

No. 21-5066

IN THE SUPREME COURT OF THE UNITED STATES

AQUABEUS MOORE, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 5-9) that robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), does not qualify as a "crime of violence" within the meaning of 18 U.S.C. 924(c)(3)(A). The court of appeals correctly rejected that contention, and the petition for a writ of certiorari should be denied.

1. A conviction for 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), cert. denied, 141 S. Ct. 167 (2020), Hobbs Act robbery qualifies as a “crime of violence” under Section 924(c)(3) 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).¹

Petitioner contends (Pet. 7-8) that he “was convicted under a statute that is now invalid,” citing this Court’s decision in United States v. Davis, 139 S. Ct. 2319 (2019). Petitioner is incorrect. This Court in Davis held that the definition of “crime of violence” in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague. See 139 S. Ct. at 2336. But that decision did not affect the alternative crime-of-violence definition in Section 924(c)(3)(A).

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); see also, e.g., United States v. Melgar-Cabrera, 892 F.3d 1053, 1060-1066 (10th Cir.), cert. denied, 139 S. Ct. 494 (2018). To the extent petitioner suggests (Pet. 5-7) that some courts of appeals have concluded that Hobbs

¹ We have served petitioner with a copy of the government’s brief in opposition in Steward, which is also available from this Court’s online docket.

Act robbery is not a crime of violence under Section 924(c)(3)(A), he is incorrect. Most of the cases cited by petitioner involved the federal Sentencing Guidelines, which “define ‘crime of violence’ differently” from Section 924(c)(3), United States v. Camp, 903 F.3d 594, 597 (6th Cir. 2018), cert. denied, 139 S. Ct. 845 (2019). See Pet. 6-7 (citing various other cases involving the Sentencing Guidelines). Petitioner also cites (Pet. 5) United States v. Simms, 914 F.3d 229 (4th Cir.), cert. denied, 140 S. Ct. 304 (2019), but as petitioner himself acknowledges (Pet. 5), that case involved conspiracy to commit Hobbs Act robbery, not substantive Hobbs Act robbery. Insofar as petitioner suggests (Pet. 8) that he was convicted of violating Section 924(c) based solely on participating in a conspiracy, as opposed to participating in Hobbs Act robberies, that argument was not pressed before or passed on by the court of appeals. See United States v. Williams, 504 U.S. 36, 41 (1992) (explaining that this Court’s “traditional rule * * * precludes a grant of certiorari” when “the question presented was not pressed or passed upon below”) (citation and internal quotation marks omitted). And the petition does not meaningfully develop it.²

² Petitioner separately invokes (Pet. 9) Section 403 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5221, which amended Section 924(c)(1)(C) in certain respects. But Congress specified that those amendments would “apply to any offense that was committed before the date of enactment of th[e] Act” only “if a sentence for the offense has not been imposed as of such date of enactment.” § 403(b), 132 Stat. 5222. Thus, as the court of appeals recognized, the Section 403 amendments do not

2. This Court has consistently declined to review petitions for a writ of certiorari asserting 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 other cases. See, e.g., Fields v. United States, No. 20-7413 (June 21, 2021); Thomas v. United States, No. 20-7382 (June 21, 2021); Walker v. United States, No. 20-7183 (June 21, 2021); Usher v. United States, 141 S. Ct. 1399 (2021) (No. 20-6272); 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). The same course is warranted here.

This Court has granted review in United States v. Taylor, No. 20-1459 (cert. granted July 2, 2021), to determine whether attempted Hobbs Act robbery qualifies as a “crime of violence” under Section 924(c)(3)(A). But petitioner does not contend that

affect petitioner’s sentence, which was imposed before the Act’s effective date (December 21, 2018). See Pet. App. A9. Petitioner provides no meaningful support for his assertion (Pet. 11-13) that application of the Act’s plain text is unconstitutional. And this Court has repeatedly denied petitions for a writ of certiorari asserting that the Section 403 amendments, or the analogously worded amendments made by Section 401 of the First Step Act, apply to a defendant like petitioner who was sentenced before the Act’s enactment. See, e.g., McDaniel v. United States, 140 S. Ct. 1272 (2020) (No. 19-6078); Coleman v. United States, 140 S. Ct. 580 (2019) (No. 19-5445); Smith v. United States, 140 S. Ct. 463 (2019) (No. 18-9431); Pizarro v. United States, 140 S. Ct. 211 (2019) (No. 18-9789); Sanchez v. United States, 140 S. Ct. 147 (2019) (No. 18-9070).

Taylor has any bearing on his case, and it would not be appropriate to hold the petition here pending the outcome of Taylor because petitioner would not benefit from a decision in favor of the respondent in Taylor. Even if this Court were to conclude that attempted Hobbs Act robbery is not a crime of violence under Section 924(c)(3)(A), the Fourth Circuit in Taylor reaffirmed that completed Hobbs Act robbery qualifies as a “crime of violence,” see United States v. Taylor, 979 F.3d 203, 207-208 (2020); the respondent in Taylor does not argue otherwise, see Br. in Opp. at 11-17, United States v. Taylor, No. 20-1459 (May 21, 2021); and this case arises from the same circuit as Taylor. The Fourth Circuit has also explicitly recognized, since its decision in Taylor, that aiding and abetting Hobbs Act robbery qualifies as a crime of violence. See United States v. Ali, 991 F.3d 561, 573-574 (2021). Accordingly, no reasonable prospect exists that this Court’s decision in Taylor will affect the outcome of this case, and it is unnecessary to hold this petition pending Taylor.³

Respectfully submitted.

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AUGUST 2021

³ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.