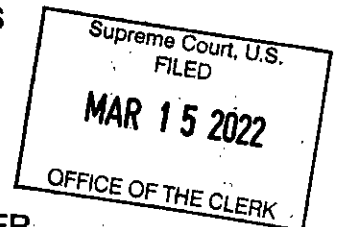


21-7933
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



John Armstrong Jr. — 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

John Armstrong Jr. # 72775-018
(Your Name)

USP McCreary, 330 Federal Way
(Address)

Pine Knot, Kentucky 42635
(City, State, Zip Code)

(606) 354-7000
(Phone Number)

QUESTION(S) PRESENTED

Under 924C Does Armstrongs attempted robbery qualify as a crime of violence. Does Armstrongs Hobbs Act robbery qualify as a crime of violence.

Does Armstrongs Hobbs Act robbery which has attempt built into it, or Armstrongs attempted bank robbery qualify as a crime of violence.

Does Section 403 of the First Step Act of multiple 924c counts intend for sentencing to be ran concurrent, rather than stacking, for a single conviction as in Armstrongs case.

Does the final ruling in Mau Mau v/s United States of America clarify that 924(c) is no longer violent thus rendering Armstrongs case no longer violent.

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:

Tanya M. Legg

Daniel Zirk

Related Cases

~~UNKNOWN~~

6:19-cr-224-Orl-78EJK

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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

18 USC 2113(a) - Whether Hobbs Act robbery or Attempted Bank robbery qualifies as a
18 USC 1951(a) crime of violence for the purposes of 924(c) or in general.
924(c)

924(c) - Whether section 403 of the First Step Act intended for concurrent terms of sentencing rather than stacking 924(c) sentences for a single conviction of multiple counts

924(c) - Clarification that 924(c) is no longer violent rendering Armstrongs case no longer violent.

OTHER N/A

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 A 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 _____ 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 12/15/2021.

☒ 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 April 14, 2022 (date) on March 1, 2022 (date) in Application No. 21 A 459.

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

- 1) Bank robbery under 18 USC 2113(a)
- 2) Attempted Bank robbery under 18 USC 2113
- 3) Crime of violence under 924(c)
- 4) Residual clause under 924(c)
- 5) Hobbs Act robbery 18 USC 1951(a)

Section 924(c) provides for a mandatory consecutive sentence for any defendant who uses or carries a firearm during and in relation to or possesses a firearm in furtherance of, either a crime of violence or a drug trafficking crime. 18 USC § 924(c)(A)(i)-(ii). More severe penalties apply if the firearm was brandished or discharged.

Section 18 USC § 924(c) crime of violence means an offense that is a felony and:
(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another may be used in the course of committing the offense. 18 USC § 924(c)(3) 18 USC § 924(c)(3)(A) is known as the use-of-force or elements clause while 18 USC § 924(c)(3)(B) is known as the residual clause.

18 USC § 924(c)(3)(B) is residual clause, like the residual clauses in the Armed Career Criminal Act and 18 USC § 16(b) is unconstitutionally vague.

Bank robbery under 18 USC § 2113(a), including by intimidation, categorically qualifies as a crime of violence under 18 USC § 924(c)(3)(A)'s use-of-force clause.

A conviction for attempting to commit a crime of violence or for aiding and abetting a crime of violence 18 USC § 924(c)(3)(A)

18 USC § 1951(a) if in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce by robbery or extortion or attempts or conspires so to do anything in violation of this section.

STATEMENT OF THE CASE

Armstrong pleaded guilty in the Middle District of the Eleventh Circuit on October 16, 2019. His plea confirmed charges of Hobbs Act Robbery, see 18 USC § 1951(a), three counts of Bank robbery or attempted Bank robbery, see 18 USC § 2113(a) and three counts of brandishing a firearm during and in relation to a crime of violence, see 18 USC § 924(c)(1)(A)(ii).

Armstrong was sentenced to 168 months for the robberies and three consecutive seven year sentences under 18 USC § 924(c) for brandishing a firearm in furtherance of a crime of violence. Armstrong appealed his conviction under the argument that the statute is unconstitutionally vague and that bank robbery is not a crime of violence. The appeals court upheld the district court's ruling.

REASONS FOR GRANTING THE PETITION

Under the ruling of the Supreme Courts case Davis § 924(c)(3)(A) is unconstitutionally void for vagueness because under 2113(a) bank robbery can be committed without use or attempted use of physical force.

Under 18 USC § 924(c) the question here is rather Armstrongs conduct would fit § 924(c) for all three counts. Congress clarified its intent by striking second or subsequent convictions under the subsection. 18 USC § 924(c)(1)(C)(i) stacking does not apply to same person engaging in the same conduct. Armstrongs stacked 21 years should be a single act of a seven year conviction.

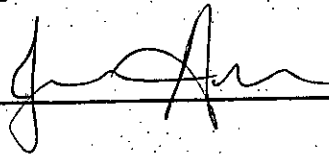
The court must now decide rather federal laws that use the categorical approach are also void for vagueness. Included are Armstrongs 18 USC § 924(c) as well as several Federal Sentencing guidelines.

Armstrong contends that his case should be held in abeyance until the final ruling in the Supreme Court of United States v/s Taylor.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 7, 2022