

23-5469

FILED
AUG 21 2023

OFFICE OF THE CLERK
SUPREME COURT U.S.

No. [REDACTED]

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

PEONTE SPENCER - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

PEONTE SPENCER

(MY NAME)

U.S.P. HAZELTON, P.O. BOX 2000

(ADDRESS)

BRUCETON MILLS, WV. 26525

(CITY, STATE, ZIP CODE)

QUESTIONS PRESENTED

1.) Whether this court's decision to deny Mr. SPENCER relief based on their conclusion that he has not made the requisite showing of demonstrating both, that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right?

2) Whether this court's decision to deny Mr. SPENCER relief based on their conclusion that he has not made the requisite showing of demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong?

LIST OF PARTIES

[X] 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 judgement is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

CASES

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U.S. v. Camp, NO. 17-1879 (6th Cir. 2018)

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18 U.S.C. § 875(c) Elanis, 135 S.Ct at 2011-12)

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U.S. v. Connor 874 F.3d 1147 (10th Cir. 2017)

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U.S. v. Taylor (4th Cir. 2021)

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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 judgement below

OPINIONS BELOW

[x] FOR CASES FROM FEDERAL COURTS:

The opinion of the United States Court of Appeals - Exh 1
to the petition and is ("Exh" means Exhibit)

[] reported at NA ("N/A" means not applicable); or,

[] has been designated for publication but is not yet reported; or

[x] is unpublished USCA No. 23-6157; USA v. People Spencer

JURISDICTION

☒ For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was MAY 26, 2023

☒ No petition for rehearing was timely filed in my case

☐ A timely petition for rehearing was filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1)

The judgement of the U.S. District Court for the Eastern district of Virginia was entered on 9/9/2019 (September 9, 2019) in case # 3:19-cr-00012-HEH. A timely Motion under 28, U.S.C. § 2255 was filed by Peonte Spencer on June 18, 2020. (Civil No. 3:20-cv-471). The United States District Court entered judgement on February 1, 2023 in case # (Civil No. 3:20-cv-471).

SPENCER Filed A Motion For A ~~WRT~~ certificate of appealability on the date of March 17, 2023, in the United States Court of Appeals for the Fourth Circuit.

The U.S. Court of Appeals For the Fourth Circuit entered judgement on May 26, 2023 in case # (~~case~~ 23-6157)

Thus the district Court had jurisdiction pursuant to 18, U.S.C. § 3231; and the court of appeals had jurisdiction pursuant to 18, U.S.C. § 1291; and whereby, this Court's jurisdiction is indeed pursuant to § 28, U.S.C § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No person should suffer adversely as a result of the application of a law or proceeding, without first enjoying notice thereof and the proper application and process of that law and proceeding, pursuant to the right, guarantee, and protection under the Fifth Amendment to the United States Constitution. (Amendment V)

STATEMENT OF THE CASE

I, PEONIE SPENCER SEEKS review in this Court from ^①the district court's application of the Hobbs Act convictions being categorically qualified as "violent offenses". ^②Also, seeking review of the district Court's application of the attached 924(c)'s that accompany the above mentioned Hobbs Act Robberies. ^③Also seeking review of Spencer's counsel's failure to object to the calculation of his sentence, which would have been a significantly lower sentence had the court properly categorized Mr. Spencer's crimes.

The U.S. district court for the Eastern district of Virginia charged me with (3) counts of Hobbs Act Robbery and subsequently attached (3) counts of 924(c)(1)(e) along with them.

As I have shown in the filed motion for certificate of appealability to the U.S. Court of Appeals for the Fourth Circuit, Several lower Courts have agreed that Hobbs Act Robbery is not a crime of violence, because Hobbs Act Robbery criminalizes conduct that extends beyond both generic Robbery and Guidelines extortion, under the enumerated offense clause. (see U.S. v. Camp, NO. 17-1879 (6th Cir. 2018), 18 U.S.C. 9875 (c) Elanis, 135 S.Ct at 2011-12.)

In U.S. v. O'Connor 874 F.3d 1147 (10th Cir. 2017) The Tenth circuit held that O'Connors prior convictions for Hobbs Act Robbery was "not a crime of violence" under the guidelines and vacated his sentence and remanded for sentencing.

The court joined four other circuits that had concluded Hobbs Act Robbery did not satisfy any of the three possible definitions. "ELEMENTS" clause - which is limited to force against another person cannot substantiate Hobbs Act Robbery because the language in Hobbs Act Robbery is overbroad, and could be committed by threats of force against property, not people. "Extortion" clause doesn't satisfy the Guidelines' narrow definition, which requires a threat or fear of "physical injury". A clear distinction from that of "property". Therefore The statute that governs what Hobbs Act Robbery is defined as is entirely too broad and vague, which violates my FIFTH Amendment rights as well as my sixth and EIGHTH Amendment rights to A FAIR and impartial trial. The eleventh circuit held because Hobbs ACT Robbery may be violated, using, attempting to use, or threatening to use force against a persons property it could not satisfy the elements clause, which requires that force be directed at a **PERSON**.

In Light of U.S. v. Taylor (4th Cir. 2021); U.S. v. Simms (2019); Johnson v. United States (2015) and Welch v. United States (2016) the courts applied retroactively to cases on collateral review that conspiracy to commit Hobbs Act Robbery, as well as Attempted Hobbs ACT Robbery are invalidated, Holding that the language therein these statutes were unconstitutionally vague.

This Court must acknowledge the necessity to right the errors that was, and is still creating a miscarriage

of justice throughout courtrooms across the United States, as it pertains to the statutes set in place long ago for Hobbs ACT Robberies. If the 18 U.S.C. Code of §1951 HAS the EXACT SAME language in Substantive Hobbs, as it does in Conspiracy and Attempted Hobbs ACT, then this Court must logically apply the same standards to the three. The law must not be divided when there is clear reason to correct such statutes.

CONCLUSION

Therefore, the U.S. Court of Appeal's decision (opinion) to dismiss this clear example of reasoning that a jury may differentiate in opinion is undeniable.

The 924(c)(1)(A)'s that are attached to those Hobbs ACT Robberies must in turn, also be vacated and remanded back to the District Court for resentencing. 924(c)'s creates a substantive offense for possessing or using a firearm during, or in the furtherance of a "CRIME OF VIOLENCE". Whereby, this Court acknowledges those Hobbs ACT Robbery offenses to be invalidated, the court must also acknowledge the accompanying 924(c)'s to be invalidated.

REASONS FOR GRANTING THE PETITION

The U.S. district Court for the Eastern district of Virginia erroneously convicted and sentenced me when I was convicted of (3) Hobbs Act Robberies as being "violent crimes", as well as (3) 924(C)'s that were attached to those robberies. My attorney failed to provide adequate assistance to me when he failed to object to the above mentioned, which engrossed my guideline sentencing factors to such a high sentence.

The U.S. Court of Appeals furthered this error by affirming the lower court's decisions, and dismissing my case in per curiam. Also denying me a Certificate of Appealability, which the Fifth Amendment guarantee's me the right to be afforded.

Therefore, I humbly pray this court grants merit to my claim and its issues.

Thank you for your time and attention in this matter

Sincerely

~~Peonte Spencer~~

PEONTE SPENCER

92928-083

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