United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 25, 2020
Decided July 27, 2020

Before

DIANE S. SYKES, *Chief Judge*

WILLIAM J. BAUER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 20-2114

ROBERT SUTTON,
Applicant,

v.

UNITED STATES OF AMERICA,
Respondent.

On Motion for an Order Authorizing the District Court to Entertain a Second or Successive Motion for Collateral Review.

O R D E R

For the fifth time, Robert Sutton applies under 28 U.S.C. §§ 2244(b) and 2255(h) for authorization to file a successive collateral attack. We deny that request and, in keeping with our prior warning, we impose a sanction for Sutton's repetitive litigation.

A federal jury found Sutton guilty of bank robbery, 18 U.S.C. § 2113(a), two counts of Hobbs Act robbery, *id.* § 1951, and three counts of using a gun during a crime of violence (i.e., during the robberies), *id.* § 924(c)(1). In addition to these substantive counts, the jury convicted him of conspiracy to commit robbery. For these crimes, he was sentenced to 52 years and 3 months in prison. On direct appeal, we affirmed. *United States v. Sutton*, 337 F.3d 792 (7th Cir. 2003).

Sutton then moved under § 2255 to vacate his sentence, but the district court denied the motion, and we denied a certificate of appealability. No. 05-3313 (7th Cir. Jan. 10, 2006). Next came two attempted collateral attacks that the district court dismissed as successive; we denied a certificate of appealability as to the first dismissal, and Sutton did not appeal the second. No. 3:01-cr-00032-bbc-3 (W.D. Wis. Mar. 8, 2013); No. 13-1705 (7th Cir. Oct. 3, 2013); No. 3:14-cv-00460-bbc (W.D. Wis. July 2, 2014). Sutton later submitted his first application for leave to file a new collateral attack on grounds not relevant here. We denied that request. No. 15-1529 (7th Cir. Mar. 19, 2015).

Then, in a second application, Sutton proposed to challenge his § 924(c) convictions on the ground that § 924(c)(3)(B)'s definition of a "crime of violence," which focuses on the risk that force will be used in committing the crime, is unconstitutionally vague. Again we denied authorization. We explained that, regardless of any problem with subsection (c)(3)(B), Hobbs Act robbery and bank robbery still count as predicate offenses under § 924(c)(3)(A)'s elements clause, which defines a crime of violence as a felony that "has as an element the use, attempted use, or threatened use of physical force." No. 16-2459 (7th Cir. July 13, 2016) (quoting the elements clause).

Still, Sutton followed up with another § 2244(b) application pressing the same claim. We denied it. No. 17-2310 (7th Cir. July 11, 2017). Then came a fourth application, which we likewise denied. No. 19-1752 (7th Cir. May 10, 2019).

That takes us to today's application, which (again) contends that Sutton's robberies were not valid predicate crimes for the § 924(c) count. In support he cites *United States v. Davis*, 139 S. Ct. 2319 (2019), which confirms what we had assumed in resolving his prior applications: that the risk-based definition of a crime of violence in § 924(c)(3)(B) is unlawfully vague. Yet, for the reasons we gave in denying Sutton's second, third, and fourth applications, his robberies count as crimes of violence under subsection (c)(3)(A).

To be sure, Sutton now questions our understanding that bank robbery and Hobbs Act robbery are crimes distinct from conspiracy to commit bank robbery and conspiracy to commit Hobbs Act robbery. And, he says, conspiracies might not count as crimes of violence. So, in his view, all our precedents recognizing these types of robbery as crimes of violence would be wrong. We see no plausible reason to think so.

We therefore **DENY** authorization and **DISMISS** Sutton's application. And, in keeping with our prior warnings, we impose the following **SANCTION**:

Sutton is fined $500. Until he pays that sum in full to the clerk of this court, any collateral attack on his convictions from 2001 or sentences from 2002 that he submits to any federal court of this circuit will be returned unfiled. Any applications for leave to file successive collateral attacks on these convictions or sentences will be deemed denied 30 days after filing unless the court orders otherwise. *See Alexander v. United States*, 121 F.3d 312 (7th Cir. 1997).