that a defendant
was convicted of elements that don't exist
within the statute of conviction, in violation of
the Sixth Amendment to the United States
Constitution, the departure also violates the fund-
amental fairness and due course and due
process of law guarantee of the fifth Amend-
ment. Therefore, we, all defendants
Similarly situated asks this court to grant
a writ of certiorari and remand this
case back to the Eighth Circuit for further
consideration in light of this court's holding
in *Mathis*, 579 U.S. (2016), at Slip Op. 16-
17 (Because 609.04 prohibits the Circuit's
confliction of § 609.24 and § 609.245, Subd. 1,
§ 609.245, Subd. 1 cannot be a violent felony.
"when a ruling of that kind exists a sentencing
judge need only follow what it says).

Respectfully
Sincerely
Peter Terrell Reddit
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F.I.
P.O. Box 1000
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November 30, 2020
date

(17)