

No. 21-

IN THE
SUPREME COURT
OF THE UNITED STATES

SILAS LEE SNEED,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

An attempted Hobbs Act robbery does not qualify as a “crime of violence” under 18 U.S.C. § 924(c)(3)(A) because no element of the offense requires proof that a defendant used, attempted, or threatened to use force. Here, the district court held and the Third Circuit denied a certificate of appealability based on the view that an attempted Hobbs Act robbery necessarily involves the attempted use of force. Should this Court grant certiorari, vacate, and remand based on *United States v. Taylor*, No. 20-1459 (U.S. June 21, 2022)?

PARTIES TO THE PROCEEDINGS

Petitioner, the defendant-appellant below, is Silas Lee Sneed.

The Respondent, the appellee below, is the United States of America.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISION	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE PETITION	5
A. Based on the ruling in <i>Taylor</i> , this Court should grant certiorari, vacate the Third Circuit's order, and remand for further proceedings	5
CONCLUSION	8
APPENDIX	

TABLE OF AUTHORITIES

Cases

<i>Johnson v. United States</i> , 559 U.S. 133 (2010).....	5
<i>United States v. Davis</i> , 139 S. Ct. 2319 (2019).....	4, 5
<i>United States v. Taylor</i> , No. 20-1459 (U.S. 2022).....	5, 6
<i>United States v. Walker</i> , 990 F.3d 316 (3d Cir. 2021)	4, 5
<i>United States v. Williams</i> , 531 F. App’x 270 (3d Cir. 2013).....	6

Statutes

18 U.S.C. § 1951.....	3
18 U.S.C. § 924(c).....	4, 5, 6
18 U.S.C. § 924(c)(1)(A)	2, 3
18 U.S.C. § 924(c)(3)	5
18 U.S.C. § 924(c)(3)(A)	2, 6
28 U.S.C. § 1254(1)	1
28 U.S.C. § 2255.....	1, 4

PETITION FOR A WRIT OF CERTIORARI

The petitioner, Silas Lee Sneed, petitions this Court for a writ of certiorari to review the final order of the Court of Appeals for the Third Circuit.

OPINIONS BELOW

The order of the Third Circuit denying a certificate of appealability is reproduced at Petition Appendix (“Pet. App.”) 1a-2a. And the district court’s opinion denying relief under 28 U.S.C. § 2255 is reproduced at Pet. App. 3a-9a.

JURISDICTION

The court of appeals entered judgment on March 28, 2022, Pet. App. 1a. This Court has jurisdiction over this timely filed petition under 28 U.S.C. § 1254(1).

STATUTORY PROVISION

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime--

- (i) be sentenced to a term of imprisonment of not less than 5 years;
- (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
- (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

* * *

(3)(A) (3) For purposes of this subsection the term "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[.]

18 U.S.C. § 924(c)(1)(A) & (3)(A).

STATEMENT OF THE CASE

A. Factual background, charges, verdict, and sentencing

On one evening in May 2015 in Harrisburg, Pennsylvania, the Petitioner, Silas Lee Sneed, robbed one business and tried to rob two others. Pet. App. 3a-4a. As a result, in July 2015, a grand jury returned a 4-count indictment, charging him with:

- **Counts 1, 2 & 3** – he did obstruct, delay and affect and *attempt* to obstruct, delay and affect commerce by robbery and *attempted* and conspired to do so, and did commit and did take or *attempt* to take U.S. currency from an employee of [3 different businesses] against his or her will by means of actual force and threatened force, violence, and fear of injury to his or her person, that is did threaten [business] personnel with a firearm, in violation of 18 U.S.C. § 1951;
- **Count 4** – he did knowingly carry and use a firearm during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, namely robbery affecting interstate and foreign commerce, in violation of 18 U.S.C. § 924(c)(1)(A).

See Pet. App. 3a (emphasis added).

In August 2017, Mr. Sneed entered into a plea agreement with the government, agreeing to plead guilty to all counts. Pet. App. 4a. At the later change of plea hearing, counsel for the government set forth the facts that supported the charges of “robberies and *attempted* robberies.” Mr. Sneed admitted to the facts and the court accepted his plea.

