

CASE NO. _____
SUPREME COURT OF THE UNITED STATES
October 2023 Term

RONALD D. HOUSTON,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

APPLICATION DIRECTED TO JUSTICE KAVANAUGH FOR ADDITIONAL TIME TO
FILE PETITION FOR A WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF
APPEALS

Submitted on Behalf of Petitioner

Submitted By:

Tyler Keith Morgan
Assistant Federal Public Defender
1010 Market, Suite 200
St. Louis, MO. 63101
(314) 241-1255

ATTORNEY FOR PETITIONER

To Justice Brett M. Kavanaugh:

Petitioner Ronald D. Houston, through his attorney of record, Assistant Federal Public Defender Tyler Keith Morgan, requests an additional 60 days in which to file a petition in this Court seeking certiorari to the Eighth Circuit Court of Appeals, up through February 17, 2024. Petitioner requests this extension under Supreme Court Rule 13.5.

JURISDICTION

Petitioner requests an extension to file a petition for writ of certiorari. Petitioner is preparing to request this Court's review of the judgment issued by the Eighth Circuit Court of Appeals on July 20, 2023, affirming his conviction for unlawful possession of a firearms on two occasions to which he pled guilty. The District Court calculated a Sentencing Guidelines range of 120-151 months, incorporating an enhanced base offense level of 22 by designating Petitioner's 2017 Missouri conviction for resisting arrest by force a prior "crime of violence." U.S.S.G. § having as an element "the use, attempted use, or threatened use of physical force against the person of another." Absent this designation the Guidelines range would have been 84-105 months. The District Court imposed concurrent sentences of 120 months. The District Court granted the Government's request to add the statement that it would have imposed the same sentence regardless of the Guidelines calculation.

Mr. Houston appealed to the Eighth Circuit Court of Appeals alleging that the District Court committed procedural error in designating Missouri's resisting arrest statute a "crime of violence" as defined in U.S.S.G. § 4B1.2(a)(1). Mr. Houston cited Missouri state court cases that established that the least violent form of resisting arrest consisted of an arrestee holding still as a law enforcement officer pushed him to force compliance with an order to move. Mr. Houston cited this Court's decision in *Borden v. United States*, 141 S. Ct. 1817 (2021), which held that

the identical “element of force” definition in 18 U.S.C. §924(e)(2)(B)(i) excluded crimes defined by a defendant’s conduct “that is not directed or targeted at another,” *id.* at 1833 (plurality decision), and that it “applied only to intentional acts designed to cause harm.” *Id.* at 1835 (Thomas, J., concurring). He noted that the Seventh Circuit had years earlier held that a similar Indiana law satisfied by proof that police injured their hands by striking a disobedient arrestee did not satisfy an identical “force clause” definition.

The Court of Appeals denied Mr. Houston’s timely motion for rehearing on September 20, 2023. Appendix at 3. The deadline for filing a petition for a writ of certiorari in this case is December 19, 2023. Petitioner files this request for additional time at least 10 days before the date the petition is currently due, in compliance with Supreme Court Rule 13.5.

REASONS FOR APPLICATION FOR EXTENSION

1. Petitioner believes that this case raises recurrent issues about which the Circuit Courts of Appeal are in conflict concerning the construction and application of the “force clause” in U.S.S.G. § 4B1.2(a)(1) and in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i), which the Circuits interpret interchangeably. The question has generated conflicting rulings in the circuits. The Government’s increasingly common tactic of inoculating an erroneously inflated Guidelines calculation by asking the Court to state it would impose the same sentence “regardless” of the Guidelines calculation also conflicts with this Court’s decisions establishing federal criminal sentence review for reasonableness to uphold the Congressional goal of reducing unwarranted disparities in *United States v. Booker*, 543 U.S. 220 (2005) and *Gall v. United States*, 552 U.S. 38 (2007).

2. Petitioner's Counsel is an assistant federal public defender in the Eastern District of Missouri shouldering a full case load of appointed cases requiring consultation with clients in detention facilities in remote parts of Missouri and other states. Counsel makes this request with no dilatory purpose. Counsel seeks only to ensure proper presentation of the important federal questions raised in petitioner's case while also providing effective representation in all cases to which counsel is assigned.

WHEREFORE, petitioner requests leave to file his Petition for Writ of Certiorari, up through and including February 17, 2024.

Respectfully submitted,



TYLER KEITH MORGAN
Assistant Federal Public Defender
1010 Market Street, Suite 200
St. Louis, Missouri 63101
Telephone: (314) 241-1255
Fax: (314) 421-3177
E-mail: Tyler_Morgan@fd.org

ATTORNEY FOR PETITIONER

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Appendix to Petitioner’s Motion for More Time to File Petition for a Writ of Certiorari

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1. *United States v. Ronald D. Houston*, No. 22-2663,
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2. *United States v. Ronald D. Houston*, No. 22-2663,
Order denying rehearing (8th Cir., Sept. 20, 2023) 3

United States Court of Appeals
For the Eighth Circuit

No. 22-2663

United States of America

Plaintiff - Appellee

v.

Ronald D. Houston, also known as Hassan Blue, also known as Ron Rezy, also
known as Ron Ron

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: April 10, 2023

Filed: July 20, 2023

[Unpublished]

Before GRUENDER, WOLLMAN, and STRAS, Circuit Judges.

PER CURIAM.

Ronald Houston received a 120-month prison sentence after he pleaded guilty to possessing a firearm as a felon. *See* 18 U.S.C. § 922(g)(1). Although he claims his prior conviction does not count as a “crime of violence,” U.S.S.G. § 2K2.1(a)(3),

we affirm because the district court¹ explained that it would have imposed the same sentence anyway.

The legal question that Houston wants us to address is whether the felony version of resisting arrest by force, *see* Mo. Rev. Stat. § 575.150.1, is a “crime of violence,” U.S.S.G. § 4B1.2(a). The answer does not matter, however, because any error was harmless. *See* Fed. R. Crim. P. 52(a); *see also United States v. Kemp*, 908 F.3d 1138, 1140–41 (8th Cir. 2018).

The district court made clear at sentencing that, “regardless of how” it “calculated the [G]uideline[s] range,” Houston would receive the same 120-month sentence. *See United States v. Marin*, 31 F.4th 1049, 1056 (8th Cir. 2022) (“Incorrect application of the Guidelines is harmless error where the district court specifies the resolution of a particular issue did not affect the ultimate determination of a sentence.” (citation omitted)). It also gave reasons, including the fact that Houston created a “risk of harm to others” and had resisted arrest before. *See* 18 U.S.C. § 3553(a) (explaining that the district court “shall consider . . . the nature and circumstances of the offense and the history and characteristics of the defendant”). In light of this “alternatively imposed” sentence, *United States v. White*, 863 F.3d 1016, 1020 (8th Cir. 2017) (citation omitted), we need not decide the crime-of-violence question. *See United States v. Grimes*, 888 F.3d 1012, 1017 (8th Cir. 2018).

We accordingly affirm the judgment of the district court.

¹The Honorable John A. Ross, United States District Judge for the Eastern District of Missouri.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-2663

United States of America

Appellee

v.

Ronald D. Houston, also known as Hassan Blue, also known as Ron Reezy, also known as Ron
Ron

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:21-cr-00080-JAR-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is
also denied.

September 20, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans