

E.D.N.Y. – Bklyn
16-cv-3496
06-cr-578
Gershon, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of May, two thousand twenty-two.

Present:

Rosemary S. Pooler,
Richard C. Wesley,
Myrna Pérez,
Circuit Judges.

Derrek Pannell,

Petitioner-Appellant,

v.

21-2849

United States of America,

Respondent-Appellee.

Appellant moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is GRANTED. 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In addition to any other issues the parties wish to raise, their briefs must address (a) whether the portions of 18 U.S.C. § 2114 defining aggravated forms of substantive postal robbery are divisible; (b) whether the portions of § 2114 defining non-aggravated forms of postal robbery are divisible and whether the answer to that issue affects the determination of the minimum culpable conduct for an aggravated form of postal robbery; and (c) whether the minimum culpable conduct for Appellant’s § 2114 substantive conviction defines a crime that remains a valid crime-of-violence predicate under 18 U.S.C. § 924(c). While Appellant may present his argument that the minimum culpable conduct determination requires the Court to consider the use of co-conspirator liability for the substantive crime, he also must

discuss whether the substantive crime itself, as defined in § 2114 without considering co-conspirator liability, remains a crime of violence under § 924(c). We express no opinion on these issues.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


