No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 2020

CHEDDIE LAMAR GRIFFIN,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Eleventh Circuit NO: 19-10331

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE ISSUE(S)

I. WHETHER THE CIRCUIT PANEL'S DECISION AFFIRMING THE DISTRICT COURT'S DENIAL OF MR. GRIFFIN'S AUTHORIZED SUCCESSIVE 2255 (UNDER JOHNSON) SIMPLY BECAUSE THE SAID CHALLENGE DID NOT EXPRESSLY MENTION DAVIS' NEW RULE OF CONSTITUTIONAL LAW IS ERRONEOUS SINCE DAVIS' SUPREME COURT LAW IS CONTROLLING, AUTHORITATIVE, AND DIRECTLY APPLICABLE.

LIST OF PARTIES

All parties appear in the caption of the case on the title page.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, **CHEDDIE LAMAR GRIFFIN,** respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Eleventh Circuit, entered in the above entitled proceeding on March10, 2021. The Eleventh Circuit Court denied the Appellant's Petition For Rehearing En Banc and Petition For Rehearing on June 4, 2021

OPINION BELOW

The Opinion of the Court of Appeals for the Eleventh Circuit (App., *infra*, 1a-13a) is unpublished, and attached hereto as Appendix A; the Order denying the Petition For Rehearing En Banc and Petition For Rehearing is attached hereto as Appendix B.

JURISDICTION

This is a Direct Appeal of a Judgment in a Civil Case denying Mr. Griffin's 28 U.S.C. §2255 Motion by the United States District Court for the Middle District of Florida. The District Court had original jurisdiction in Mr. Griffin's underlying Criminal proceedings under 18 U.S.C.§3231, and, jurisdiction in Mr. Griffin's companion Civil proceedings under 28 U. S. C. §§ 1331 and 2255. Accordingly, this Court's jurisdiction over this Appeal is predicated upon 18 U.S.C.§3742, and 28 U.S.C.§§1291, 2255.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No person shall be held to answer for a capital, or infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fifth Amendment to the United States Constitution.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Sixth Amendment to the United States Constitution.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Eighth Amendment to the United States Constitution.

STATEMENT OF THE CASE AND FACTS

Course of the Proceedings and Dispositions in the Court Below[1]

Original Indictment

Cheddie Lamar Griffin, Kendrick Ivey, and Charlie Joubert Taylor, a/k/a "Ed," a/k/a Straight Cash, were named in a Two-Count Indictment returned in the Middle District of Florida, Tampa Division, on January 23, 2008.

Count One charged that on December 19, 2007, all three Defendants committed carjacking, in violation of 18 U.S.C. §§ 2119 and 2. (Crim Doc. 1)

Count Two charged that on December 19, 2007, all three Defendants brandished a firearm in relation to the crime of violence of carjacking, in violation of 18 U.S.C. § 924(c). *Id.*

First Superseding Indictment

Cheddie Lamar Griffin, Kendrick Ivey, and Charlie Joubert Taylor, a/k/a "Ed," a/k/a Straight Cash, were then named in a Nine-Count First Superseding Indictment returned in the Middle District of Florida, Tampa Division, on March 12, 2008. (Crim Doc. 18)

Count One charged that on December 19, 2007, all three Defendants committed carjacking, in violation of 18 U.S.C. §§ 2119 and 2. *Id.*

Count Two charged that on December 19, 2007, all three Defendants brandished a firearm in relation to the crime of violence of carjacking, in violation of 18 U.S.C. § 924(c). *Id.*

Count Three charged that on December 19, 2007, Cheddie Lamar Griffin and Griffin and Charlie Joubert Taylor committed the offense of kidnapping, in violation of 18

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[1] Most of the facts were adopted from the PSR unless where Defendant objected; the facts were tailored to the issue(s) on Appeal. Additionally, the following facts are supported by the Record on Appeal, but, are not necessarily conceded as true by Mr. Griffin. (PSR dated 01/14/2009)

U.S.C. §§ 1201 and 2. *Id.* (emphasis supplied)

Count Four charged that on December 19, 2007, Cheddie Lamar Griffin and Charlie Joubert Taylor brandished a firearm in relation to the crime of violence of kidnapping, in violation of 18 U.S.C. § 924(c). *Id,* purportedly in relation to Count 3. (e.s.)

