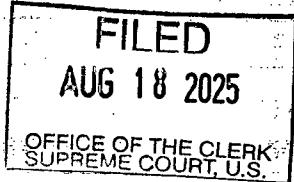


25-5781

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Michael Cobbs — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Michael W. Cobbs
(Your Name)

P.O. Box 5000
(Address)

Yazoo City, Ms. 39194
(City, State, Zip Code)

(Phone Number)

App. A-1

QUESTIONS PRESENTED

- 1.) Whether the Seventh Circuit erred in holding that Petitioner's conviction under 18 U.S.C. § 924 (c) remains valid despite the court's decision in *United States v. Taylor* 596 U.S. 845 (2022), which held that attempted Hobbs Act robbery does not qualify as a "crime of violence".
(See Appendix B)
- 2.) Whether the Seventh Circuit improperly applied procedural default to bar Petitioner's claim despite a showing of actual innocence, in conflict with *Bousley v. United States*, 523 U.S. 614 (1998). (See Appendix C)
- 3.) Whether Justice Jackson's opinion in *Hewitt v. United States* No. 23-1002, applies here where retroactivity is concerned?
- 4.) Whether the indictment failed to give notice of the offense?
- 5.) Whether a defendant can be punished/imprisoned for a crime or count the Grand Jury did not return?
- 6.) Whether an indictment has to be clear and concise?
- 7.) Whether counsel was ineffective for failing to object to the court and prosecutions ambiguity?
- 8.) Whether the indictment's ambiguity and the courtroom confusion prejudiced Petitioner and produced a miscarriage of justice?

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:

United States District Court
Central District of Illinois
Springfield Division

United States Court of Appeals
for the Seventh Circuit

RELATED CASES

None

TABLE OF CONTENTS

| | |
|---|---|
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... | |
| STATEMENT OF THE CASE | |
| REASONS FOR GRANTING THE WRIT | |
| CONCLUSION..... | |

INDEX TO APPENDICES

APPENDIX A-1 Questions Presented & Statement of Case
A-2 Reason for Granting Writ

APPENDIX B-United States Court of Appeal Denial

APPENDIX C-United States District Court Denial

APPENDIX D - Indictment

APPENDIX E - Plea hearing

APPENDIX F - Sentencing Transcript

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

| | |
|---|------------------|
| <u>United States v. Taylor</u> 596 U.S. 845 (2022) | P.1 Appendix A-1 |
| <u>United States v. Bousley</u> 523 U.S. 614 (1998) | P.1 Appendix A-1 |
| <u>Hewitt v. United States</u> No. 23-1002 | P.1 Appendix A-1 |
| <u>Stone v. United States</u> , 361 U.S. 212 (1996) | P.4 App. A-2 |
| <u>United States v. Debow</u> (346 U.S. 374) (1953) | P.1 App. A-2 |
| <u>Rossell v. United States</u> 369 U.S. 749 (1962) | P.2 App. A-2 |

STATUTES AND RULES

18 U.S.C. § 924(c)

28 U.S.C. § 2255

Rule 7 (c) Standard

18 U.S.C. § 1951

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 8 to the petition and is

reported at June 26, 2025; 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 C to the petition and is

reported at 08/10/23; 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 June 26, 2025.

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

The Fifth Amendment P.2 Appendix A-2 = Reason for Granting
18 U.S.C. § 924 (c) P.1 Appendix A-2 = Reason for Granting
28 U.S.C. § 2255 P.1 Appendix A-2 = Reason for Granting
18 U.S.C. § 1951 P.3 Appendix A-2 = Reason for Granting

AppA1

STATEMENT OF THE CASE

Petitioner Michael W. Cobbs was charged by a Grand Jury with Attempted Hobbs Act Robbery as count one of his indictment and Possession of a firearm in furthrance of Robbery, (See Appendix A- D).

Following this court;s decision in United States v. taylor No. 596 U.S. 845 (2022). Petitioner filed a timely motion under 28 U.S.C. § 2255, arguing that his § 924 (c) conviction was invalid because Attempted Hobbs Act Robbery is not a crime of violence. The district court denied relief finding Petitioner's plea colloquy established the elements of a completed Hobbs Act Robbery. (See Appendix A-). The Seventh Circuit affirmed on June 26, 2025, holding that Petitioner failed to demonstrate actual innocence of a completed Hobbs Act Robbery and that procedural default barred review. (See Appendix A- B)

App A-2 ~

REASON FOR GRANTING THE WRIT

This case presents unresolved and nationally significant questions following United States v. Taylor 596 U.S. 845 (2022) and the allowance of ambiguity in a indictment.

The Supreme Court has repeatedly held that an indictment must identify the offense with sufficient clarity so the accused can understand the charge and so that the record shows whether the accused was convicted of charges fairly within the indictments scope, United States v. Debrow 346 U.S. 374 (1953) (Rule 7 (c) standard), (Indictment must be plain, concise and definite); The court described that failure to do so undermines due process. Federal courts remain divided on whether convictions under 18 U.S.C. § 924 (c) are valid when plea colloquies are ambiguous as to whether the offense was an attempt or a completed robbery. Here the prosecution charges "Attempted Hobbs Act Robbery" in the indictment, (See Appendix A-D). During the change of plea hearing, (See Appendix A-E), The prosecution refers to count 1 as "obstructing or attempting to obstruct commerce by robbery", (P.11, L. 24).