Then in January 2018, the district court sentenced Mr. Sneed to serve 132 months. Pet. App. 4a. The sentence consisted of a term of 48 months on each of

Counts 1, 2 and 3 to be served concurrently and 84 months on Count 4 to be served consecutively. *Id.* Mr. Sneed did not appeal.

B. The post-conviction proceedings

In July 2019, two weeks after this Court decided *United States v. Davis*, 139 S. Ct. 2319 (2019), Mr. Sneed wrote a letter to the district court to request counsel to file a motion based on that decision. Pet. App. 4a. And in March 2020, Mr. Sneed filed a *pro se* motion to vacate his sentence under Section 2255 of Title 28 of the United States Code based on *Davis*. *Id.* In June 2020, counsel filed a supplemental motion, arguing that because his predicate offense is no longer a crime of violence, his conviction, and consecutive sentence on Count 4, for a violation of Section 924(c), violates due process and should be vacated. *Id.*

The district court disagreed. The court found that “*Davis* has no impact on Sneed’s Section 924(c) conviction and sentence.” Pet. App. 8a. The court determined that based on the Third Circuit’s recent holding in *United States v. Walker*, 990 F.3d 316 (3d Cir. 2021), Mr. “Sneed’s convictions—whether for completed or *attempted* Hobbs Act robbery—qualify categorically as crimes of violence under the elements clause.” Pet. App. 7a-8a (emphasis added).

On appeal, the Third Circuit denied a certificate of appealability based on its holding in *Walker*.

REASONS FOR GRANTING THE PETITION

A. Based on the ruling in *Taylor*, this Court should grant certiorari, vacate the Third Circuit’s order, and remand for further proceedings.

Under Section (c)(3), a “crime of violence” is defined as:

- (3) For purposes of this subsection, the term “crime of violence” means an offense that is a felony and –
 - (A) has an element the use, attempted use, or threatened use of physical force against the person or property of another, or
 - (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

The first clause is often called the elements clause. And the second is the residual clause. *See Davis*, 139 S. Ct. at 2324. In *Davis*, this Court held that the residual clause is unconstitutionally vague in violation of the Due Process Clause. *Id.* at 2336. Thus, a conviction under Section 924(c) may only stand if the predicate offense satisfies the elements clause. That is, having as an element the use, attempted use, or threatened use of physical force against the person or property of another. *See Johnson v. United States*, 559 U.S. 133, 140 (2010) (defining “physical force” to mean “violent force—that is, force capable of causing physical pain or injury to another person.”). Finally, the categorical approach applies when determining whether a predicate offense is a crime of violence. *See Davis*, 139 S. Ct. 2329.

Mr. Sneed acknowledges that the district court and the Third Circuit were bound by the decision in *Walker*, 990 F.3d at 330, and therefore, compelled to

conclude that an attempted Hobbs Act robbery qualified as a crime of violence. But in *United States v. Taylor*, No. 20-1459, this Court addressed attempted Hobbs Act robbery. To begin, the Court framed the inquiry—under the categorical approach—does “the federal felony have as an *element* the use, attempted use, or threatened use of physical force” required under Section 924(c)(3)(A). *Taylor*, slip op. at 3. For an attempted Hobbs Act robbery, the Court explained that two elements exist: 1) an intent to unlawfully take or obtain personal property by actual or threatened force; 2) and a substantial step towards that end. *See id.* at 4.

The Court observed that a substantial step involves more than mere preparation but need not be violent. *See id.* Without defining what a substantial step requires, it does not necessitate proof that a defendant used, attempted to use, or even threatened violence. *See id.* at 4-5. For example, the Court noted that when a defendant is apprehended before reaching his robbery victim and before engaging in threatening conduct, he has satisfied the elements for attempted robbery. *See id.* at 5. And the Court emphasized that the government has obtained convictions for attempted Hobbs Act robbery without proving a communicated threat. *See id.* at 11 (citing *United States v. Williams*, 531 F. App’x 270, 271-72 (3d Cir. 2013)).

In sum, “[a]ttempted Hobbs Act robbery does not require proof of any of the elements § 924(c)(3)(A) demands.” *Taylor*, slip op. at 12. And here, it is unclear whether Mr. Sneed’s Section 924(c) conviction rested on an attempted robbery. As

the Third Circuit denied a certificate of appealability because it had held that an attempted robbery satisfied the elements clause, a remand is appropriate.

CONCLUSION

For all these reasons, this Honorable Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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