

No. _____

In the
Supreme Court of the United States

TAVARAS E. WARREN,

Petitioner,

v.

UNITED STATES OF AMERICA,

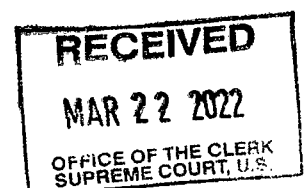
Respondent.

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

**MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI**

Tavaras E. Warren
Reg. No. 55999-039
USP Hazelton
PO Box 2000
Bruceton Mills, WV 26525

Pro Se



To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and as Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

Petitioner Tavaras Etone Warren, proceeding *pro se*, respectfully requests that the time for a petition for writ of certiorari in this matter be extended for 60 days to and including Friday, June 3, 2022.

The Court of Appeals denied Petitioner's appeal of his motion pursuant to 28 U.S.C. § 2255 on September 17, 2021. See Appendix A. Thereafter, the Court denied a timely-filed petition for rehearing *en banc* on January 3, 2022. See Appendix B.

Petitioner's petition for relief from this Court therefore would be due on Monday, April 4, 2022, absent an extension. Petitioner is filing this application at least ten days before that date.

The Court has jurisdiction over the judgment under 28 U.S.C. & 1254(1).

Petitioner was convicted in the U.S. District Court for the Eastern District of Michigan on July 1, 2019, of one count of discharging a firearm during and in relation to the commission of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A) (Count 1ss); and one count of interference with commerce by threats or violence (Hobbs Act robbery), in violation of 18 U.S.C. § 1951. He was sentenced to 20 months for Count 2ss and 120 months on Count 1ss, to be served consecutively to each other (and to be served consecutively to the sentence imposed in Case No. 4:18cr20219).

Petitioner did not appeal, but on June 18, 2020, timely filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The District Court denied the *Motion* by an *Order* on September 30, 2020. See Appendix C.

Petitioner filed a timely *Notice of Appeal*, and thereafter argued that the under the categorical approach for determining 18 U.S.C. § 924(c) liability after *United States v. Davis*, --- U.S. ---, 139 S. Ct. 2319, 204 L. Ed. 2d 757 (June 24, 2019), a court must determine whether “the minimum criminal conduct” for which a defendant can be convicted under the statute requires actual or attempted use of force, and the minimum criminal conduct for aider/abettor liability under the Hobbs Act does not require that the defendant use or attempt to use force, an issue that competent trial counsel would have raised at trial; and that *Hobbs Act* robbery is not categorically a crime of violence under the § 924(c)(3) elements clause given that a *Hobbs Act* robbery can be committed by causing fear of future injury to property; and causing fear of future injury to property fails to meet the *Johnson v. United States*, 576 U. S. ---, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015), standard that the prior offense must have involved actual or threatened violent physical force, also an issue that competent trial counsel would have raised.

The time to file a petition for a writ of certiorari should be extended for 60 days for the following reasons:

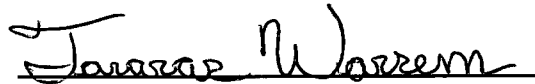
1. Petitioner is proceeding *pro se*, and the time for seeking Supreme Court review began to run just as the COVID-19 Omicron wave was reaching its peak. Petitioner was “locked down” at his facility, unable to access legal material and legal research for a period of almost 60 days. In fact, his institution – USP Hazelton – is still operating at BOP Level 3, described by the Federal Bureau of Prisons as requiring “intense” modifications to normal operations.¹
2. Second, Petitioner raises a question as to statutory interpretation that has undergone and continues to undergo substantial change since *Johnson, supra* and *Davis, supra*. This Court currently is considering a closely-related issue in *United States v. Taylor*, Case No. 20-1459, on which a decision is pending.
4. By extending the date for the petition in this case, the Court will provide a *pro se* petitioner ample opportunity to complete research, write and file a petition for writ of *certiorari* that fully and fairly presents the issues. The need for an extension is due to the pandemic instead of any failing on Petitioner’s part. Additionally, the Court and Petitioner are more likely to have the benefit of the ruling on a substantially similar issue when Petitioner's petition is presented.

¹ See https://www.bop.gov/coronavirus/covid19_modified_operations_guide.jsp (last accessed March 9, 2022).

6. An extension will not prejudice Respondent. Petitioner is currently incarcerated and will continue to serve his sentence. If Petitioner fails on the merits, Respondent will be in the same position as it is now. Any adverse impact from a delay will redound to the detriment of Petitioner and no one else.

For the foregoing reasons, the Court should extend the time to file a petition for a writ of certiorari in this appeal 60 days to and including Friday, June 3, 2022.

Executed March 15, 2022

A handwritten signature in black ink, appearing to read "Tavaras E. Warren", written over a horizontal line.

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No. 21-1145

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

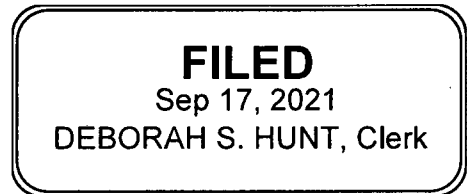
TAVARAS ETONE WARREN,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

O R D E R

Before: BUSH, Circuit Judge.

