

No. 16-1293

IN THE
SUPREME COURT OF THE UNITED STATES

Shurron S. Roberts — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shurron Roberts
(Your Name)

P.O. Box 34550 Memphis, Tenn.
(Address)

Memphis Tenn, 38134
(City, State, Zip Code)

(Phone Number)

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:

QUESTION(S) PRESENTED

Did the District court err in holding Petitioners prior convictions are usable as crimes of violence and prior Drug convictions inlight of Mathis V. United States, 136 S.Ct 894(2016).

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Mathis V. United States, 136 S.Ct 2243,2249, 195 L.

Ed. 2d 604(2016).

United States V. Fields, 863 F. 3d 1012 (8th cir 2017).

STATUTES AND RULES

OTHER

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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 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 16-1293; 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☒ is unpublished.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 D to the petition and is

☐ reported at 4:15-cr-00115-CEJ-1; 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 July 13, 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

Sixth and Fourteenth Amendment of the United States Constitution.

Sixth Amendment Right to a Jury find all the necessary elements.

Fourteenth Amendment right of all Similary Situated individuals
treated the same.

STATEMENT OF THE CASE

On July 20, 2015 Defendant/Appellant Shurron Roberts, plead guilty to two(2) counts of an Indictment. Count I of the indictment charged a lesser included offense of Conspiracy to Possess with Intent to Distribute Heroin, in violation of 21 U.S.C. §841(b)(1)(B) and 21 U.S.C. §841(a)(1); and Count II- Felony in Possession of a Firearm, in violation of 18 U.S.C. §922(g)(1), 18 U.S.C. §924(e). On January 12, 2016, he recieved a sentence of one hundred Sixty-four months(164) months in the Bereau of Prisons followed by Four (4) years of supervised release. On appeal Counsel Filed an Anders Brief, Acting Pro-se, Petitioner filed an Brief Pursuant to Johnson V. United States, 135. S. Ct 2254 (2015) and a Motion Under 28 J letter to Supplement the Authority Stating that Mathis V. United States Makes Clear that Petitioners Prior convictions were not crimes of violence. On July 13, 2017 The Court of Appeals Filled their opinion denying petitioners appeal. Petitioner filed a rehearing inwhich the Appeals Court stated that they did not get, Petitioner filed a Avvidavit Stating that He sent a timely motion for rehearing Pursuant to FRAP Rules 35(a);(B), but the Appeals court Denied as untimely the motion to rehear petitioners appeal.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition because of the Unfair Treatment of the Court of appeals, simply because of his Pro-se status.

Petitioner in this case has a sole issue. Did the District court error in holding petitioners Prior Missouri Second degree assault a crime of violence, as well as his Missouri Drug conviction of a controlled Substance in light of this Courts Holding in Mathis V. United States, 138, S. Ct.2243 (2016). Petitioner after the District court sentenced petitioner to 164 months imprisonment appeals the case to the Eighth Circuit court of appeals. Counsel filed an anders brief upon the courts, but while petitioner appeals was pending, petitioner acting pro-se filed two Key motions to the court. (1) Petitioner argued that Johnson U. United States, 135 S. Ct 2251(2015) applied to his case, and (2) that the New Supreme Courts-holding of Mathis V. United States, 136 S.Ct 2243(June 23 2016) which was handed down just day's after petitioner was sentence applied as well. Additionally, the Eight Circuit in United States V . Fields No.16-4140 (June 20 2017) hanve held that a similiar statute was not a crime of violence. Indeed, petitioner in this case had even researched the Relevant Jury instructions controllling a Second Degree Assault Statute. In State V. Randle SC94646 (2015), there the Question of law was whether a "Basis in evidence for conviction" Randle of the lesser included offense of Third Degree assault existed. The State argued like the GOvernment did in this case, that Different mental states constitute different elements for Purposes

of determining "nested" lesser- included offenses, but the court disagreed. Randle was convicted of Second Degree assault, which required a finding that he "knowingly" caused Physical injury when he smashed the vodka bottle over Bass's head. Third-degree assault requires that Randle caused the Physical injury "recklessly". Under Missouri Revised Statutes Section 562.021.4, a finding of "Knowingly: necessarily establishes a finding of "recklessness". Thus the court stated if there was sufficient evidence for a jury to find Randle acted "knowingly" in committing Second-degree assault, then there was also necessarily a "basis in the evidence for convicting Randle of the nested charge of Third degree assault. Thus The Comment to the 1973 Proposed code made this clear rule statement "This [subsection] is useful in grading offenses (making it possible to convict for lesser included offenses) and also avoids the argument that something was not done recklessly because it was done knowingly or purposely." In the Respondents Substitute Brief page "14" it stated "it is certainly true that §562.021.4 provides a basis to convict on a "reckless" offense when the evidence proves "knowingly" and to be sure, if the trial court instructs on a included offense and the defendant is found guilty of the included offense (as expressly permitted by 556.046.1), then §562-021.4, can be relied on to uphold the conviction if the evidence tends to show that the defendant actually had a higher culpable mental state. P "3". Thus as the Eight Circuit has determined this court Uses a Denovo review to determine if an offense is a crime of violence. United States V. Harrison, 809 F. 3d 420, 425 (8th cir 2015) This

