

Serrano-Delgado v. United States

United States District Court for the District of Puerto Rico

May 15, 2026, Decided; May 15, 2026, Filed

Civil No. 23-1479 (FAB); Criminal No. 17-533 (FAB)

Reporter

2026 U.S. Dist. LEXIS 108494 *; 2026 LX 279296

CRISTIAN SERRANO-DELGADO, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.

Counsel: [*1] For USA, Plaintiff (3:17-cr-00533): Alexander L. Alum - INACTIVE, LEAD ATTORNEY, United States Attorneys Office, San Juan, PR.

Cristian Serrano-Delgado, Petitioner (3:23-cv-01479), Pro se, POLLOCK, LA.

For USA, Respondent (3:23-cv-01479): Mariana E. Bauza - INACTIVE, LEAD ATTORNEY, Lrm: Cristzayda Matos, Torre Chardon, San Juan, PR.

Judges: FRANCISCO A. BESOSA, SENIOR UNITED STATES DISTRICT JUDGE.

Opinion by: FRANCISCO A. BESOSA

Opinion

OPINION AND ORDER

BESOSA, Senior District Judge.

Before the Court is plaintiff Cristian Serrano-Delgado ("Serrano")'s motion to vacate, set aside, or correct his sentence. (Docket No. 1.) For the following reasons, Serrano's motion is **GRANTED IN PART** and **DENIED IN PART**.

I. Background¹

On September 11, 2017, Serrano drove two men (Jonathan Valentín-Santiago and Rubén Miró-Cruz) to and from Herol Café - a bar and restaurant in Ponce, Puerto Rico — to commit a robbery, during which Valentín killed an off-duty police officer. Serrano, Valentín, and Miró were charged with conspiracy to commit a robbery affecting interstate commerce in violation of [18 U.S.C. § 1951\(a\)](#) ("Hobbs Act") (count one); committing the Herol Café robbery in violation of [18 U.S.C. § 1951\(a\)](#) (count two); discharging a firearm during and in relation to crimes of [*2] violence resulting in death in violation of [18 U.S.C. § 924\(c\)\(1\)\(A\)\(iii\)](#) and § 924(j) (count three); and discharging a firearm during and in relation to a crime of violence in violation of [18 U.S.C. § 924\(c\)\(1\)\(A\)\(iii\)](#) (count four). (Docket No. 101.)

Valentín and Miró each pleaded guilty to a reduced version of the charges; Serrano chose to go to trial. After a 7-day trial, a jury convicted Serrano on all counts. (Docket No. 206.) On January 31, 2019, Serrano moved for a judgment of acquittal pursuant to Rule 29. (Docket No. 229.) The Court denied the motion. (Docket No. 255.)

¹ The facts are taken from the record of *United States v. Serrano-Delgado*, 375 F. Supp. 3d 157 (D.P.R. 2019) (Besosa, J.) and from *United States v. Serrano-Delgado*, 29 F.4th 16 (1st Cir. 2022).

Serrano was sentenced to two hundred forty months on counts one, two, and three, to be served concurrently with each other, and one hundred twenty months on count four to be served consecutively to counts one, two and three, for a total of three hundred and sixty months of imprisonment. (Criminal Case Docket No. 271.)

Serrano appealed the judgment. (Docket No. 276.) Relevant to the case *sub judice*, he argued (1) that his section 924(c) and 924(j) convictions were unlawful because they are not predicated on crimes of violence, and (2) that the district court erred in denying his objection to the Pinkerton² jury instruction. See United States v. Serrano-Delgado, 29 F.4th 16 (1st Cir. 2022). The First Circuit Court of Appeals rejected Serrano's arguments and affirmed [*3] his sentence in all respects.³ Id.

Serrano now challenges his sentence pursuant to 28 U.S.C. § 2255. (Docket No. 1.) He argues that his trial attorney and appellate attorney provided ineffective assistance of counsel in violation of his rights under the Sixth Amendment of the United States Constitution. Specifically, he argues (1) that his trial attorney failed to object to the form of the Pinkerton jury instruction, and (2) that his appellate attorney failed to argue that the form of the Pinkerton jury instruction was plain error. Serrano also argues that his section 924(c) and section 924(j) convictions are unlawful because they violate United States v. Taylor, 596 U.S. 845 (2022), where the Supreme Court held that an attempted Hobbs Act robbery is not a crime of violence for purposes of a section 924(c) and section 924(j) conviction. The government responded to Serrano's motion. (Docket No. 12.) Serrano replied. (Docket No. 18.)