Count Five charged that on December 19, 2007, Cheddie Lamar Griffin and Charlie Joubert Taylor committed the offense of robbery, in violation of 18 U.S.C. §§ 1951 and 2. *Id.*

Count Six charged that on December 19, 2007, Cheddie Lamar Griffin and Charlie Joubert Taylor committed the offense of armed robbery, in violation of 18 U.S.C. §§ 2113(a)(d) (e), and 2. *Id.*

Count Seven charged that on December 19, 2007, Cheddie Lamar Griffin and Charlie Joubert Taylor brandished a firearm in relation to the crime of violence of robbery, in violation of 18 U.S.C. § 924(c). *Id.*

Count Eight charged that on January 10, 2008, Cheddie Lamar Griffin committed the offense of robbery, in violation of 18 U.S.C. §§ 1951 and 2. *Id.*

Count Nine charged that on January 10, 2008, Cheddie Lamar Griffin brandished a firearm in relation to the crime of violence of robbery, in violation of 18 U.S.C. § 924(c).

The Indictment contained a forfeiture provision pursuant to 18 U.S.C. § 982(a)(5), 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 924(d), and 28 U.S.C. § 2461(c). *Id.*

On June 19, 2008, Cheddie Lamar Griffin was found guilty by a jury as to Counts One through Nine of the First Superseding Indictment. Crim Doc. 73 Sentencing, before The Honorable Richard A. Lazzara, United States District Judge, was held on January 23, 2009. (Crim. Doc. 121)

Mr. Griffin was sentenced to a term of imprisonment essentially of fifteen (15) years to life, as to Counts 1, 3, 5,6, and 8 concurrently, while Counts 2, 4, 7, and, 9 run consecutively to each other and all others for 82 years in total. (Crim. Doc. 122)

Mr. Griffin appealed his Convictions and Sentences for carjacking, in violation of 18 U.S.C. § 2119; four counts of brandishing a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c); kidnapping, in violation of 18 U.S.C. § 1201; two counts of robbery, in violation of 18 U.S.C. § 1951; and armed robbery, in violation of 18 U.S.C. § 2113(a), (d), and (e). He raised three issues regarding his Convictions and Sentences on Appeal, and, this Court found no reversible error on June 23, 2010. (Crim. Doc. 147)

On August 1, 2011, Mr. Griffin filed the first Motion To Vacate, under 28 U.S.C. § 2255, which was denied on August 10, 2011. (Crim. Docs. 153 and 156). Mr. Griffin filed another Motion To Vacate, under 28 U.S.C. § 2255, on June 27, 2016, and the District Court denied same on June 30, 2016. (Crim. Docs. 190 and 193) Then on July 16, 2018, Mr. Griffin filed a Motion To Vacate, under 28 U.S.C. § 2255, which was unsuccessful at the District Court Level, leading to this current Appeal. (Crim. Docs. 200 and 203). (Civ. Doc. 1)

In his most recent § 2255 Motion, Mr. Griffin argued, inter alia, that his 18 U.S.C. § 924(c) conviction for brandishing a firearm in relation to a crime of violence, charged in Count Four of his Superseding Indictment, was invalid.

Offense Conduct (Underlying Facts)

In the early morning hours of December 19, 2007, Kevin Taylor was sitting in his 2006 Chevrolet Monte Carlo in the parking lot of a nightclub located on North Howard Avenue in Tampa. As Taylor sat in the parking lot, Kendrick Ivey and a juvenile came up to the driver's side door, pointed a gun at Taylor, and ordered him out of his car. Taylor was then taken to a nearby red SUV and placed on the back seat. Three individuals were in the red SUV: Charlie Joubert Taylor was the driver; Cheddie Lamar Griffin was in the front passenger seat, and a juvenile was in the back seat. These individuals were armed with weapons previously obtained by Charlie Joubert Taylor. Cheddie Lamar Griffin had a .40 caliber Glock firearm. The juvenile had a Glock 9mm firearm and a shotgun. Kendrick

Ivey, now in the victim's car, possessed a 9mm pistol.

With Kevin Taylor now secure in the SUV, the two vehicles left the parking lot. Kendrick Ivey drove the victim's Monte Carlo, and Charlie Joubert Taylor drove the red SUV. Within a few minutes, on 1-275, Kendrick Ivey was stopped by the Tampa Police Department for a traffic infraction. He was arrested when it was determined he was driving on a suspended license. He was found to be in possession of a Walther, 9mm pistol. At that point in time, law enforcement was unaware of the carjacking.

