

No. 17-6344

IN THE SUPREME COURT OF THE UNITED STATES

JERRY N. BROWN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION TO CONSOLIDATE APPEAL
WITH UNITED STATES v. SYKES

Mr. Brown requests that this Court consolidate this appeal with *United States v. Sykes*, 16-9604. In support of this motion, Mr. Brown states the following:

This Court should consolidate this appeal with *United States v. Sykes*, 16-9604, which has a pending petition for certiorari before this Court (filed June 14, 2017). Mr. Brown and Mr. Sykes have a “related question”, *see* Rule 27.3, as it pertains to whether a Missouri burglary statute is divisible under the Armed Career Criminal Act, which will determine whether each crime is a “violent felony.”

Specifically, while the two cases analyze distinct Missouri burglary statutes (*Sykes*, the contemporary statute and *Brown*, an antiquated statute), they share a core similarity: “the Government agrees that pending en banc [*Naylor*] proceedings in the Eighth Circuit may determine whether petitioner remains eligible for an ACCA sentence.” Solicitor’s brief, pg. 8 (citing *United States Naylor*, 16-2047.) *En banc* oral argument was held by the Eighth Circuit in September 2017. The Eighth Circuit has not yet issued an *en banc* opinion.

Likewise, in *Sykes*, it is undisputed that Eighth Circuit's opinion in *Naylor* should determine whether the defendant is an ACCA offender. See Solicitor's brief, pg. 17; see also Mr. Sykes' 9/23/17 motion to defer consideration based on *Naylor*. Thus, both *Sykes* and *Brown* are awaiting the decision by the Eighth Circuit in *Naylor*, precisely because it analyzes this "related question."

Mr. Brown has argued before this Court that Mr. Brown's "burglary conviction from a 1969 Missouri statute is not a violent felony because, *like the contemporary Missouri burglary statute*, it is a fatally overbroad and indivisible statute." Brown's petition for certiorari, pg. 13-19. Mr. Brown has also analyzed why *Sykes* was wrongly decided in his Petition for Certiorari. Brown's petition for certiorari, pg. 14-18. The Solicitor General has not maintained in its response brief before this Court that there are any meaningful distinctions between the Missouri burglary statute analyzed in *Sykes*, and the antiquated burglary statute at issue in this case. Rather, again, it maintains that *Naylor* (and by implication *Sykes*) "may determine" the outcome of this case. Solicitor's brief, pg. 8.

In his reply brief, Mr. Brown states further reasons why this Court should grant this motion to consolidate (which will not needlessly be duplicated herein). This reply brief is being filed contemporaneously with this motion.

CONCLUSION

For the foregoing reasons, Mr. Brown's motion to consolidate should be granted.

Respectfully submitted,

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