

No. _____

20-7322

IN THE

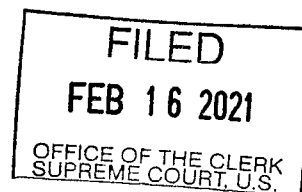
SUPREME COURT OF THE UNITED STATES

ORIGINAL

KELSEY COFFEE — 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 Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

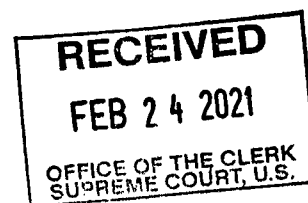
PETITION FOR WRIT OF CERTIORARI

KELSEY COFFEE, Reg.# 60890-018
(Your Name)

FCI Coleman-Medium, Unit B-2
(Address) P.O. Box 1032

Coleman, Flroda 33521-1032
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

- 1) Whether Petitioner Is Actually Innocent Of Counts 4-8, Based On Conspiracy To Hobbs Act Robbery And Aiding And Abetting Hobbs Act Robbery (Davis v. United States, 139 S. Ct. 2319 (2019))?
- 2) Whether Petitioner Was Inappropriately Convicted Based On The Wrong Charge To The Jury?

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Bousley v. U.S. , 523 U.S. 614 (1998)	9
Cronic v. United States , 466 U.S. 648 (1984)	8, 9, 11
Cuyler v. Sullivan , 446 U.S. 335 (1980)	8, 11
In re Pinder , 824 F.3d 977 (11th Cir. 2016)	9
In re Rogers , 825 F.3d 1335 (11th Cir. 2016)	9
Johnson v. United States , 135 S. Ct. 2551 (2015)	9
Rosemond v. United States , 572 U.S. 65, 73 (2014)	7, 8
Sessions v. Dimaya , 138 S. Ct. 1204 (2018)	9
Slack v. McDaniels , 529 U.S. 474 (2000)	9, 12
Strickland v. Washington , 466 U.S. 668 (1984)	8, 9, 11
United States v. Davis , 139 S. Ct. 2319 (2019)	5-9
U.S. v. Salas , 884 F.3d 681 (10th Cir. 2018)	9
Weaver v. Massachusetts , 137 S. Ct. 1899, 1907 (2017)	7

STATUTES AND RULES

18 U.S.C. § 1951

18 U.S.C. § 924(c)

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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 "B" 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 "A" 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 November 19, 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

Fifth Amendment of the United States Constitution

Sixth Amendment of the United States Constitution

STATUTORY PROVISION

18 U.S.C. § 924(c) (3) (B)

18 U.S.C. § 924(c) (3) (A)

18 U.S.C. § 924(c)

18 U.S.C. § 1951

STATEMENT OF THE CASE

Petitioner is a federal prisoner, serving a 234 month sentence for Aiding and Abetting Hobbs Act Robbery, 18 U.S.C. § 1951(a) and 2; use of a firearm during and in relation to a crime of violence, 18 U.S.C. § 924(c)(1)(A). Petitioner proceeded to trial on this case, and was convicted on Counts 4-8 of his indictment and acquitted for Counts 2, and 3 of the indictment. Petitioner appealed and all of his appeals were denied. Petitioner now appeals to the United States Supreme Court for its opinion in this Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable Court does not have to accept this Writ of Certiorari because the Honorable Court has discretion to accept whatever case they chose to accept and or grant. Petitioner requests that this Honorable Court accept this Writ because it affects the nation in the sense that no defendant should be allowed to stay convicted for a crime that **United States v. Davis**, 139 S. Ct. 2319 (2019), states he is actually innocent of, and is in violation of his Fifth and Sixth Amendment Rights to Due Process and a jury determination beyond a reasonable doubt, and counsel's ineffectiveness and below the standards of representation. Also, Petitioner asks that this Honorable Court accept this Writ because Petitioner was convicted unconstitutionally in violation of Petitioner being convicted based on a jury verdict form that stated the incorrect statute of the Petitioner's charge to the jury and allowed the jury to convict on that incorrect charge of Robbery, when it should have stated Title 18 U.S.C. § 924(c), instead of Robbery, § 1951. Petitioner therefore, hopes that this Writ of Certiorari is granted so that no one else will have to endure such unconstitutional violations from the Lower Courts in the future.

ARGUMENT ONE

- 1) Whether Petitioner is actually innocent of Counts 4-8 based on conspiracy to Hobbs Act Robbery and Aiding and Abetting Hobbs Act Robbery (United States v. Davis, 139 S. Ct. 2319 (2019)).

Petitioner was convicted in a trial before a jury, for conspiracy and aiding and abetting Hobbs Act Robbery in regards to Counts 4-8. In accordance with Title 18 U.S.C. § 924(c) / Conspiracy to and Aiding and Abetting Hobbs Act Robbery, in regards to Counts 4-8.

A grant jury charged Petitioner with two counts of aiding and abetting in Hobbs Act Robbery (Counts Two, Four, Five, Six, and Eight) in violation of 18 U.S.C. § 1951(a) and two counts of Aiding and Abetting in the use of a firearm that was brandished during and in relation to Hobbs Act Robbery (Counts Three and Seven) in violation of 18 U.S.C. § 924(c)(1)(A). Petitioner was acquitted of Counts Two and Three.

Petitioner states that his Counts 4-8, violate his Fifth Amendment Right to Due Process of Law based on United States v. Davis, 139 S. Ct. 2319 (2019), because Hobbs Act Robbery is not a violent offense, nor is Aiding and Abetting to conspiracy to Hobbs Act Robbery, nor is Aiding and Abetting to Hobbs Act Robbery a violent offense, according to Davis, supra. Because the Petitioner's § 924(c) is unconstitutionally vague. And

conspiracy and aiding and abetting to § 924(c), and conspiracy to Hobbs Act Robbery is not a violent offense. Permitting conspiracy and aiding and abetting for conspiracy to Hobbs Act Robbery under § 924(c), is a fundamental error and a violation of the Petitioner's Fifth Amendment Right to Due Process of Law, and his Sixth Amendment to effective assistance of counsel, and the Element Clause in this case to a jury determination beyond a reasonable doubt for Counts 4-8, that Petitioner is actually innocent of, according to **Davis**, supra; and **Weaver v. Massachusetts**, 137 S. Ct. 1899, 1907 (2017) based on structural error in this case, in regards to conspiracy to Hobbs Act Robbery and Aiding and Abetting Hobbs Act Robbery, in regards to §§ 924(c) / 1951(a).

It was therefore a structural and fundamental error to convict Petitioner based on conspiracy/aiding and abetting to Hobbs Act Robbery / § 924(c), as a crime of violence. Because in **Davis**, the United States Supreme Court held, that Hobbs Act conspiracy was not a crime of violence because it did not necessarily require proof that a defendant used, attempted to use, or threatened to use force. Instead, "conspiracy to commit an offense is merely an agreement to commit an offense." Also, as for aiding and abetting that offense , that in itself has to be proven that Petitioner actually aided and abetted in that offense. **Rosemond v. United States**, 572 U.S. 65, 73 (2014). Aiding and abetting does not qualify as a crime of violence

under § 924(c) nor for conspiracy to Hobbs Act Robbery, because the Supreme Court has held that a "defendant can be convicted can be convicted as an aider and abetter without proof that a defendant ever participated in each and every element of the offense.

Because the Lower Courts permitted Petitioner to be convicted for aiding and abetting and conspiracy to Hobbs Act Robber in regards to Counts 4-8, concerning § 924(c) convictions in this case, they were and still are in violation of **Davis, Rosemond**, and Petitioner's Fifth and Sixth Amendment Rights to Due Process and Sixth Amendment Rights to a jury determination beyond a reasonable doubt, and to effective assistance of counsel by counsel's below the standards of representation for which prejudiced Petitioner in this case and caused him 234 months in a federal prison unconstitutionally, based on counsel's ineffectiveness and unprofessional representation. **Strickland v. Washington**, 466 U.S. 668-687 (1984); **Cronic v. United States**, 466 U.S. 648 (1984); **Cuyler v. Sullivan**, 446 U.S. at 335-350 (1980), **In re Gomez**, 830 F.3d 1225, 1227 (11th Cir. 2016).

Petitioner also states to the Honorable United States Supreme Court, that according to U.S. Supreme Court Justice , Mr. Gorsuch, "a vague law is no law at all." In Petitioner's case in point, the vagueness doctrine rests on twin constitutional pillars of Due Process and Separation of Powers.

