APPENDIX

15-2674 (L)
Williams v. United States

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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 26th day of October, two thousand and seventeen.

PRESENT: ROBERT D. SACK,
PETER W. HALL,
CHRISTOPHER F. DRONEY,
Circuit Judges.

TREVOR WILLIAMS,

Petitioner-Appellant,

-v.- 15-2674, 15-3503

UNITED STATES OF AMERICA,

Respondent-Appellee.

FOR PETITIONER-APPELLANT:

Daniel Habib, Federal Defenders of New York, Inc., New York, NY.

FOR RESPONDENT-APPELLEE:

Michael Krouse, Margaret Garnett, Assistant United States Attorneys, *for* Joon H. Kim, Acting United States Attorney for the Southern District of New York, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Berman, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

I. Prior Proceedings

Petitioner-Appellant Trevor Williams was convicted in the District Court for the Southern District of New York of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). The district court sentenced him pursuant to the Armed Career Criminal Act ("ACCA" or the "Act"), 18 U.S.C. § 924(e), to 192 months' imprisonment and five years' supervised release. Williams appealed to this Court, arguing, among other things, that he should not have been sentenced under the ACCA because he did not have at least three previous violent-felony convictions. *United States v. Williams*, 526 F. App'x 29, 36-37 (2d Cir. 2013) ("*Williams I*").

This Court decided that Williams had three or more prior convictions qualifying as violent felonies, *viz.* (1) a 1993 conviction for third-degree robbery, in violation of New York Penal Law ("NYPL") § 160.05; (2) a 1994 second-degree attempted robbery conviction, in violation of NYPL §160.10; and (3) a 1997

second-degree assault conviction, in violation of NYPL § 120.05(2). *Williams I*, 526 F. App'x at 37. Because the Second Circuit had previously found that convictions pursuant to § 160.05 (robbery in the third degree) and § 120.05(2) (assault) qualified categorically as violent felonies under the Armed Career Criminal Act, and that § 160.10 adopted the same robbery definition as § 160.05, we held that Williams was properly adjudicated as an armed career criminal. *Id.* (citing *United States v. Walker*, 442 F.3d 787, 789 (2d Cir. 2006) (§ 120.05(2)); *United States v. Brown*, 52 F.3d 415, 425-426 (2d Cir. 1995) (§ 160.05)).

On April 21, 2015, Williams, acting *pro se*, petitioned for habeas relief under 28 U.S.C. § 2255, asserting, among other things, that he had been wrongly sentenced under the ACCA because his prior convictions were not "violent felonies" within the meaning of that Act and that he had been sentenced improperly under the Act's "residual clause." *See Williams v. United States*, No. 15-Civ-3302, 2015 WL 4563470, at *4-5, 2015 U.S. Dist. LEXIS 97107, at *9-11 (S.D.N.Y. July 20, 2015). The district court denied Williams's habeas petition, concluding that because the Second Circuit had previously determined that Williams qualified as a violent felony offender under the ACCA, this issue could not be relitigated in a § 2255 petition. *Id.*, 2015 U.S. Dist. LEXIS 97107 at *11. The district court also found that although the Supreme Court had struck down the "residual clause" in *Johnson v. United States*, 135 S. Ct. 2551 (2015) ("*2015 Johnson*"), for being unconstitutionally vague, Williams was not classified or sentenced pursuant to this clause. *Williams*, 2015 WL 4563470 at *5, 2015 U.S. Dist. LEXIS 97107 at *11.

II. The Law-of-the-Case Doctrine

On appeal, Williams argues that none of his prior convictions qualify as ACCA predicates within the meaning of the Act. However, he has not identified any intervening changes in law, or any other circumstances, that would justify reconsidering this Court's holding in *Williams I*.