Charlie Joubert Taylor, Cheddie Griffin and the juvenile continued to depart the area with the victim, after they saw the Tampa Police Department cruiser pull in behind Kendrick Ivey. While the juvenile kept a shotgun against the victim,
Charlie Joubert Taylor drove to Clearwater. During that drive, the victim's wallet and watch were taken, and Charlie Joubert Taylor, Cheddie Griffin, and the juvenile began to look for a Suntrust ATM machine to obtain United States Currency with the victim's ATM and credit cards. They returned onto the interstate toward Polk County. During this drive, again they saw the victim's car, which had been driven by Kendrick Ivey, pulled over to the side of the interstate by the Tampa Police Department. They discussed killing the victim, and dumping his body. Ultimately, they found a Suntrust Bank ATM machine in Polk County, and forced the victim to utilize his ATM and credit cards to withdraw money from it for them. After they obtained the money, they had the victim place a telephone call to the police and state that his car had been stolen. The victim was then released, and he reported the incident to the Tampa Police Department. During the time that the victim was held in the SUV, the juvenile kept a shotgun pointed at him.

The ATM machine in Polk County electronically contacted the Suntrust Bank computer in Georgia, which authorized the dispersal of United States Currency to the **ATM** machine in Polk County. Suntrust Bank is an interstate Financial Institution which is regulated by the Federal Reserve and whose deposits and accounts are insured by the Federal Deposit Insurance Corporation.

On January 10, 2008, at approximately 8:00 p.m., Cheddie Lamar Griffin robbed the Right Konnections Car Stereo Store in Lakeland, Florida. Mr. Griffin entered the store, brandished and cocked a black handgun, and said "give me your mother fucking money." Three people were present in the store at the time that Mr. Griffin entered. Imad Sihwail, the owner of the store was present, along with two of his friends, Mr. Robert Mercer ,and, Kayla McBride. The store owner pulled a handful of one dollar bills (approximately $40) from his pocket, and placed the money on the desk. Mr. Griffin then demanded the owner's wrist watch and bracelet. Mr. Griffin also demanded Mr. Mercer's wallet, which contained his Driver's Licence and Social Security Card, but no cash. Mr. Griffin then demanded more money. He was directed to a Zephyrhills water bottle that contained approximately $300 in change. Mr. Griffin picked up the cash, the watch, the bracelet, and, the water bottle containing the change, and fled the store. Law Enforcement was already searching for Mr. Griffin in reference to his involvement in the December 19, 2007, carjacking, kidnapping, and robbery of Kevin Taylor.

On January 10, 2008, at approximately 11:45 p.m., Mr. Griffin was arrested, following a motor vehicle pursuit that ended near the Calvary Baptist Church, on North Florida Avenue, in Lakeland, Florida. The following day, Law Enforcement was

called to the Calvary Baptist Church as a fully loaded Gook handgun was found in the parking lot on the Church property.

REASON(S) FOR GRANTING THE PETITION

In this Case, the Circuit Panel ruled:

> In evaluating that question, we must conclude that Mr. Griffin's Motion was not timely. Mr. Griffin's conviction became final on August 23, 2010 and the Supreme Court issued Johnson on June 26, 2015. So under § 2255(f), in the absence of any tolling, the latest Mr. Griffin could have timely filed his authorized Johnson-based Motion was June 25, 2016. Yet Mr. Griffin did not file Motion until more than Two Years later- on July 16, 2018. Nor does the record here contain any basis for tolling the Statutory period.(footnote omitted) Under these circumstances, we must conclude that Mr. Griffin's § 2255 Johnson Claim is untimely.
>
> Although we affirm the District Court's denial of Mr. Griffin's Motion because it was untimely under 28 U.S.C. § 2255(f), we conclude by noting that he may still have a path to challenge his § 924(c) Sentence on Count Four. Mr. Griffin has not sought authorization to file a Second Successive Application on the basis of United States v. Davis, 1395 S. Ct. 2319 (2019). Because we have held that "Davis announced a new substantive Rule of Constitutional Law in its own right," *See* In re Hammond, *931 F.3d 1032, 1040 (11th Cir. 2019),* nothing appears to preclude Mr. Griffin from seeking authorization to file a Second or Successive Petition under 28 U.S.C. §2255 (h)(2) (authorizing Second or Successive Motions that contain "a new Rule of Constitutional Law, made retroactive to Cases on collateral review by the Supreme Court")., based on Davis.
>
> Griffin v. United States, *No. 19-10331 (11th Cir. March 10, 2021) [unpublished Opinion]*
>
> *One day later, a separate Circuit Panel ruled as follows:*
>
> *To be sure we gave Granda leave to file a Johnson challenge - the Supreme Court had not yet decided* Davis *so we did not (nor could we then) certify that Granda's Second Petition "contain[ed]" the new Rule Of Constitutional Law Davis announced. See* 28 U.S.C. §2255 (h) *(footnote omitted) Section 2255(h) instructs us to certify "as provided in Section 2244" that a Second or Successive Motion contains a New Rule Of Constitutional Law, in turn, § 2244 focuses on whether a "Claim" contains a New Constitutional Rule, not on whether the Motion as a whole does. 28 U.S.C. §*