See **Davis**, *supra*, and **Johnson**, 135 S. Ct. 2551 (2015), which addressed the residual clause, in which it stated that the imposition of criminal punishment cannot be made to depend on a judge's estimation of the degree of risk posed by a crimes imagined or ordinary case. See § 924(c)(3)(A) and § 924(c)(3)(B), in regards to the residual clause, as being unconstitutionally vague in regards to **Davis/Johnson**, *supra*. See also, **Sessions v. Dimaya**, 138 S. Ct. 1204 (2018), *In re Pinder*, 824 F.3d 977, 979 n.2 (11th Cir. 2016); and *In re Rogers*, 825 F.3d 1335, 1340 (11th Cir. 2016); **United States v. Ledbetter**, et. al. (Nos 17-3299 and 17-3309 (6th Cir. 2019)); **United States v. Salas**, 884 F.3d 681, 685 (10th Cir. 2018).

According to Counts 4-8, of the Petitioner's indictment, he is actually innocent of those Counts. **Bailey v. United States**, 517 U.S. 137 (1995); and **Bousley v. United States**, 523 U.S. 614-620 (1998). but for counsel's ineffectiveness, and below the standards of representation, the proceedings would have been so much different. **Strickland v. Washington**; and **Cronic v. United States**, *supra*. Jurists of reason would stipulate that this argument deserves further encouragement, and that Petitioner's Fifth and Sixth Amendment Rights were in fact violated based upon all of the above stated reasons, and that he was prejudiced by counsel's below the standard of representation, which caused Petitioner 234 months in a federal U.S. prison. **Slack v. McDaniels**, 529 U.S. 474-484 (2000); **Buck**

v. Davis, 137 S. Ct. 759-779 (2018); **Barefoot v. Estelle**, 463 U.S. 880, 885; **Miller El v. Cockrell**, 537 U.S. 322 (2003).

Petitioner hopes and prays that the United States Supreme Court will grant leave for a Certificate of Appealability to be granted in this case, and that it be remanded back to the U.S. District Court for further review or vacate Petitioner's unconstitutional Counts 4-8 of his Writ of Certiorari, based on all of the above sated reasons.

ARGUMENT TWO

2) Whether Petitioner was inappropriately convicted based on the wrong charge to the jury.

According to Petitioner, his Fifth Amendment Right to Due Process and his Sixth Amendment Rights were violated to the jury when counsel allowed and failed to object to a verdict form that was submitted to a jury, that erroneously indicted indicated that Petitioner was charged with "Robbery" in violation of § 924(c), as to Count Seven in the Petitioner's indictment. When in fact the Count Seven was for a § 924(c) and not Robbery; and as a result the jury returned a guilty verdict for Robbery, rather than for what the Petitioner was really supposed to have been charged for. Petitioner was not charged in Count Seven for Robbery, but was instead charged for Title 18 U.S.C. § 924(c), not Robbery. Therefore, Petitioner was convicted for a Robbery in Count Seven when in fact, it was not a Robbery, but a Title

18 U.S.C. § 924(c) Count. Thereby, prejudicing the Petitioner and causing him to be convicted for a count that he was never guilty of by the jury. Had counsel objected to this fundamental error, the proceedings would have been so much different. But for counsel's failure to object and below the standards of representation, the proceedings would have been very different to the extent that Petitioner would not have been convicted period for a count that was the wrong and inappropriate count to the jury. Thereby causing a fundamental miscarriage of justice with the jury and a manifest injustice to the Petitioner which caused the Petitioner 234 months in a federal U.S. prison. **Strickland v. Washington; Cronin v. United States; Cuyler v. Sullivan; and Woods v. Georgia, 450 U.S. 261 (1981).**

Jurists of reason would stipulate that this argument deserves further encouragement, and that Petitioner's Fifth Amendment Right to Due Process and his Sixth Amendment Right to the proper charge and verdict statute count in the jury verdict form should have stated to the jury Title 18 U.S.C. § 924(c) rather than 18 U.S.C. § 1951, Robbery, or § 924(c), rather than Robbery. Petitioner is therefore, serving an unconstitutional conviction and sentence, based on a defective jury verdict form that was inappropriately submitted to the jury, based on counsel's failure to object to such a defective jury verdict form. Thereby prejudicing the Petitioner and causing him 234 months in a federal prison.

Jurists of reason would stipulate that this case deserves further encouragement, and should proceed further, based on violations of the Petitioner's Fifth and Sixth Amendment Rights under the United States Constitution that were in fact violated. **Slack v. McDaniels; Miller El v. Cockrell; Buck v. Davis; and Barefoot v. Estelle, supra.**

Petitioner hopes and prays that this Honorable Court will grant him relief and remand this case back to the lower court, based on all of the above stated reasons.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: _____