II. Legal Standard

A federal prisoner may move to vacate, set aside, or correct his or her sentence if "the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack[.]" 28 U.S.C. § 2255(a). "In seeking to collaterally attack a conviction, the burden is [*4] on the petitioner to show entitlement to relief[.]" United States v. Lara, No. 1:23-cr-10121-IT, 2026 U.S. Dist. LEXIS 3233, at *5 (D. Mass. Jan. 8, 2026) (citing David v. United States, 134 F.3d 470, 474 (1st Cir. 1998)). This burden includes showing "any entitlement to an evidentiary hearing." Id. (citing Cody v. United States, 249 F.3d 47, 54 (1st Cir. 2001)); see 28 U.S.C. § 2255(b) (court shall "grant a prompt hearing" on the petitioner's *habeas corpus* motion "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief[.]")

Criminal defendants have the right, pursuant to the Sixth Amendment of the United States Constitution, "to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685 (1984). "[T]he right to counsel is the right to the effective assistance of counsel." Id. To make a claim of ineffective assistance of counsel, the petitioner must make two showings. First, the petitioner must show that "counsel's performance fell below an objective standard of reasonableness." Lara, 2026 U.S. Dist. LEXIS 3233, at *6 (citing Strickland, 466 U.S. at 690). "The court should be 'highly deferential' in scrutinizing counsel's performance and 'indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.'" Id. at *6-7 (citing Strickland, 466 U.S. at 689). Second, "any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance [*5] under the Constitution." Strickland, 466 U.S. at 692. "The [petitioner] must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

² Pinkerton v. United States, 328 U.S. 640 (1946).

³ The court of appeals' reasoning will be discussed below.

III. Discussion

A. Ineffective Assistance of Counsel

Serrano argues that his trial attorney was ineffective because he failed to object to the form of the [Pinkerton](#) jury instruction. (Docket No. 1-1 at pp. 14-15.) He also states that his appellate attorney was ineffective because he failed to raise and argue that the [Pinkerton](#) jury instruction constituted plain error. *Id.*

1. Trial Attorney

Serrano argues that the attorney's failure to object to the form of the [Pinkerton](#) jury instruction deprived him "of a meaningful opportunity to have legal errors corrected by the First Circuit [Court of Appeals]" and "the right to a fair and effective appeal." (Docket No. 1-1 at p. 15.) The government argues that he was not deprived of meaningful review because the Court of Appeals did review and reject his challenges to the [Pinkerton](#) instruction. (Docket No. 12 at pp. 13-15.) The Court agrees that Serrano was not deprived of a meaningful opportunity [*6] to have legal errors corrected by the court of appeals.

[Pinkerton](#) liability allows a defendant to be held liable for the substantive crimes committed by his coconspirators in certain circumstances. In order to be held liable, (1) a defendant needs to have been part of a conspiracy, (2) the offense committed by coconspirator was within scope of the unlawful project, (3) the offense was committed in furtherance of the conspiracy, and (4) the defendant could have reasonably foreseen the offense as a necessary or natural consequence of the unlawful agreement. [Pinkerton, 328 U.S. at 646-48.](#)

In the First Circuit Court of Appeals' opinion, it stated that "[t]he instruction given by the district court largely track[ed] the circuit's model [Pinkerton](#) instruction." *Serrano-Delgado, 29 F.4th at 27.* A trial attorney's failure to object to an instruction that largely tracks the first circuit's instructions does not fall below an objective standard of reasonableness. *See Cruz v. Maloney, 152 F. App'x 1, 6 (1st Cir. 2005)* ("Failure to object to an accurate jury instruction does not qualify as ineffective assistance of counsel."). Therefore, the failure to object did not fall below an objective standard of reasonableness.

The First Circuit Court of Appeals, however, did note that the instruction could be improved because the instruction [*7] seems to "permit[] liability if it is foreseeable a co-conspirator 'might commit' the charged substantive crime, rather than . . . 'whether the offense could be reasonably foreseen as a necessary or natural consequence of the unlawful agreement.'" *Serrano-Delgado, 29 F.4th at 27* (citing [Pinkerton, 328 U.S. at 648](#)). It also stated that "it would have been better had the district court separated out each of the counts rather than linking them disjunctively in a single instruction." *Id.* In any case, even if the Court assumes that the attorney's failure to object to the Court linking the counts in the instructions fell below an objective standard of reasonableness (which the Court doubts), Serrano fails to show prejudice. Although Serrano argues that the outcome of the trial would have been different if the trial attorney had objected, the First Circuit Court of Appeals already stated that:

[t]he [Pinkerton](#) charge performed no work for the robbery conviction; rather, the case for finding Serrano to have aided and abetted the robbery turned entirely on whether Serrano's conduct as driver was unwitting. As we have explained, the evidence supported a negative answer beyond a reasonable doubt. Nor was there any reason to rely on the [Pinkerton](#) charge to reach that conclusion. [*8] To the contrary, in this case it was Serrano's own participation in the robbery that provided the basis for inferring an agreement to commit the robbery, not vice versa. Thus, the jurors could not have found him guilty of conspiring to aid and abet the robbery without first concluding that he did in fact aid and abet the robbery.

