

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2023

TODJI KIJUAN MARTIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

6th Circuit Case No. 22-5278

MARK E. BROWN (TN. BPR #021851)*
Attorney for the Petitioner Todji Kijuan
Martin appointed under the provisions of
the Criminal Justice Act, 18 U.S.C. §3006A
MENEFEE & BROWN, P.C.
2633 Kingston Pike, Ste. 100
Knoxville, Tennessee 37919
Phone: (865) 357-9800
Fax: (865) 357-9810
email: mbrown@menefeebrown.com

*Counsel of Record (CJA)

QUESTIONS PRESENTED

- I. Whether this Court's 2022 opinion in *United States v. Taylor*, is applicable to all attempt crimes particularly when the crime in question may be committed by a means that does not require use of force?

PARTIES TO THE PROCEEDING

Pursuant to United States Supreme Court Rule 14(1)(b), your Petitioner states that the parties to this Petition are as follows:

Petitioner: Todji Kijuan Martin

Respondent: United States of America

There are no other proceedings in either State or Federal Trial Courts, or Appellate Courts, including the United States Supreme Court, that are directly related to this case. The opinion of the United States Court of Appeals for the Sixth Circuit was only to Petitioner Todji Kijuan Martin.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS INVOLVED.....	2
STATUTORY PROVISIONS INVOLVED.....	2
SENTENCING GUIDELINES INVOLVED.....	2, 3
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT.....	5
I. THIS COURT'S DECISION IN UNITED STATES V. TAYLOR CHANGED THE ANALYSIS OF ALL "ATTEMPT CRIMES", PARTICULARLY THOSE WHERE THE SUBSTANTIVE CRIME MAY BE COMMITTED BY SOMETHING OTHER THAN THE USE OF FORCE.....	5
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	10
APPENDICES.....	11
Appendix 1 – Judgment in a Criminal Case, <i>United States of America v. Todji Kijuan Martin</i> , United States District Court for the Eastern District of Tennessee, Case No. 3:19-cr-00020-KAC-DCP(1).....	12
Appendix 2 – Opinion of the United States Court of Appeals for the Sixth Circuit, <i>United States of America v. Todji Kijuan Martin</i> , Case No. 22-5278.....	21
Appendix 3 – Order denying Petition for Rehearing with Suggestion of Rehearing En Banc, United States Court of Appeals for the Sixth Circuit, Case No. 22-5278.....	37

TABLE OF AUTHORITIES

CASES CITED:

<i>Alvarado-Linares v. United States,</i> 44 F.4 th 1334 (11 th Cir. 2022).....	6, 7
<i>United States v. Taylor,</i> 142 S.Ct. 2015 (2022).....	5, 7, 8

STATUTES CITED:

<i>Tenn. Code Ann. §39-13-210(a) (West 2008)</i>	2, 7
--	------

SENTENCING GUIDELINES CITED:

<i>U.S.S.G. §4B1.1 (West 2023)</i>	2, 3
--	------

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA
October Term 2023

TODJI KIJUAN MARTIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

The Petitioner Todji Kijuan Martin respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered in the above-styled proceeding on April 2, 2023 and an Order denying petition for rehearing with the suggestion of rehearing *en banc*, entered on May 8, 2023

OPINIONS BELOW

(1) Judgment in a Criminal Case, *United States of America v. Todji Kijuan Martin*, Case No. 3:19-cr-00020-KAC-DCP(1), United States District Court for the Eastern District of Tennessee at Knoxville, March 31, 2022 (Appendix 1).

(2) Opinion, *United States of America v. Todji Kijuan Martin*, United States Court of Appeals for the Sixth Circuit, Case No. 22-5278, April 3, 2023 (Appendix 2).

(3) Order denying Petition for Rehearing with Suggestion of Rehearing En Banc, *United States of America v. Todji Kijuan Martin*, Court of Appeals for the Sixth Circuit, Case No. 22-5278, May 8, 2023 (Appendix 3).

