

No. 17-8876

IN THE SUPREME COURT OF THE UNITED STATES

QUINTON BANNISTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 8-16) that the lower courts erred in denying a certificate of appealability on his claim that the definition of a "crime of violence" in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague in light of Johnson v. United States, 135 S. Ct. 2551 (2015). Petitioner further contends (Pet. 16-29) that this Court should grant review to determine whether armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), conspiracy to commit bank robbery, in violation of 18 U.S.C. 371, and conspiracy to commit robbery under the Hobbs Act, in violation of 18 U.S.C. 1951(a), are "crime[s] of violence" under 18 U.S.C. 924(c)(3).

As relevant here, petitioner was convicted on three counts of using a firearm during and in relation to a "crime of violence," in violation of 18 U.S.C. 924(c)(1)(A). Judgment 1; see Superseding Indictment 4, 7, 9-10. One count identified the underlying crimes of violence as armed bank robbery, conspiracy to commit bank robbery, and conspiracy to commit Hobbs Act robbery. Superseding Indictment 4. The other counts identified the underlying crimes of violence as conspiracy to commit bank robbery and conspiracy to commit Hobbs Act robbery. Id. at 7, 9.¹

Insofar as petitioner challenges whether armed bank robbery is a crime of violence, his claim does not merit review. Section 924(c)(3) defines a "crime of violence" as a felony that either "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A), or, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 18 U.S.C. 924(c)(3)(B). For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Stephens v.

¹ The district court addressed only the Section 924(c) count that identified armed bank robbery as a predicate offense. See Pet. App. A7, A20 (report and recommendation of magistrate judge); id. at A4-A5 (district court order adopting report and recommendation of magistrate judge). Petitioner, however, challenged his convictions on all Section 924(c) counts. See D. Ct. Doc. 10, at 2, 11-13, 19-28 (Dec. 6, 2016); see also Pet. App. A26-A27.

United States, cert. denied, No. 17-5186 (Dec. 4, 2017), armed bank robbery qualifies as a “crime of violence” under 18 U.S.C. 924(c)(3)(A), because it “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” See Br. in Opp. at 6-9, Stephens, *supra* (No. 17-5186).² Every court of appeals to consider whether the federal offenses of bank robbery or armed bank robbery qualify as crimes of violence under Section 924(c)(3)(A) and similar provisions has held that they do. *Id.* at 7-9. And this Court has repeatedly denied review of that issue, *id.* at 5 & n.2, including in Stephens, *supra*, and more recent cases. See, e.g., Robinson v. United States, No. 17-7689 (June 4, 2018); Adams v. United States, No. 17-7197 (May 14, 2018); Perry v. United States, 138 S. Ct. 1439 (2018) (No. 17-6611).

Insofar as petitioner challenges whether conspiracy to commit bank robbery or conspiracy to commit Hobbs Act robbery are crimes of violence, however, his claims implicate Section 924(c)(3)(B). Several courts of appeals have classified conspiracy offenses as “crime[s] of violence” under Section 924(c)(3)(B). See, e.g., United States v. Eshetu, 863 F.3d 946, 955-956 (D.C. Cir. 2017) (Hobbs Act conspiracy) (citing cases).

² We have served petitioner with a copy of the government’s brief in opposition in Stephens.

In Sessions v. Dimaya, 138 S. Ct. 1204 (2018), this Court held that the definition of a “crime of violence” in 18 U.S.C. 16(b), which contains language that is nearly identical to that in Section 924(c)(3)(B), is unconstitutionally vague. 138 S. Ct. at 1223. Accordingly, the appropriate course in light of Dimaya is to grant the petition for a writ of certiorari, vacate the court of appeals’ judgment, and remand for further consideration of petitioner’s challenge to his convictions under Section 924(c) for use of a firearm during and in relation to conspiracies to commit bank robbery and Hobbs Act robbery.³

Respectfully submitted.

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³ The government waives any further response to the petition unless this Court requests otherwise.