Id. at 26. In terms of count three and count four — the charges on the discharge of the firearm and resulting death — the court of appeals stated that the [Pinkerton](#) jury instruction was not confusing to apply because this was an "easy-

to-understand case centered on a single robbery in which all three suspects substantially participated in their respective roles." *Id.* at 26. Finally, the court of appeals rejected Serrano's argument that "the [Pinkerton](#) jury instruction provided a theory of guilt [for the discharge of the gun and resulting death charges] that would leave no viable crime of violence [as] predicate . . . because it is eminently possible that his substantive convictions rested on the jury's conspiracy finding." *Id.* at 28. The First Circuit Court of Appeals reasoned that "it is not possible for the jurors to have found that the discharge and death occurred during and in relation to the conspiracy, [*9] but not during and in relation to the robbery." *Id.* With such findings, the Court finds that Serrano was not prejudiced by the trial attorney's failure to object to the form of the [Pinkerton](#) jury instruction. Accordingly, the Court finds that Serrano has failed to establish that his trial attorney's assistance was ineffective.

2. Appellate Attorney

Serrano also argues that he received ineffective assistance of counsel from his appellate attorney because he failed to properly raise and argue that the form of the [Pinkerton](#) jury instruction met the plain error test. (Docket No. 1-1 at pp. 15-16.) Without deciding whether the appellate attorney's decision not to raise any argument as to the form of the [Pinkerton](#) jury instruction, the Court finds that Serrano has failed to show he was prejudiced. As discussed in detail above, the First Circuit Court of Appeals did address whether the [Pinkerton](#) jury instruction had any effect on Serrano's guilty verdict. It found that it did not. Accordingly, Serrano also fails to establish that his appellate attorney's assistance was ineffective for failing to argue that the form of the [Pinkerton](#) jury instruction was plain error.

B. Constitutional Challenge to Firearm Convictions ([18 U.S.C. § 924\(c\)](#) and § 924(j))

Serrano's final [*10] argument is that his conviction on count four of the indictment, which charges violations of [18 U.S.C. §§ 924\(c\)\(1\)\(A\)\(iii\)](#) is unconstitutional after the Supreme Court's holding in [United States v. Taylor, 596 U.S. 845 \(2022\)](#). *Taylor* concerned whether the definition of "crime of violence" in [18 U.S.C. § 924\(c\)\(3\)\(A\)](#) excludes an attempted Hobbs Act robbery. The Supreme Court held that an attempted Hobbs Act robbery does not qualify as a "crime of violence" because no element of the offense requires proof that the defendant used, attempted to use, or threatened to use force. *Id.* According to Serrano, the same reasoning applies to conspiracy to commit a Hobbs Act robbery. (Docket No. 1-1 at p. 20-22.) The government concedes that conspiracy to commit a Hobbs Act robbery is not a crime of violence. It argues, however, that *Taylor* does not apply because his section 924(c) conviction was premised on two distinct crimes - a completed Hobbs Act robbery and a conspiracy to commit a Hobbs Act robbery — and the completed robbery is still a crime of violence. (Docket No. 12 at pp. 18-19.) Serrano replied that because his section 924(c) conviction in count four is premised on the same Hobbs Act robbery as his section 924(j) conviction in count three, the Court must vacate his conviction and sentence under section 924(c). (Docket No. 18 at pp. 2-3; [*11] 7-8.) He argues he cannot be punished cumulatively for convictions under section 924(c) and section 924(j). *Id.*

The Court agrees with the government that *Taylor* does not apply here for the reasons stated in its brief. Nonetheless, the Court finds that Serrano's section 924(c) and section 924(j) convictions overlap in violation of the Double Jeopardy clause must be vacated pursuant to [Barrett v. United States, 607 U.S. 128 \(2026\)](#).⁴

Recently, the Supreme Court considered the relationship between [18 U.S.C. §§ 924\(c\)](#) and 924(j) in [Barrett v. United States, 607 U.S. 128 \(2026\)](#). *Barrett* held that a defendant cannot receive two separate convictions and sentences for the same conduct that violates both section 924(c) and 924(j). [Barrett, 607 U.S. at 149](#). The Supreme

⁴ Serrano's brief was filed on September 22, 2023, and predates the Supreme Court's decision in *Barrett*. The Court, however, finds that Serrano's argument harkens to the issue recently decided in *Barrett*, such that it is appropriate for the Court to address it.