> *2244(b)(2). And in In re Hammond, a Panel of this Court held that a Johnson Claim is distinct from a Davis Claim for purposes of the rule against filing repeat Petitions raising Claims that had been previously rejected. See 931 F.3d 1032, 1039-40 (11th Cir. 2019). One might argue then, that while we have authorized Granda to bring a Johnson Claim, we did not authorize the filing of a Davis Claim. See Morton v. United States, 776 F. App'x 651, 652-53 (11th Cir. 2019) (unpublished per curiam opinion). (footnote omitted) Of course, a District Court is without jurisdiction to consider an unauthorized Second or Successive Petition. Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003).*
>
> *But to resolve the Johnson Claim we did authorize, we can, indeed we must apply the controlling Supreme Court Law of Davis (footnote omitted) As this Court held en banc in United States v. Johnson , "when 'a precedent of the Supreme Court has direct application,' we must follow it." 921 F.3d 991, 1001 (11th Cir.) (en banc) (alteration accepted) (citation omitted), cert denied. 140 S. Ct. 376, 205 L.Ed 2d 215 (2019); See also Brown, 942 F.3d at 1072 (applying Davis to resolve a pre-Davis Petition that raised a Johnson Claim). Davis extended the reasoning of Johnson, providing us with the answer to a question central to Granda's Petition: whether the § 924(c)(3)(B) Residual Clause is unconstitutionally vague. Applying Davis to resolve Granda's vagueness claim does not transform the authorized claim – which originally relied on Johnson – into a distinct, unauthorized Davis Claim.*

The Granda Panel expressly noted that the Jurisprudence requires the Panel to recognize Davis in the first instance. Davis is controlling in this matter involving Mr. Griffin and applying Davis does not transform the authorized claim which originally relied on Johnson, into a distinct, unauthorized Davis claim. Any other reasoning would elevate form over substance.

The need for the Griffin Panel to decide the case on the merits is further augmented by the Circuit's Certificate of Appealability (COA) in subsequent Orders. In granting the COA, the single Judge of this Court ruled, in part,

> *...Without the benefit of the Supreme Court's recent decision in United States v. Davis, 1395 S. Ct. 2319 (2019), the District Court denied the Motion, concluding that (1) Mr. Griffin's claim was foreclosed by our*

decision in Ovalles v. United States, *905 F.3d 1231 (11th Cir. 2018) (en banc), abrogated by* Davis, *1395 S. Ct. 2319; (2) Mr. Griffin's kidnapping constituted a crime of violence under the conduct-based approach; and (3) the concurrent Sentencing Doctrine "arguably" relieved the Court of the obligation to review the validity of the Count Four conviction.*

> In light of Davis, reasonable Jurists could debate the District Court's rejection of Mr. Griffin's claim, as Davis concluded that § 924(c)'s Residual Clause is unconstitutionally vague and explicitly rejected the conduct-based approach. 139 S. Ct. at 2324, 2325 & n.2, 2333-33, 2336...

Order dated August 15, 2019[2]

In United States v. Pickett, 916 F.3d 960, 963 (11th Cir. 2019), this Circuit Court remanded the matter despite the Magistrate Judge's finding under Chance[3] that "[a]t that time, the showing required to make a successful Johnson claim was not altogether clear." In Pickett, a prior finding of an "unclear" record under Chance did not preclude a remand to permit the Movant to satisfy Beeman.[4]

Griffin objected to the PSI "almost in its entirety" (PSI dated January 14, 2009), and steadfastly maintained his objection at Sentencing (Crim. Doc. 134 at 8-11); he objected to each and every finding of fact contained in the Offense Conduct section of the (PSI) Report and to the Statutory Penalties calling for minimum mandatory consecutive Sentences.

