

No. 21-7233

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM SARDINAS, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 14-40) that he is entitled to collaterally undo his conviction for carrying or possessing a firearm in connection with a crime of violence or a drug-trafficking crime, in violation of 18 U.S.C. 924(c), based on a claim that the conviction might rest on the predicate offense of either attempted Hobbs Act robbery or conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a), both of which petitioner contends are invalid predicates. This Court is currently considering, in United States v. Taylor, No. 20-1459 (argued Dec. 7, 2021), whether attempted Hobbs Act robbery is a valid predicate "crime of violence" under 18 U.S.C. 924(c)(3).

Because petitioner would not be entitled to relief regardless of the outcome in Taylor, however, the petition for a writ of certiorari need not be held pending Taylor and should instead be denied. This Court has recently denied petitions for a writ of certiorari raising the same claims, including a petition filed by one of petitioner's co-defendants. Wong v. United States, No. 21-6748 (Apr. 4, 2022); Granda v. United States, 142 S. Ct. 1233 (2022) (No. 21-6171). The same result is warranted here.

1. Petitioner conspired with others to steal drugs from a fictional stash house in a sting operation organized by law enforcement. See Pet. App. A3, at 2-4. Police arrested petitioner on the day of the planned robbery -- after petitioner convened with the other planned participants at an arranged meeting spot -- and retrieved a shortened rifle, two silencers, and a magazine clip of ammunition from the SUV in which he had been traveling.

Ibid.

A federal grand jury charged petitioner with conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); attempted Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); conspiring to possess with intent to distribute five or more kilograms of cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A)(ii) and 846; attempting to possess with intent to distribute five or more kilograms of cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A) and 846; carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a

crime of violence or a drug-trafficking crime (the Hobbs Act and drug-trafficking crimes charged in the preceding counts), in violation of 18 U.S.C. 924(c)(1)(A); possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1); and possessing a firearm with an obliterated serial number, in violation of 18 U.S.C. 922(k). Pet. App. A3, at 4; Superseding Indictment 1-5.

At trial, the district court instructed the jury that it could find petitioner guilty of violating Section 924(c) if it found that petitioner "committed a drug trafficking offense or crime of violence" and that during the commission of the crime petitioner "knowingly carried a firearm in relation to" or "possessed [the firearm] in furtherance of that drug trafficking crime or crime of violence." Pet. App. A3, at 4-5 (quoting jury instructions) (emphasis omitted). The jury found petitioner guilty on all counts, and the court sentenced him to 600 months of imprisonment. See 386 Fed. Appx. 927, 933. The court of appeals affirmed. Id. at 946.

After the district court denied a motion by petitioner to correct, set aside, or vacate his sentence under 28 U.S.C. 2255, the court of appeals authorized petitioner to file a second or successive Section 2255 motion challenging his Section 924(c) conviction in light of this Court's decision in United States v. Davis, 139 S. Ct. 2319 (2019). See Pet. App. A3, at 5-6. In Davis, this Court held that the definition of "crime of violence"

in Section 924(c)(3)(B) is unconstitutionally vague. See 139 S. Ct. at 2336. Petitioner argued that after Davis, conspiracy to commit Hobbs Act robbery no longer qualified as a "crime of violence" under Section 924(c)(3) and that his Section 924(c)(3) conviction was accordingly invalid. See Pet. App. A3, at 6-9.

The district court denied the motion. Pet. App. A3, at 7-11. The court concluded that petitioner demonstrated cause and prejudice to excuse the procedural default of his claim. Id. at 7-10. The court determined, however, that petitioner's claim failed on the merits because petitioner had not shown that the jury relied solely on an invalid predicate in convicting him under Section 924(c). Id. at 10-11. The court explained that petitioner could not make that showing because the jury "was presented with [petitioner's] own post-arrest admission of bringing firearms to commit a robbery of a drug stash house with the intent to acquire large amounts of cocaine." Id. at 11 (emphasis omitted).

The district court subsequently denied a motion for reconsideration, applying Granda v. United States, 990 F.3d 1272 (11th Cir. 2021), cert. denied, 142 S. Ct. 1233 (2022). Pet. App. A4, at 1-5. The court explained that under Granda, petitioner could not demonstrate either cause and prejudice or actual innocence, as required to overcome his procedural default. Id. at 2-4. In particular, the court observed that petitioner could not show cause for failing to raise his claim at trial or on direct appeal because a vagueness challenge to Section 924(c)(3)(B) was

not so novel that its legal basis was not reasonably available to his counsel, id. at 2, and also could not show prejudice, because the jury's finding that petitioner possessed or carried a firearm in connection with a conspiracy to commit Hobbs Act robbery necessarily also entailed a finding that petitioner possessed or carried a firearm in connection with the conspiracy and attempt to possess cocaine, the object of the planned robbery. Id. at 2-3. And for the same reasons, the court found that petitioner could not show that he was actually innocent of violating Section 924(c). Id. at 3. The court also reiterated its previous determination that petitioner's claim failed on the merits, explaining that any error in instructing the jury on both valid and invalid theories of guilt was harmless in the circumstances of petitioner's case. Id. at 3-4.

The district court and the court of appeals denied petitioner's requests for a certificate of appealability. Pet. App. A4, at 4-5; Pet. App. A1, at 1.

2. Petitioner contends (Pet. 14-40) that this Court should review the denial of a certificate of appealability by the court of appeals, the determination by the district court that petitioner could not show cause to overcome procedural default, and the determination by the district court that any error in instructing the jury on both valid and invalid theories of guilt was harmless in the circumstances of this case. He alternatively requests (Pet. 7, 40) that this Court hold his petition for a writ of certiorari

pending the Court's decision in Taylor and the Court's resolution of the petition for a writ of certiorari in Granda v. United States, No. 21-6171 (filed Nov. 1, 2021).

This Court recently denied the petition for a writ of certiorari in Granda, see 142 S. Ct. 1233 (2022), as well as the nearly identical petition for a writ of certiorari filed by one of petitioner's co-defendants in Wong v. United States (No. 21-6748). The petition here should likewise be denied for the reasons identified on pages 14 to 29 of the government's brief in opposition in Granda, supra (No. 21-6171) (Granda Opp.).¹

Petitioner does not and cannot dispute that two of the predicates charged in the indictment and sent to the jury -- conspiring and attempting to possess cocaine with the intent to distribute it -- qualify as "drug trafficking crime[s]" under Section 924(c)(2), and are therefore valid predicates under Section 924(c). 18 U.S.C. 924(c)(2). The jury found beyond a reasonable doubt that petitioner committed those drug-trafficking crimes, and no reasonable possibility exists that the jury could have found that petitioner carried or possessed a firearm in connection with the Hobbs Act robbery offenses but not the two drug-trafficking crimes. See Pet. App. A4, at 3-4.

Petitioner accordingly cannot demonstrate cause and prejudice to overcome the procedural default of his current claims, nor can

¹ We have served petitioner with a copy of the government's brief in opposition in Granda.

he show that the claimed errors would have been deemed prejudicial, rather than harmless, if raised on direct review. See Granda Opp. at 23-29. And because petitioner's claim fails regardless of whether attempted Hobbs Act robbery is a valid predicate under Section 924(c), the petition need not be held pending the Court's decision in Taylor.²

Respectfully submitted.

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² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.