Thus to determine whether a prior conviction was for a crime of violence, courts apply the categorical approach, looking to the element of the offense as defined in the... Statute of conviction rather than to the facts underlying the defendants prior conviction. *United States V. Rice*, 813 F. 3d 704, 705 (8th cir 2016) if the Statute of conviction encompasses multiple crimes, some of which are crimes of violence and some of which are not, court apply the modified categorical approach to "look at the charging document plea colloquy, and comparable judicial records for determining which part of the statute the defendant violated". In (quoting *Dawn* 865 F. 3d at 794-95). Since Petitioner did not have the opportunity to fully argue the merits, petitioner will do so now. Like *Field*, petitioner argues that this court's decision in *United States V. Ossana*, 638 F. 3d 895 (8th cir 2011) provides the controlling answer. In *Ossana*, the court held that a conviction under Arizona assault statute was not categorically a crime of violence under the guidelines because the assault statute also criminalized reckless driving resulting in injury. *Id* at 903. Using the analogy from this court's holding in *Begay* v. *United States*, 533 U.S. 137 139 (2008), which held that a conviction for driving under the influence of alcohol was not a "violent felony" for purposes of the Armed Career Criminal Act. See also *United States V. Boose*, 739 F. 3d 1185, 1187 (8th cir 2014) (so long as... Arkansas [first degree battery] statute... encompasses reckless driving which results in injury, [a] conviction under that statute [i]s not qualifying crime of violence under the force clause of the guidelines") *Dawn*, 685 F. 3d at 795. Indeed, this case is an exact match, petitioner

was convicted in 1995 under the same statute as fields 565.060, which encompasses reckless driving. What's more is the jury instruction makes clear that Missouri assault statute as a whole cannot support a crime of violence enhancement. See The Missouri State case of State v. Jackson, 435 S.W. 3d 390, 396 (Mo, Banc 2014) where the State discussed and conceded that there was a basis for acquitting appellant for the offense of assault in the second degree. Respondants Substitute brief at 10-11. As such, appellant (Randle) requests this court to find that the state has conceded all of the foregoing and to turn to the issue of whether there was a basis for convicting appellant of the requested lesser included offense. The State's reply brief talks about 562.021 RSMO and concedes that under that statute, "proof that the defendant acted knowingly" (i.e. proof that the defendant had higher culpable mental state) will nevertheless support a conviction for a reckless crime. The state's reply brief also concedes, that: "[a]s stated in the Comment to the proposed 1973 code, this [subsection] is useful in grading offenses (making it possible to convict for lesser included offenses) and also avoids the argument that something was not done recklessly because it was done knowingly or purposely," Respondants substitute brief at 13. The States' reply brief concedes the following: "It is certainly true that §562.021.4 provides a basis to convict on a reckless offense when the evidence proves a knowingly offense. And to be sure, if the trial instructs on an included offense and the defendant is found guilty on the included offense (as expressly permitted by §566.046.1. Then 562.021.4, can be relied on to uphold the conviction. As such from these state cases, the States conceding

that under §562.021.4 RSMO, there is a basis for convicting appellant of the requested lesser included offense. The State argued and lost the same argument that The Eighth Circuit is using to uphold individual prisoners Missouri Second Degree assaults under 565.060 that different mental states constituted different elements for purposes of determining "nested" lesser included offenses, See State V. Harris, 620 S.W. 2d 349 (Mo Banc 1981), holding "in other words, all of the elements of the lesser offenses must be included in the higher. See also State V. Amsden, 299 S.W. 2d 498 (Mo. 1957). There the court stated thus If the greater of the two offenses included all the legal and factual elements of the lesser, the greater includes the lesser. Thus this makes clear that petitioners second degree assault encompasses reckless, and knowingly and recklessly and knowingly are interchangeable means of committing the Second Degree assault Statute that petitioner was convicted of. This court should grant review of the extraordinary case, as several other cases like these are sure to come.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Murron Roberts

Date: 12/28/2017