Under 28 U.S.C. § 2255(a), a federal prisoner "may move the court which imposed the sentence to vacate, set aside or correct the sentence" "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States[.]" Because "[t]he law of the case ordinarily forecloses

relitigation of issues expressly or impliedly decided by the appellate court," *United States v. Quintieri*, 306 F.3d 1217, 1229 (2d Cir. 2002) (internal quotation marks omitted), we have made clear that "section 2255 may not be employed to relitigate questions which were raised and considered on direct appeal." *United States v. Becker*, 502 F.3d 122, 127 (2d Cir. 2007) (quoting *Cabrera v. United States*, 972 F.2d 23, 25 (2d Cir. 1992) (internal quotation marks omitted)). Nevertheless, the law-of-the-case doctrine "remains a matter of discretion, not jurisdiction," *id*. at 127, and this Court may find it appropriate to revisit an earlier decision if presented with "cogent or compelling reasons" to do so. *United States v. Tenzer*, 213 F.3d 34, 39 (2d Cir. 2000) (internal quotation marks omitted). Such reasons may include "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Tenzer*, 213 F.3d 34 at 39 (internal quotation marks omitted).

Williams argues that the law-of-the case doctrine does not apply because his present claim was not raised or decided on direct appeal. In its summary order affirming Williams's conviction and sentence in *Williams I*, however, we considered and then rejected the precise claim that Williams raises in his habeas petition: that his ACCA-based sentence was unconstitutional because he did not have at least three prior violent felony-convictions. As this Court wrote,

> Williams has three or more prior convictions that qualify as violent felonies: (1) a 1993 conviction for third-degree robbery, in violation of New York Penal Law ("NYPL") § 160.05; (2) a 1994 second-degree attempted robbery conviction, in violation of NYPL § 160.10; and (3) a 1997 second-degree assault conviction, in violation of NYPL § 120.05(2). We have previously determined that convictions pursuant to NYPL §§ 160.05 (robbery in the third degree) and 120.05(2) (assault) qualify, categorically, as violent felonies under the Armed Career Criminal Act. Furthermore, as NYPL § 160.10 adopts the same definition of robbery as § 160.05, except that the degree is second instead of third, it too qualifies as a violent felony.

Williams I, 526 F. App'x at 37 (citations omitted).

Williams's further contention that his argument based on the Supreme Court's decision in *Johnson v. United States*, 559 U.S. 133 (2010) ("*2010 Johnson*") was not raised on direct appeal is unavailing. In *2010 Johnson*, the Supreme Court determined that a defendant's battery conviction under Florida law was not a violent felony under the ACCA because it did not involve violent force. *Id*. at 138-143. In his brief on direct appeal, Williams quoted *2010 Johnson* to argue that his 2005 attempted second-degree assault conviction does not qualify as a violent felony under the ACCA. Also, in *Williams I*, this Court implicitly determined that New York third-degree robbery "qualif[ies], categorically, as [a] violent felon[y] under the Armed Career Criminal Act" notwithstanding *2010 Johnson*. *Williams I*, 526 F. App'x at 37 (citing *United States v. Brown*, 52 F.3d 415, 426 (2d Cir. 1995) for this proposition).

Williams next argues that even if this Court finds the law of the case applies, "an intervening change of controlling law" or "the need to correct a clear error or prevent manifest injustice" permits reconsideration of Williams's argument that none of his priors constitute violent felonies in the context of the ACCA. We do not agree.

First, Williams contends that, to the extent that our decision in *Williams I* depended on the residual clause, this conclusion must be revisited in light of *2015 Johnson*. But neither the district court nor this Court's decision in *Williams I* depended on—or even addressed—the residual clause in finding that Williams qualified for an ACCA sentence. Rather, there, we concluded that Williams's prior robberies were violent felonies based on *United States v. Brown*, an elements-clause case, which did not involve application of the residual clause. *See Williams I*, 526 F. App'x at 37; *Brown*, 52 F.3d at 426. With regard to Williams's 1997 second-degree assault conviction, in *Williams I*, we decided that this crime qualified as a violent felony under *United States v. Walker*, which rested on both the elements and the residual clauses. *See Williams I*, 516 F. App'x at 37; *Walker*, 442 F.3d at 788-789.

