

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Jay D. Lamont

(Your Name) — PETITIONER

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jay D. Lamont

(Your Name)

FCC Forrest City - Low, P.O. Box 9000

(Address)

Forrest City, Arkansas 72336

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Petitioner filed a 28 U.S.C. § 2255 Motion seeking relief from his ACCA sentence based on *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2251 (2015), believing that his prior robbery convictions no longer qualified as "violent felonies." The district court rejected this position finding the prior robbery convictions to be "violent felonies" under the ACCA's "use of force" clause. In making this finding, the district court relied solely on the findings of the PSR writer to factually determine that Petitioner's prior robbery convictions were "violent felonies" and rejected any categorical analysis. The Eighth Circuit Court of Appeals upheld the judgment of the district court denying further review.

- I. Did the district court legally err in dismissing Petitioner's § 2255 Motion by rejecting any categorical analysis which would have proven that the prior robbery convictions at issue do not categorically qualify as "violent felonies?"
- II. Did the Eighth Circuit legally err in rejecting Petitioner's motion requesting a certificate of appealability in light of the errors identified in the lower court proceedings?

LIST OF PARTIES

- ☒ 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 judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A - Judgment from the Eighth Circuit Court of Appeals

APPENDIX B - Order Denying Motion under 28 U.S.C. § 2255

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Taylor v. United States, 495 U.S. 575 (1990)	7
Shepard v. United States, 544 U.S. 13 (2005)	8
Descamps v. United States, 133 S. Ct. 2276 (2013)	8
Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2551 (2015)	4,5,6,8
Mathis v. United States, 136 S. Ct. 2243 (2016)	5,6,7,8

STATUTES AND RULES

18 U.S.C. § 922	4
18 U.S.C. § 924	4
Missouri Revised Statutes, § 569.020	4,7
Oklahoma Statutes Title 21 §§ 791, 801	4,7

OTHER

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 judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 18, 2017.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just cause.

STATUTORY PROVISIONS

Armed Career Criminal Act - See 18 U.S.C. § 924(e)

Missouri Revised Statutes § 569.020

Oklahoma Statute Title 21 §§ 791, 801

STATEMENT OF THE CASE

On May 10, 2005, an indictment was issued charging Jay D. Lamont, hereinafter Petitioner, with one count of being a felon in possession of a firearm after "having been convicted of crimes punishable by imprisonment for terms exceeding one year, and having been convicted of three violent felonies as defined by 18 U.S.C. § 924(e), committed on occasions different from one another," in violation of 18 U.S.C. § 922(g)(1) and § 924(e).

On October 6, 2005, Petitioner plead guilty pursuant to a written plea agreement. Prior to sentencing, the Presentence Investigation Report (PSR) determined that Petitioner had previously been convicted of five (5) prior violent felony convictions for robbery in the first degree in violation of Mo. Rev. Stat. § 569.020 and four (4) prior violent felony convictions of robbery with a firearm under Okla. Stat. tit. 21 § 801. Based solely on the findings contained within the PSR, Petitioner was sentenced on March 1, 2006 to the 180-month statutory minimum required by the ACCA under § 924(e).

Based on this Court's watershed ruling in *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015), Petitioner filed a 28 U.S.C. § 2255 motion seeking relief from his 180-month ACCA sentence believing that his prior robbery convictions no longer qualified as "violent felonies" post *Johnson*. The district court assigned an attorney from the Federal Defender's office to represent Petitioner. However, the AFPD ultimately determined that Petitioner was not eligible for relief under *Johnson* and the Court allowed the AFPD to withdraw.

On January 10, 2017, the district court denied Petitioner's § 2255 Motion and declined to issue a certificate of appealability. In denying relief, the district court reasoned that, "at least three of Movant's prior felonies qualify as violent felonies under the force clause of the ACCA. Because

Johnson invalidated only the residual clause definition of a "violent felony" and did not affect the force clause, Johnson cannot provide Movant relief." The disitRICT court also found that a certificate of appealability was not warranted as Movant mad no such showing of the denial of a constitutional right.

See Appendix B - Order Denying Movant's Motion Under 28 U.S.C. § 2255

Petitioner filed a motion requesting a certificate of appealability from the Eighth Circuit Court of Appeals, which denied the request and dismissed the appeal on September 18, 2017. No request for rehearing or en banc review was filed. This request for review by certiorari is therefore timely filed.

Petitioner respectfully seeks review by this Court in light of this Court's holding in Mathis v. United States, 136 S. Ct. 2243 (2016), believing that his prior robbery convictions under Missouri and Oklahoma State law do not categorically qualify as violent felonies under the ACCA's use of force clause. He asks this Court to vacate the judgment of the Eighth Circuit and remand in light of this Court's Mathis decision and also United States v. Goodwin, No. 15-1841 finding that the elements of Iowa burglary are broader than those of generic burglary and cannot give rise to an ACCA sentence. Following this categorical analysis, Petitioner here believes that the prior "violent felonies" in question, i.e., his prior robbery convictions, do not, and can never properly qualify as a categorical match to federal generic robbery. His ACCA sentence is therefore invalid and should be vacated.