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[2] See also Order dated October 7, 2019 in which the Court stated:

> Here the issue on Appeal —whether Mr. Griffin's 18 U.S.C.§ 924(c) conviction charged in Count Four (4) of the Superseding Indictment is valid—is a relatively complex issue, as it involves both a lengthy line of cases and a question of first impression in this Court regarding whether kidnapping qualifies as a "crime of violence" after Davis. Thus, the interests of justice warrant appointment of Counsel. See Kilgo v. Ricks, 983 F.2d 189, 193 (11th Cir. 1993) ...

[3] In re Chance 831 F.3d 1335, 1339 (11th Cir. 2016)

[4] Beeman v. United States, 871 F.3d 1215 (11th Cir. 2017)

The Probation Office, along with the Government presumably, merely retorted that "the Defendant stands convicted of crimes of violence in this instant matter". PSI dated January 14, 2009, Addendum.

In this case, the District Judge, who also handled this § 2255 matter and is still alive, stated at Sentencing that "... I've reviewed the Pre-Sentence Report, I'm familiar with the facts of this case, having presided over the trial of Mr. Griffin, and I 'm going to adopt the factual statements contained in the report as well as the Guideline Application, and I will make the following findings:...." (Crim. Doc. 134 at 10).

Similarly, the District Court Order under review is very instructive; the District Court expressly relied on and endorsed the residual provision in denying relief. See Civ. Doc. 14 at 1. Furthermore, the said District Court's January 2019 Order improperly relied on the conduct-based approach subsequently rejected by the United States Supreme Court in June 2019.

The conviction under Count Four for committing a crime of violence, 18 U.S.C. § 924(c) should be vacated, because the predicate offense of kidnapping in violation of 18 U.S.C. § 1201 (a) is not a crime of violence as a matter of Law. No published Opinion from the Eleventh Circuit Court Of Appeal directly addresses whether the Federal Kidnapping Statute under § 1201 (a) qualifies as a crime of violence under the physical force clause of § 924(c). Because kidnapping is not a crime of violence under the force clause, it cannot serve as a predicate crime of violence for purposes of § 924(c).

The Concurrent Sentence Doctrine provides that, if a defendant is given concurrent sentences on several counts and the conviction on one count is found to be

valid, an Appellate Court need not consider the validity of the convictions on the other counts." United States. v. Fuentes-Jimenez, 750 F.2d 1495, 1497 (11th Cir. 1985). "The practice is eminently practical and conserves judicial resources for more pressing needs." Jones v. Zimmerman, 805 F.2d 1125, 1128 (3d Cir. 1986). This Doctrine normally applies unless it appears that the challenged convictions will cause additional, adverse collateral consequences for the Petitioner. *See* Fuentes-Jimenez, 750 F.2d at 1497.

This cause involved not only concurrent sentences but also consecutive sentences. On the other hand, when a Defendant is convicted on a Multi-Count Indictment, Sentencing Courts typically craft a disposition on the various counts to accomplish an overall Sentencing Plan. U.S. v. Fowler, 749 F.3d 1010, 1015 (11th Cir. 2014). (This "common judicial practice" is "grounded in the basis notion of how Sentencing decisions are made in cases involving multiple counts of conviction.") This is known as the "Sentencing Package." *Id.* at 1014. Mr. Griffin contends that he should be resentenced under the Sentencing Package Doctrine.

The Eleventh Circuit Court has expressly held that the District Courts may use the Sentencing Package Doctrine after vacating a Sentence in a § 2255 proceeding. *See* Fowler, 749 F.3d at 1016-17; United States v. Rozier, 485 F. App'x 352, 355-57 (11th Cir. 2012).

Conclusion

Mr. Griffin's Sentence should be vacated and the cause remanded for Resentencing with instructions to apply the guidelines Constitutionally and with due

regards for the precedent set by the United States Supreme Court and the Eleventh Circuit Court of Appeal by a different Judge. For the foregoing reasons, the Panel's decision both conflict with the Supreme Court's prior decisions and presents questions of exceptional importance. Accordingly, Mr. Griffin respectfully requests the Court grant the Petition For Certiorari..

Respectfully submitted,

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