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Sixth Circuit was entered on April 3, 2023, affirming the Petitioner Todji Kijuan Martin's sentence of 151 months. The United States District Court for the Eastern District of Tennessee determined Martin was a Career Offender and entered its Judgment on March 31, 2022. A Petition for Rehearing with a Suggestion of Rehearing En Banc was denied by Order entered on May 8, 2023.

The United States Court of Appeals for the Sixth Circuit had jurisdiction over Martin's appeal pursuant to 28 U.S.C. §1291, which confers upon the United States Court of Appeals jurisdiction from all final decisions of the District Courts of the United States.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1), which provides that cases in the Courts of Appeals may be reviewed by the Supreme Court by Writ of Certiorari granted upon the petition of any party. Jurisdiction is also invoked by United States Supreme Court Rules 10 and 13.

CONSTITUTIONAL PROVISIONS INVOLVED

None

STATUTORY PROVISIONS INVOLVED

Tenn. Code Ann. §39-13-210 provides:

- “(a) Second degree murder is
- (1) A knowing killing of another; or
- (2) A killing of another than results from the unlawful distribution of any Schedule I or Schedule II drug when the drug is the proximate cause of the death of the user.”

SENTENCING GUIDELINES INVOLVED

U.S.S.G. §4B1.1 provides –

- (a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense

of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

STATEMENT OF THE CASE

A.

1. The United States District Court for the Eastern District of Tennessee had jurisdiction of the criminal case against Martin pursuant to 18 U.S.C. §3231, which confers on the District Courts of the United States original, exclusive jurisdiction of all offenses against the laws of the United States.

2. The United States Court of Appeals for the Sixth Circuit had jurisdiction over Martin's appeal pursuant to 28 U.S.C. §1291, which confers on Courts of Appeal jurisdiction from all final decisions of district courts.

B.

3. On January 27, 2019, the Defendant Todji Kijuan Martin ("Martin") was stopped on Interstate 75 in Tennessee. 41 packages of suspected heroin was subsequently found hidden in a police car where Martin was being held during a search of his vehicle. Martin was arrested and charged in a Criminal Complaint filed in the Eastern District of Tennessee on a single count of possession with intent to distribute heroin.

4. On February 20, 2019, Martin was indicted on seven (7) counts of possession with intent to distribute a mixture and substance containing a detectable amount of heroin, and one (1) count of conspiracy to possess with intent to distribute a mixture and substance containing a detectable amount of heroin, in violation of 21 U.S.C. §§846, 841(a)(1), 841(b)(1)(C) and 18 U.S.C. §2.

5. On July 8, 2021, Martin pled guilty to Counts one (1) through five (5) of the indictment. The remaining counts were dismissed as part of his plea agreement. Martin stipulated to selling heroin on five (5) different dates; agreed to a drug amount of between 10 – 20 grams; and retained the right to appeal any finding by the District Court that he qualified for a career offender enhancement.

6. On November 30, 2021, the probation office for the Eastern District of Tennessee filed Martin’s Pre-Sentence Investigation Report (“PSR”). Probation classified Martin as a career offender and based on his offense level and the mandatory criminal history category of VI, his guideline range was 151 – 188 months.

7. On December 14, 2021, Martin objected to the Career Offender enhancement arguing that one of his offenses was not a categorical match as a “crime of violence.” One of the offenses used by probation for the enhancement was a 2008 conviction for Attempted Second Degree Murder in Knox County, Tennessee Criminal Court case 86006 which drew a sentence of eight (8) years in the Tennessee Department of Corrections. Martin argued that this “attempt” conviction did not fit the guidelines’ “elements clause” or the “use of force clause.”

8. On March 31, 2022, Martin appeared before the District Court for sentencing. The District Court overruled Martin’s objection determining that attempted second degree murder is a crime of violence.

C.

9. Martin appealed his sentence to the United States Court of Appeals for the Sixth Circuit. Martin’s primary argument was that this Court’s recent decision in *United States v. Taylor*, 142 S.Ct. 2015 (2022) definitively established that “attempt” crimes were no longer classified as

“crimes of violence.” Martin did not make this argument before the District Court as he was sentenced on March 31, 2022 and the *Taylor* decision was not filed until June 21, 2022.