REASONS FOR GRANTING THE PETITION

- I. The district court legally erred in dismissing Petitioner's § 2255 Motion without properly performing a categorical analysis of the predicate state robbery offenses under Mathis v. United States.

Petitioner is actually innocent of being sentenced as an Armed Career Criminal as the predicate offenses used to enhance his sentence under the ACCA do not categorically qualify as "violent felonies" when properly evaluated under Mathis v. United States. A correct categorical evaluation reveals that Petitioner's State of Missouri and State of Oklahoma robbery convictions are overbroad and divisible. In other words, these state robbery statutes contain elements that cover conduct that is not violent. They can also be committed by alternative means that do not correspond to the equivalent federal analogue.

In denying § 2255 relief, the district court held that Petitioner was not eligible for relief under Johnson v. United States because he was not sentenced under the residual clause of the ACCA. Rather, he was sentenced under the "use of force" clause. The district court opined that

"The listed elements make clear Robbery in the First Degree is a violent felony. A person may commit Robbery in the First Degree when a person forcibly steals property and either causes serious physical injury, is armed with a deadly weapon, uses or threatens to use what appears to be a deadly weapon or dangerous instrument."

A simple review of the above reveals that there is multiple ways by which to commit Missouri Robbery. Based on the district court's analysis (pre-Mathis), it was determined that all the elements of Missouri First Degree robbery satisfy the ACCA's "Use of force" clause. And therein lies the problem. Compared to Hobbs Act Robbery - the comparable federal analogue, Missouri First Degree robbery is a categorical mismatch. It can therefore never categorically qualify as an ACCA predicate. This Court's holding in prior cases such as Descamps and now Mathis makes this very clear.

Petitioner's prior State of Oklahoma robbery convictions do not qualify as ACCA predicates for the same reasons as why Missouri doesn't. Here's why. The district court stated:

"Similarly, under Okla. Stat. tit. § 801, a person commits the crime of robbery with a firearm when with the use of any firearms or any other dangerous weapons, whether the firearm is loaded or not, or who uses a blank or imitation firearm capable of raising in the mind of the one threatened with such device a fear that it is a real firearm, attempts to rob or robs any person or persons, or who robs or attempts to rob any place of business, residence, or banking institution or any place inhabited or attended by any person or persons at any time, either day or night..."

Oklahoma defines robbery as the "wrongful taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." Okla. Stat. tit. 21 § 791.

As with Missouri First Degree robbery, Oklahoma robbery is a categorical mismatch when compared to the federal analogue. This mismatch in the elements precludes use as an ACCA predicate. This Court's holdings in Descamps and now Mathis makes this very clear.

Simply, Petitioner is actually innocent of being an Armed Career Criminal under the ACCA. And this has existed since inception. It was the district court's failure to properly evaluate these state priors by their elements to determine a categorical match that caused the problem. The district court's sole reliance on the PSR to factually determine ACCA applicability violated Due Process. This continuation into the § 2255 proceedings resulted in a violation of Due Process for the same reason. The district court's opinion put forth when denying § 2255 relief still continues to fall short of correcting the Due Process error from inception in that no correct categorical analysis to compare these state robbery convictions to the federal analogue has never properly been performed. As Petitioner is actually innocent of his ACCA sentence due to the mismatch in elements determined by categorical analysis, no barrier should exist to deny relief. Since Taylor v. United States, and continuing through a long

line of cases such as *Shepard v. United States*, *Descamps v. United States*, *Johnson v. United States*, and now *Mathis v. United States*, this Court has repeatedly held that courts must adhere to the categorical approach when evaluating predicate offenses. Unfortunately, for years, and inspite of the long case history cited above from this Court, the district court's have not paid attention. It is still happening today. That is why relief from this Court is respectfully requested.

II. The Eighth Circuit Court of Appeals legally erred in denying Petitioner's request for a certificate of appealability in light of the errors that occurred in the district court proceedings.

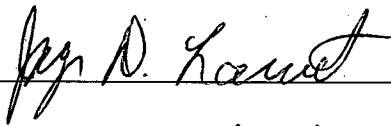
In denying § 2255 relief, the district court also declined to issue a certificate of appealability stating that the Petitioner had not made a substantial showing of the denial of a constitutional right. Petitioner filed a motion requesting a certificate of appealability to the Eighth Circuit, which denied this request without opinion. For the same reasons as to why the district court erred in denying § 2255 relief, the Eighth Circuit erred for the same reason. Simply, Petitioner was denied his Due Process rights by the district court and the Eighth Circuit when ignoring this Court's required categorical analysis concerning predicate offenses. Denial of Due Process in the § 2255 proceedings IS the denial of a clearly recognized Constitutional right. And Petitioner made a substantial showing that he was denied that right. It was therefore legal error for the Eighth Circuit to simply affirm the denial of § 2255 relief.

Petitioner therefore respectfully requests this Court to grant this request and remand to the Eighth Circuit for review in light of this Court's *Mathis* decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 12/6/2017