

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

United States v. Baker

No. 20-3062, United States Court of Appeals for the Tenth Circuit (September 26, 2022)

SUMMARY

The Tenth Circuit held that its prior decision in *United States v. Melgar-Cabrera*—which categorically held that Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c)(3)(A)'s elements clause—remains binding precedent and is not undermined by arguments that Hobbs Act robbery can be committed by threatening injury to intangible property. The court denied the defendant's request to expand the certificate of appealability to challenge that holding. Following *United States v. Taylor*, 142 S. Ct. 2015 (2022), which held that attempted Hobbs Act robbery is not a crime of violence, the court remanded for the district court to determine whether the defendant may amend his § 2255 motion to raise a *Taylor*-based challenge to his Count 11 conviction predicated on attempted Hobbs Act robbery.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Holmes; Hartz; Eid
JURISDICTION	Federal
DECIDED	September 26, 2022
DOCKET	20-3062
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's denial of a second or successive motion under 28 U.S.C. § 2255.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Abasi S. Baker v. United States of America

TOPICS

- criminal procedure
- habeas corpus
- sentencing
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. In light of the contention that Hobbs Act robbery can be accomplished by threatening injury to intangible property, was *United States v. Melgar-Cabrera*, 892 F.3d 1053 (10th Cir. 2018), wrongly decided because Hobbs Act robbery would not qualify as a crime of violence either categorically under § 924(c)(3)(A) or under § 924(c)(3)(B) after *United States v. Davis*?
2. Whether the court should expand the COA to consider whether Hobbs Act robbery is not a crime of violence because it can be committed by a threat to any property.
3. Whether *Taylor v. United States* affects Baker's Count 11 conviction for attempted Hobbs Act robbery.

HOLDINGS

1. *Melgar-Cabrera* is controlling and Hobbs Act robbery is categorically a crime of violence under § 924(c)(3)(A). The fact that *Melgar-Cabrera* did not specifically address threats to intangible property is irrelevant; the holding is categorical and binding.
2. The request to expand the COA is denied because the issue is not reasonably debatable under *Melgar-Cabrera*.
3. The *Taylor* issue was not preserved in this appeal because Baker did not raise a separate argument for attempted Hobbs Act robbery before *Taylor*, and the COA did not cover that issue. The court remands for the district court to consider whether amendment is appropriate.

KEY QUOTATIONS

“We conclude that Melgar-Cabrera is controlling here—both as to the original issue regarding which we granted a COA, and as to the question Mr. Baker presents in his expansion request.” (14)

“we concluded that every act—including the least of the acts—criminalized by Hobbs Act robbery constitutes a crime a violence.” (15)

“unless and until the holding of a prior decision is overruled by the Supreme Court or by the en banc court, that holding is the law of this Circuit regardless of what might have happened had other arguments been made to the panel that decided the issue first.” (18)

“Bowen did not abrogate or restrict Melgar-Cabrera's holding, and Mr. Baker's reliance on Bowen is unavailing.” (19)

“Taylor does not implicate our holding in Melgar-Cabrera, which expressly addressed completed Hobbs Act robbery.” (22)

FACTUAL BACKGROUND

Baker was convicted of a series of armed robberies in the Kansas City, Kansas area in early 2011. He was charged with seven counts of Hobbs Act robbery, seven counts of using a firearm during a crime of violence (the Hobbs Act robberies), and seven counts of being a felon in possession. He was convicted on all counts and

sentenced to 164 years. His direct appeal was affirmed. He filed an initial § 2255 motion in 2014 which was denied. In 2016, he sought authorization to file a second or successive § 2255 motion based on the invalidity of § 924(c)(3)(B). After Davis, the Tenth Circuit authorized the motion. The district court denied it, citing Melgar-Cabrera.

PROCEDURAL HISTORY

Baker was convicted of multiple counts including Hobbs Act robbery and § 924(c) counts. He filed a second or successive § 2255 motion after *United States v. Davis*, which the district court denied. He appealed, and the Tenth Circuit granted a COA on the issue of whether Melgar-Cabrera was wrongly decided in light of Davis and threats to intangible property.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remand to the district court to determine whether it is legally permissible and otherwise appropriate to allow Mr. Baker to amend his § 2255 motion to advance a Taylor-like argument, including issues of timeliness and relation back under Rule 15(c)(1)(B).

CASES CITED

- *United States v. Davis*, 139 S. Ct. 2319 (2019)
- *United States v. Melgar-Cabrera*, 892 F.3d 1053 (10th Cir. 2018)
- *United States v. Taylor*, 142 S. Ct. 2015 (2022)
- *United States v. Bowen*, 936 F.3d 1091 (10th Cir. 2019)
- *United States v. O'Connor*, 874 F.3d 1147 (10th Cir. 2017)
- *United States v. Jefferson* (Jefferson I), 911 F.3d 1290 (10th Cir. 2018)
- *United States v. Jefferson* (Jefferson II), 989 F.3d 1173 (10th Cir. 2021)
- *Buck v. Davis*, 137 S. Ct. 759 (2017)
- *Moncrieffe v. Holder*, 569 U.S. 184 (2013)
- *United States v. Muskett*, 970 F.3d 1233 (10th Cir. 2020)
- *United States v. Mathis*, 932 F.3d 242 (4th Cir. 2019)
- *United States v. Hopkins*, 2022 WL 2610345 (10th Cir. July 8, 2022) (unpublished)