Tavaras Warren, a federal prisoner proceeding pro se, applies for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) and Rule 22(c) of the Federal Rules of Appellate Procedure for review of the district court's order denying his motion to vacate, set aside, or correct his sentence that was filed pursuant to 28 U.S.C. § 2255.

Warren pleaded guilty, pursuant to a plea agreement, to committing a Hobbs Act robbery, in violation of 18 U.S.C. § 1951, and to discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). In June 2019, the district court sentenced Warren to 20 months of imprisonment for the Hobbs Act robbery and 120 months for the firearm-discharge offense, to be served consecutively, and three years of supervised release. The sentence was also to be served consecutively to a sentence imposed in another criminal prosecution. *See United States v. Warren*, No. 4:18-cr-20269 (E.D. Mich. July 1, 2019). Warren did not appeal his convictions or his sentence.

In June 2020, Warren filed a § 2255 motion to vacate his sentence, arguing that his firearm-discharge conviction could no longer stand in light of *United States v. Davis*, 139 S. Ct. 2319 (2019), because neither a Hobbs Act robbery nor aiding and abetting a Hobbs Act robbery qualifies as a predicate "crime of violence" under § 924(c). Warren also argued that counsel performed

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ineffectively by failing to challenge the § 924(c) conviction under *Davis*. In *Davis*, the Supreme Court invalidated the “residual clause” of the definition of “crime of violence” in § 924(c) but left its “elements clause” standing. 139 S. Ct. at 2336. The district court denied Warren relief, determining that Hobbs Act robbery, under *United States v. Gooch*, 850 F.3d 285 (6th Cir. 2017), qualifies as a crime of violence under the elements clause. The district court also determined that a challenge to the qualification of Hobbs Act robbery would have been futile, so Warren did not suffer ineffective assistance of counsel for counsel’s failure to make that challenge.

Warren subsequently filed a timely motion to alter or amend judgment, which the district court denied. *See* Fed. R. Civ. P. 59(e). The court also denied Warren a certificate of appealability.

Warren filed a timely notice of appeal from the denial of his Rule 59(e) motion. A certificate of appealability may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When the district court’s denial of the § 2255 motion is based on the merits of the constitutional claims, the applicant “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Reasonable jurists would not find the district court’s assessment of Warren’s claims debatable or wrong. Although *Davis* held that the residual clause of § 924(c)(3)(B) is unconstitutionally vague, reasonable jurists could not debate the district court’s conclusion that *Davis* does not entitle Warren to relief because his conviction for Hobbs Act robbery still qualifies as a crime of violence under § 924(c)(3)(A), which was unaffected by *Davis*. *See Gooch*, 850 F.3d at 292. Warren argues at length that *Gooch* and its progeny, *see United States v. Richardson*, 948 F.3d 733, 741 (6th Cir.), *cert. denied*, 141 S. Ct. 344 (2020), are wrongly decided because Hobbs Act robbery can be committed by causing a fear of future injury to property, but he also acknowledges that this court is bound by its precedent. In any event, Congress has chosen to define “crime of violence” in § 924(c) by including offenses that have as an element threats of force against property. *See* 18 U.S.C. § 924(c)(3)(B).

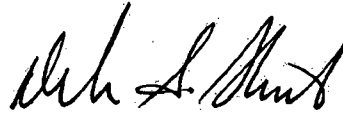
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A claim of ineffective assistance of counsel requires a demonstration that (1) the performance of counsel fell below an objective standard of “reasonableness under prevailing professional norms” and (2) “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Warren cannot meet the second *Strickland* factor because *Richardson* makes clear that *Davis* did not affect the qualification of Hobbs Act robbery or aiding and abetting a Hobbs Act robbery as a crime of violence under § 924(c). There is no reasonable probability that Warren’s firearm-discharge conviction under § 924(c) would have been overturned had counsel challenged it.

Accordingly, Warren’s application for a certificate of appealability is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

No. 21-1145

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 03, 2022
DEBORAH S. HUNT, Clerk

TAVARAS ETONE WARREN,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Before: GUY, DONALD, and MURPHY, Circuit Judges.

Tavaras Warren petitions for rehearing en banc of this court's order entered on September 17, 2021, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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In the
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TAVARAS E. WARREN,

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v.

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PROOF OF SERVICE

I, TAVARAS E. WARREN, DO SWEAR OR DECLARE THAT ON MARCH 15, 2022, AS REQUIRED BY SUPREME COURT RULE 29, I HAVE SERVED THE ENCLOSED *PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI* ON EACH PARTY TO THE ABOVE PROCEEDING OR THAT PARTY'S COUNSEL, AND ON EVERY OTHER PERSON REQUIRED TO BE SERVED, BY DEPOSITING AN ENVELOPE CONTAINING THE ABOVE DOCUMENTS IN THE UNITED STATES MAIL PROPERLY ADDRESSED TO EACH OF THEM AND WITH FIRST-CLASS POSTAGE PREPAID.

THE NAMES AND ADDRESSES OF THOSE SERVED ARE AS FOLLOWS:

CHRISTOPHER W. RAWSTHORNE.
ASSISTANT U.S. ATTORNEY
600 CHURCH STREET
FLINT, MICHIGAN 48502
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950 PENNSYLVANIA AVE., N.W.
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TELEPHONE: (202) 514-2203

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON MARCH 15, 2022.



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