

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 4, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC KAMAHELE,

Defendant - Appellant.

No. 17-4154
(D.C. Nos. 2:15-CV-00506-TC &
2:08-CR-00758-TC-1)
(D. Utah)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **LUCERO**, Senior Circuit Judge, and **McHUGH**,
Circuit Judge.

This matter is before us on remand from the United States Supreme Court. In his original briefing, petitioner Eric Kamahale requested a certificate of appealability (“COA”) on whether Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c). This court previously considered petitioner’s request for grant of a COA on this issue. The request was not granted. United States v. Toki (Toki II), 23 F.4th 1277, 1280 (10th Cir. 2022) cert. granted, vacated sub nom. Kamahale v. United States, 143 S. Ct. 556 (2023); United States v. Toki, (Toki I), 822 F. App’x 848, 853

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

(10th Cir. 2020), cert. granted, vacated sub nom. *Kamahele v. United States*, 142 S. Ct. 58 (2021). This court was asked by the Court to consider the matter further “in light of *United States v. Taylor*.” *Kamahele*, 143 S. Ct. 556 (2023). *Taylor* distinguished attempted Hobbs Act robbery from completed Hobbs Act robbery for the purposes of § 924(c). 142 S. Ct. 2015, 2020 (2022) (“Whatever one might say about completed Hobbs Act robbery, attempted Hobbs Act robbery does not satisfy the elements clause [of § 924(c)].”).

Petitioner was convicted of attempted Hobbs Act robbery, and his original application before us requesting a COA made no distinction between attempted and completed Hobbs Act robbery. In declining to rule on whether completed Hobbs Act robbery was a crime of violence, the Court nonetheless held that attempted Hobbs Act robbery was surely not a crime of violence. Given that petitioner has yet to apply for grant of a COA on whether attempted Hobbs Act robbery is a crime of violence, and given that the Court wants us to reconsider the matter, we decide that this case should appropriately be remanded to the district court for consideration of whether petitioner should now be allowed to amend his § 2255 motion to squarely present the issue to the district court under the further authority of *United States v. Taylor*. If the district court allows petitioner to amend his § 2255 motion, we leave it to the trial court to consider what *Taylor* means for petitioner and his § 924(c) sentence predicated on attempted Hobbs Act robbery.

We **REMAND** this case to allow the district court to determine whether it is appropriate to permit Mr. Kamahale to amend his § 2255 motion in light of United States v. Taylor, 596 U.S. ___, 142 S. Ct. 2015 (2022).¹

Entered for the Court

Carlos F. Lucero
Senior Circuit Judge

¹ In its order on remand, the Supreme Court vacated our judgment in Toki II, in full. Given that Taylor solely concerns petitioner's attempted Hobbs Act robbery conviction, the remaining aspects of our previous opinion unaffected by Taylor and this remand are reinstated.