

IN THE
SUPREME COURT OF THE UNITED STATES

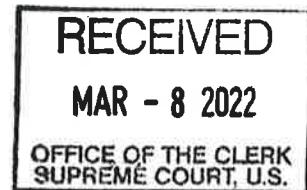
21-6415

TERRILL KINCHEN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING OF AN ORDER
DENYING A WRIT OF CERTIORARI



Reason for Rehearing

BASED ON THE 7TH AND 4TH CIRCUIT FINDINGS THAT "A DEFENDANT SENTENCE AS A CAREER OFFENDER DUE TO THE HOBBS ACT ROBBERY NO LONGER BEING A CRIME OF VIOLENCE SHOULD BE RESENTENCE" A REHEARING IS WARRANTED

After the Writ of Certiorari being filed in this case, in United States V. Jerry, 996 F.3d 495 (7th Cir. 2021), the Seventh Circuit held, "because intervening precedent has held that Hobbs Act Robbery did not qualify as a "crime of violence" under the Guidelines, and noting in the Guidelines, **and nothing in the record showed that the district court provided reasoning for defendant's sentence not dependant on the Guideline calculation.** The Judgment was reversed and case remanded to the District Court for resentencing.

The Seventh Circuit noted, -as Kinchen argues in his brief- nothing in the record shows that the district court provided reasoning for Jerry's sentence not dependant on the Guideline calculation. District Court have the independent obligation to consider 18 U.S.C. § 3553(a) factors, along with the Guidelines, to determine whether any sentence is "sufficient, but not greater than necessary." ... Although the Guidelines undoubtedly play a large role in sentencing, they are "effectively advisory." United States V. Booker, 543 U.S. 220 (2005).

In United States V. Green, 996 F.3d 176 (4th Cir. 2021), the Fourth Circuit held: "Five other federal courts of appeals have considered this question and have concluded unanimously that it is not." See United States V. O'Connor, 874 F.3d 1147, 1158 (10th Cir. 2017); United States V. Camp, 903 F.3d 594, 604 (6th Cir. 2020); Bridges V. United States, 991 F.3d 793 at *6 (7th Cir. 2021). [The Fourth Circuit] agree with our sister circuits and now hold that Hobbs Act robbery is not a crime of violence under sentencing Guidelines career offender provision.

Prior to the Writ of Certiorari being filed, the Eleventh Circuit issued United States V. Thompson, 839 Fed. Appx. 421 (11th Cir. 2021). In Thompson, the Court held: "[H]ere, the District Court's determination that Hobbs Act Robbery is a crime of violence for purposes of the career offender sentencing enhancement under U.S.S.G. § 4B1.1 was plain error ... This erroneous application of the career offender sentence enhancement resulted in an incorrect, and higher, guidelines range being applied at Thompson's sentencing -a Guidelines range of 262 to 327 months' imprisonment as opposed to the correct 84 months' imprisonment. Thus, the error affected Thompson's substantial rights and the fairness, integrity, and public reputation of the judicial proceedings.

As the record in this case in plain, the District Court adopted the findings of the PSR, adopted the recommendation of the PSR -which held Kinchen's minimum guideline sentence was 535 based on the career offender enhancement -but choose to uphold the agreed 420 months that the party agreed too. It was the duty of the Eleventh Circuit to had Granted COA on this issue, especially on how it ruled in Thompson.

This Court should exercise it's discretionary power and grant this Writ of Certiorari. Kinchen avers granting Certiorari is warranted in order to be unified with the sister circuit decision on this matter; "Hobbs Act Robbery is not a crime of violence under the Sentencing Guidelines." This Court should not look over the fact, Kinchen was sentence as a career offender due to the instant offense - Conspiracy to Commit Hobbs Act Robbery- being a crime of violence during sentencing. But, since "conspiracy to commit Hobbs Act Robbery and Hobbs Act Robbery" re no longer crime of violence under the guideline, relief should be given. Because, the District Court never placed on the record that it would have sentence Kinchen to the 420 months without the minimum guideline sentence recommendation being 535 months.

CERTIFICATE OF GOOD FAITH

Kinchen hereby certify that the Petition for Rehearing is presented in good faith and not for delay.

CERTIFICATE OF SUBSTANTIAL CONTROLLING EFFECT

I hereby certify that the grounds are limited to substantial grounds not previously presented.