
No. 17-6344

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY N. BROWN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER

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Table of Authorities

Cases

United States v. Naylor, ___ F.3d ___, 2018 WL 1630249 (Apr. 5, 2018) 1

United States v. Sykes, 844 F.3d 712 (8th Cir. 2016) 1

Statutes

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SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, Petitioner wishes to alert this Court to the Eighth Circuit Court of Appeals' recent decision in *United States v. Naylor*, ___ F.3d ___, 2018 WL 1630249, 16-2047 (April 5, 2018) (*en banc*). The *en banc Naylor* court concluded "that convictions for second-degree burglary under Mo. Rev. Stat. §569.170 (1979) do not qualify as violent felonies under the ACCA." *Id.* at *7.

The Solicitor General has stated the following in this case:

[T]he Government agrees that pending *en banc* [*Naylor*] proceedings in the Eighth Circuit may determine whether petitioner remains eligible for an ACCA sentence. If those proceedings make clear that he is no longer eligible, the government would not oppose relief. The government therefore suggests that the Court grant the petition for a writ of certiorari for the limited purpose of vacating the court of appeals' judgment and remanding for further proceedings in light of the position expressed in this brief.

Solicitor's brief, pg. 8 (filed February 12, 2018).

As highlighted in detail in Mr. Brown's petition for certiorari, his Missouri burglary conviction in question involves a different, albeit related statute, §569.170 (1969), than the one analyzed in *Naylor*. The problem with the lower court's analysis is that it relied on *United States v. Sykes*, 844 F.3d 712 (8th Cir. 2016), to conclude that 569.170 (1969) is a "violent felony." The Eighth Circuit, sitting *en banc* in *Naylor*, just overruled *Sykes*, thereby illustrating that not only is Mr. Brown entitled to a certificate of appealability on this issue, but that he also has a likelihood of success on the merits. *See* Brown's Petition for Certiorari, pg. 13-14 (outlining why "the Missouri's 1969 burglary statute is overbroad and indivisible for

similar reasons why the contemporary Missouri statute is overbroad and indivisible.”); and pg. 18-20 (“Missouri state case law highlights why the Missouri 1969 burglary statute is indivisible.”).

Mr. Brown’s substantive arguments have merit, thus his petition for certiorari should be granted.

CONCLUSION

For the foregoing reasons, including the Solicitor General’s position in this case, the petition for a writ of certiorari should be granted, the judgment vacated, and the case remanded for further proceedings before the Eighth Circuit.

Respectfully submitted,

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