Court explained that conduct that violates section 924(j) also necessarily violates section 924(c) because section 924(j) merely identifies a subset of 924(c) violations that result in death and provides for a harsher punishment.⁵ Therefore, a defendant cannot receive two separate convictions and sentences for violating section 924(c) and section 924(j). That is, in fact, what happened to Serrano. Serrano was convicted on count three of the indictment for violating section 924(j) and on count four of the indictment for violating section 924(c). He received a sentence of two hundred forty months on count three that ran concurrently to his two hundred forty months sentences in counts one and two, and one hundred twenty months on count four, to run consecutively [*12] to the other sentences. (Criminal Case Docket No. 271.)

There can be no dispute that Serrano's sentence does not comport with Barrett, but there is a question as to whether the rule can be applied retroactively. The applicability of a new Supreme Court decision on collateral review turns on two factors: (1) a court must determine whether the decision announces a new rule or only applied a settled rule to new facts; and (2) if the decision announces a new rule, then the court must determine whether that rule is substantive or procedural. See United States v. Charles, 813 F. Supp. 3d 200, 203 (D. Mass. 2025). A rule is considered new when it is not dictated by existing precedent at the time of defendant's conviction. Id. That is, if the Supreme Court decision is merely applying a principle already established by a different set of facts, then a new rule has not been announced. Id. (citing Shea v. United States, 976 F.3d 63, 71 (1st Cir. 2020)). Where a Supreme Court decision merely applies a settled rule, "a defendant may invoke the new decision on collateral review." Id.

Here, Barrett did not announce a new rule; it merely applied the Blockburger test⁶ to section 924(c) and section 924(j). The Supreme Court stated:

The assumption underlying the Blockburger rule is that Congress ordinarily does not intend to punish the same offense under [*13] two different statutes," where "punishment" means "a criminal conviction and not simply the imposition of sentence." Ball v. United States, 470 U.S. 856, 861(1985). It is for this reason that running sentences concurrently does not avoid the problem; an unauthorized "second conviction, even if it results in no greater sentence, is an impermissible punishment." Rutledge v. United States, 517 U.S. 292, 302 (1996) (quoting Ball, 470 U.S., at 865).

. . . .

Here, we have nothing more than the "classic relation of the 'lesser included offense' to the greater offense." Garrett v. United States, 471 U.S. 773, 787 (1985).

607 U.S. at 141-42, 148. Because Barrett applies "[t]he Blockburger presumption [which] is 'long settled', muscular and fundamental to our law," the Court invokes it to vacate Serrano's conviction and sentence on either count three (section 924(j)) or count four (section 924(c)(1)(A)(iii)). Id. at 149.

The Court will vacate the conviction and sentence for count three (section 924(j)) because the sentence previously imposed (a total of three hundred sixty months) continues to reflect the seriousness of the offenses, promote respect for the law, provide a just punishment, afford adequate deterrence to criminal conduct, protect the public from additional crimes by the defendant, and provides the defendant with needed correctional treatment. 18 U.S.C. § 3553(a). Accordingly, Serrano's motion is **GRANTED IN PART**.

⁵ Section 924(c) criminalizes using, carrying, or possessing a firearm in connection with a federal crime of violence. Section 924(j), in turn, states that a person who violates 924(c) and causes the death of a person in the process is subject to a higher sentence.

⁶ The Blockburger test establishes that the government can only prosecute an individual for violating two different statutory provisions arising from a single course of conduct if each offense requires the government to prove an element that it does not have to prove for the other offense. If the test is not satisfied, the Double Jeopardy Clause bars successive prosecutions and additional punishment. Blockburger v. United States, 284 U.S. 299 (1932).

IV. Conclusion

For the above reasons, [*14] Serrano's motion to vacate, set aside, or correct his sentence is **GRANTED IN PART and DENIED IN PART**. (Docket No. 1.) Serrano's conviction and sentence on count three shall be vacated. His three hundred sixty months sentence, however, remains in effect as follows: two hundred forty months of imprisonment term for count one and count two, and one hundred twenty months imprisonment term for count four, to be served consecutively to the concurrent sentences imposed for counts one and two.

Judgment shall be entered accordingly. An Amended Judgment shall be entered in the criminal case.

No certificate of appealability shall issue because Rodríguez-Santos did not make a substantial showing of the denial of a constitutional right. [28 U.S.C. § 2253\(c\)\(2\)](#).

IT IS SO ORDERED.

San Juan, Puerto Rico, May 15, 2026.

/s/ Francisco A. Besosa

FRANCISCO A. BESOSA

SENIOR UNITED STATES DISTRICT JUDGE

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