10. On April 3, 2023, the Sixth Circuit affirmed Martin’s conviction. On the *Taylor* issue, the Court held that it did not change the analysis, and the District Court properly applied the Career Offender enhancement.

11. Martin filed a timely Petition for Rehearing with Suggestion of Rehearing En Banc on April 17, 2023. The Petition was denied on May 8, 2023.

D.

12. Martin seeks Supreme Court review for the following reason:

Pursuant to United States Supreme Court Rule 10(c), the United States Court of Appeals for the Sixth Circuit has decided an important question of federal law, that has not been, but should be decided by this Court. That question being whether this Court’s opinion in *United States v. Taylor*, 142 S.Ct. 2015 (2022) applies to all attempt crimes or is limited to the crime of “Attempted Hobbs Act” robbery. The Taylor opinion does not specifically confine its reasoning to “Attempted Hobbs Act” robbery, but the Sixth Circuit Court of Appeals and the Eleventh Circuit Court of Appeals appear to have done so, have misinterpreted *Taylor*, narrowed its scope in contradiction of the opinion’s language and created a conflict that needs to be resolved by this Court as the penalties for being classified as a career offender are substantial.

REASONS FOR GRANTING THE WRIT

I. THIS COURT’S DECISION IN *UNITED STATES V. TAYLOR* CHANGED THE ANALYSIS OF ALL “ATTEMPT CRIMES”, PARTICULARLY THOSE WHERE THE SUBSTANTIVE CRIME MAY BE COMMITTED BY SOMETHING OTHER THAN THE USE OF FORCE

The question presented here is whether this Court’s 2022 opinion in *United States v. Taylor*, 142 S.Ct. 2015 (2022) is meant to apply to all attempt crimes or whether its holding is limited to

“Attempted Hobbs Act” robbery. On its face, *Taylor* appears to be a broad command applicable to all attempt crimes. The Sixth Circuit in this case and the Eleventh Circuit in a similar case disagreed and narrowed its scope by essentially saying that Taylor is limited to the crime of “Attempted Hobbs Act” robbery.

Here the Sixth Circuit found:

“Taylor does not change the outcome here. A completed Hobbs Act robbery does not require the use or attempted use of force; it can be committed by threat of force alone. So the elements clause does not encompass attempted Hobbs Act robbery: [a]lthough the elements clause covers the use of force, the attempt to use force, and the threat to use force. *Alvarado-Linares v. United States*, 44 F.4th 1334, 1346 (11th Cir. 2022). But murder does require the use of force, and because the completed crime of murder has an element the use of force, the attempt to commit murder has an element the attempted use of force. *Id.* at 1347 (distinguishing Taylor); see *United States v. Taylor*, 979 F.3d 203, 209 (4th Cir. 2020), aff’d, 142 S.Ct. 2015 (2022) (“[W]here a crime of violence requires the use of physical force...the corresponding attempt to commit that crime necessarily involves the attempted use of force”).

Martin’s only rejoinder is that Taylor’s holding extends to all attempt crimes, not just attempted Hobbs Act robbery, based on how broadly the opinion discusses the elements clause. All Taylor does is articulate how courts should conduct the elements clause analysis: the question is not whether the accused attempted to commit a crime of violence but whether the crime of conviction itself – whether completed or an attempt – is a crime of violence. See, 142 S.Ct. at 2022. Here it is. Because Martin’s attempted second degree murder conviction was for a crime of violence, his classification as a career offender was correct.”

(Appendix, p. 34).

In *Alvarado-Linares v. United States*, 44 F.4th 1334 (11th Cir. 2022), the Eleventh Circuit Court of Appeals said:

“We think Taylor is distinguishable. We read Taylor to hold that where a crime may be committed by the threatened use of force, an attempt to commit the crime – i.e., an attempt to threaten – falls outside the elements clause. But, unlike Hobbs Act robbery, a criminal cannot commit murder by threat. Instead, the completed crime of murder always requires the use of physical force because it is impossible to cause death without applying force that is capable of causing pain or physical injury. Because the completed crime of murder has

an element the use of force, the attempt to commit murder has an element the attempted use of force.”

Id. at 1346 - 1347.