The magistrate (on P.13, L. 21) refers to count one as "Hobbs Act Robbery", and (on P. 22, L. 15) the Magistrate uses the word "attempt". Then again (on P. 23, l 21 -22) he uses "Hobbs Act violation". In the presentence report (of which I am not allowed to have in my possession) refer to count one as "Attempt Hobbs Act". In fact in the petitioners district court's 28 U.S.C. § 2255 denial the judge admits the presentence report refers to count one as "Attempted Hobbs Act Robbery", the plea hearing and judgement also refers to count one as "Attempt", See Appendix A-F. If that is not enough the same district judge referred to count one

in the sentencing hearing as "Hobbs Act Robbery" (P. 4, L. 10) and again the judge refers to count one as "Hobbs Act Robbery".

The indictment (and subsequent proceedings) failed to clearly and sufficiently allege the precise offense conduct for which Petitioner was convicted in particular, whether the government charged a completed Hobbs Act Robbery, Attempted Hobbs Act Robbery or some other offense. At various stages, the courts (magistrate and district judge) and the record reflect confusion about conduct actually charged.

The Fifth Amendment to the United States Constitution unequivocally mandates that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury". This requirement is not a mere formality; it is a substantive protection ensuring that an accused is informed of the exact nature and cause of the accusation against them, so that they may adequately prepare a defense and avoid double jeopardy.

When an indictment is unclear, due process is violated. The Supreme Court has repeatedly recognized that a defendant cannot knowingly plead guilty to an offense they do not fully understand, nor to an offense that was never properly alleged by the grand jury, *Russell v. United States*, 369 U.S. 749 (1962), make clear "the accused must be apprised by the indictment, with reasonable certainty, of the nature of the accusation".

Here, the confusion extended beyond Petitioner and counsel (defense), the magistrate judge and district judge both operated under the same lack of clarity, as evidenced in the record. If the court officials themselves could not consistently articulate the charge, how could petitioner (defense)

possibly provide an informed plea? The indictment and government's failure to clearly state or correct whether petitioner was charged with "Attempt" or a completed Hobbs Act Robbery is fatal under the Constitution.

Defense counsel (Elisabeth R. Pollock) believe she was arguing Attempt by this statement (see Appendix ~~A~~^F) "He sat in a garbage can 300 yards from the restaurant and waited for the police to show up to kill him, which is what he thought would happen." P.33 L.3-9

Here the district judge admits on record that petitioner was charged, convicted, and sentenced to Attempted Hobbs Act Robbery. The prosecution altered the nature of offense post-indictment without returning to the grand jury for a superseding indictment.

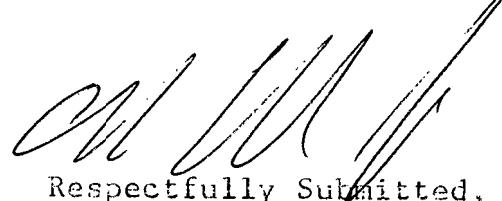
The Hobbs Act (18 U.S.C. § 1951) requires proof of certain elements (affecting interstate commerce and either robbery/extortion or attempt/conspiracy to do so); whether the government charged and proved an attempted or completed robbery affects the elements the defendant must be able to meet. the statue separately proscribes attempts and completed offenses.

The law is clear that a defendant may not be convicted (nor have his liberty extinguished by an involuntary or uninformed plea) on a theory that was not presented to the grand jury. A constructive amendment or fatal variance occurs when the charging terms are altered in substance an error that destroys the defendant's substantial right to be tried only on charges presented by a grand jury. Where, as here, the Attempted Hobbs Act theory was later overturned and the proceeding thereafter blurred or shifted theory of liability without a clear grand jury charge, Petitioner is to be held on a ground not alleged in the

App A-2

robbery, but attempt. Yet the Seventh Circuit dismissed his claim, relying on ambiguous plea with colloquy language to characterize the offense as a completed robbery. In so doing, the Seventh Circuit ignored this court's instruction that the categorical approach governs whether an offense qualifies as a "crime of violence". This Court's review is necessary because the Seventh Circuit's approach permits lower courts to evade Taylor by construing ambiguous plea colloquy statements as completed offenses. That approach conflicts with Taylor and threatens to create non-uniform application of § 924 (c) across the circuits. Moreover, by imposing a procedural bar despite a credible claim of actual innocence, the Seventh Circuit's decision also conflicts with *Bousley v. United States*, 523 U.S. 614 (1998). Only this court can resolve this conflict.

For the foregoing reasons, Petitioner respectfully requests that this court grant the petition for a Writ of Certiorari and review the judgement of the United States Court of Appeals for the Seventh Circuit. (See Appendix A - B)



Respectfully Submitted,

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DATED: 9-18-25