

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 19a0437n.06

CASE Nos. 16-1650/1706/1707/1708

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

UNITED STATES of AMERICA, )  
 )  
 *Plaintiff-Appellee,* )  
 )  
 v. )  
 )  
 NATHANIEL PEMBROOK, SHAIED )  
 CALHOUN, DAVID BRILEY, and )  
 ORLANDO JOHNSON, )  
 )  
 *Defendants-Appellants.* )  
 )  
 \_\_\_\_\_ )

**FILED**  
Aug 20, 2019  
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

**Before: BATCHELDER, GIBBONS, and COOK, Circuit Judges.**

**ALICE M. BATCHELDER, Circuit Judge.** Upon convictions for robbery, conspiracy, and firearms charges, the district court imposed lengthy prison sentences on four co-defendants. On appeal, we affirmed. *United States v. Pembroke*, 876 F.3d 812 (6th Cir. 2017).

In that appeal the defendants argued that 18 U.S.C. § 924(c)(3)(B) was unconstitutionally vague, so the § 924(c) minimum sentences did not apply and resentencing was warranted. We rejected that argument based on then-binding Sixth Circuit precedent, but acknowledged that if the defendants were correct, that would warrant resentencing. *Id.* at 830-31.

The defendants petitioned the Supreme Court for certiorari and the Court remanded for reconsideration of this issue. *See, e.g., Pembroke v. United States*, 139 S.Ct. 68 (2018). In the meantime, the Court has now held that that § 924(c)(3)(B) is unconstitutionally vague. *United States v. Davis*, No. 18-431, 588 U.S. - -, 2019 WL 2570623, at \*13 (June 24, 2019).

Consequently, we remand these cases to the district court for resentencing.