The second-degree murder statute applicable at the time of Martin’s 2006 charge and 2008 conviction encompasses acts that do not by their nature require the use of force. Tenn. Code Ann. §39-13-210(a) provides:

- “(a) Second degree murder is
 - (1) A knowing killing of another; or
 - (2) A killing of another than results from the unlawful distribution of any Schedule I or Schedule II drug when the drug is the proximate cause of the death of the user.”

Tenn. Code Ann. §39-13-210(a) (2008).

The statute encompasses two different mens rea: a knowing killing or the reckless distribution of drugs. Thus the relevant question: whether the narrow reading of *Taylor* by the Sixth Circuit and Eleventh Circuit applies to attempt crimes and particularly those that by their statutory definition (like Tenn. Code Ann. §39-13-210) may be committed by something other than a use of force.

The reasoning of the Sixth and Eleventh Circuits makes sense in the case of murder, but Tennessee’s second-degree murder statute is drafted to include the reckless distribution of drugs – which can but does not require - an element of force as a basis for a conviction. Based on its disregard for the explicit language in *Taylor*, the Sixth Circuit has held that Tennessee’s attempted second degree murder statute is a crime of violence, making the attempt of second degree murder a crime of violence as well. Martin submits this goes contrary to this Court’s unambiguous statement in *Taylor*:

“The elements clause does not ask whether the defendant committed a crime of violence or attempted to commit one. It asks whether the defendant did commit a crime of violence – and it proceeds to define a crime of violence as a felony that includes as an element the use, attempted use, or threatened use of force. If Congress had wanted the elements clause

to do the kind of work the government supposes, it could have easily said so. For example, it might have swept in those federal crimes that require as an element the use or threatened use of force and those that constitute an attempt to commit an offense that has such an element. But that simply is not the law we have.”

Taylor, 142 S.Ct. at 2022.

The resolution of this question is important as the Career Offender enhancement in the Sentencing Guidelines is unforgiving in its application. An offender with a relatively low guideline range can be sentenced to well over a decade or more. In this case, Martin would have been released on time-served had the enhancement not applied. Instead, he must serve at least 12 ½ years.

Martin and others similarly situated deserve some clarity on the scope of this Court’s *Taylor* decision. As it stands now based on the Sixth Circuit opinion, Tennessee’s second-degree murder statute is a crime of violence, and any attempt to do so is likewise. It is an important question of law that candidly the Sixth Circuit Court of Appeals failed to answer. The question presented here is one Martin respectfully requests this Court consider.

CONCLUSION

This case presents an important question of federal law that requires Supreme Court review. The Defendant-Appellant Todji Kijuan Martin respectfully requests that this Court grant this Petition for Writ of Certiorari.

Respectfully submitted this 8th day of June 2023

/s/ Mark E. Brown

Mark E. Brown (Tennessee BPR #021851)
Court appointed Attorney for the Defendant-Appellant
Todji Kijuan Martin under the Criminal Justice Act,
18 U.S.C. §3006A
MENEFEE & BROWN, P.C.
2633 Kingston Pike, Ste. 100
Knoxville, Tennessee 37919
Phone: (865) 357-9800
Fax: (865) 357-9810
email: mbrown@menefeebrown.com

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June 2023, I served a true and exact copy of the foregoing document on the following: OFFICE OF THE SOLICITOR GENERAL OF THE UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, ROOM 5616, 90 PENNSYLVANIA AVENUE, N.W., WASHINGTON, D.C. 20530-0001 by placing the same in the United States Mail, first class postage pre-paid.

/s/ Mark E. Brown

Mark E. Brown

APPENDECIES

Appendix 1 – Judgment in a Criminal Case, *United States of America v. Todji Kijuan Martin*, United States District Court for the Eastern District of Tennessee, Case No. 3:19-cr-00020-KAC-DCP(1)

Appendix 2 – Opinion of the United States Court of Appeals for the Sixth Circuit, *United States of America v. Todji Kijuan Martin*, Case No. 22-5278

Appendix 3 – Order denying Petition for Rehearing with Suggestion of Rehearing En Banc, United States Court of Appeals for the Sixth Circuit, Case No. 22-5278