Second, Williams argues that the Supreme Court's decision in *United States v. Castleman*, 134 S. Ct. 1405 (2014), established that in the context of the ACCA, forcible stealing does not qualify as the type of violent force required under the Act. *Castleman*, however, only addressed the meaning of a "misdemeanor crime

of domestic violence" as defined by 18 U.S.C. § 922(g)(9). Thus, the decision does not squarely address the "violent felony" definition of ACCA, and does not provide grounds to depart from the law of the case.

Third, Williams contends that our decision in *United States v. Jones*, 830 F.3d 142 (2d Cir. 2016) ("*Jones I*"), *vacated and withdrawn from bound volume*, 838 F.3d 296 (2d Cir. 2016) ("*Jones II*"), that a New York robbery conviction absent other aggravating factors no longer necessarily qualifies as a crime of violence, constitutes a change in law justifying reconsideration of Williams's ACCA claim. But *Jones I* has indeed been vacated, and the portion of this decision that Williams relies upon has not been reinstated. *See United States v. Jones*, No. 15-1518-cr (2d Cir. Sep. 11, 2017) (concluding that New York first-degree robbery categorically qualifies as a crime of violence under the residual clause). It is possible that this Court will one day conclude, as we intended to in the now-vacated *Jones I*, that robbery in New York is not categorically a crime of violence under the elements clause. The present case is not, however, in a procedural posture in which we can address the issue. We therefore do not do so.

Finally, Williams argues that the *Williams I* decision was "in clear error" or that it would be a "manifest injustice" to let the judgment in that case stand. We cannot find "cogent or compelling reasons," however, why the law of the case doctrine should be discarded here. For the time being, at least, we must treat *Williams I* as having been correctly decided. And there is no manifest injustice in the district court's decision; it was faithful to the *Williams I* holding.

We have considered Williams's remaining arguments on appeal and find them to be without merit. For the foregoing reasons, the judgment of the district court is therefore **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TREVOR WILLIAMS,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Government.

15 Civ. 3302 (RMB)

DECISION AND ORDER

I. Background

On April 21, 2015, Trevor Williams ("Williams" or "Petitioner"), proceeding pro se, filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 2255 ("§ 2255 Petition"). Williams is seeking to vacate his October 20, 2011 conviction, following a jury trial, of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e) and to set aside his sentence imposed by the Court on March 29, 2012 of 192 months of incarceration. See Judgment and Commitment Order, dated Apr. 2, 2012 ("Judgment"). **For the reasons set forth below, Williams' § 2255 Petition is respectfully denied.** [1]

Williams has two principal complaints, as follows: (1) he was without counsel in the United States Court of Appeals for the Second Circuit ("Second Circuit"), and the Second Circuit should have "automatically appointed counsel to represent petitioner on his direct appeal" (Mem. in Supp. of § 2255 Petition at 3, dated Apr. 21, 2015, 15-CV-3302, ECF No. 1 ("Petitioner's Brief")); and (2) he was "sentenced [by the district court] under the Armed Career Criminal Act [18 U.S.C. § 924(e) ("ACCA")] in violation of both the Fifth and Sixth

[1] Any issues raised by Petitioner not specifically addressed herein were considered by the Court and rejected on the merits.

Amendments of the United States Constitution." (§ 2255 Petition at 6.)

The Government responded to Williams' § 2255 Petition on June 15, 2015, contending that Williams' claims are "wholly without merit and should be denied without a hearing." The Government argues persuasively that (1) Williams' "waiver of his right to counsel was proper," his "statements and actions were reasonably construed to indicate a continuation of Williams' long-standing desire to appear pro se," and the Second Circuit was "under no obligation to appoint appellate counsel"; and (2) Williams has at least three qualifying violent felony convictions and was properly sentenced under the ACCA. (Respondent's Brief at 10-11, dated June 15, 2015, 09-CR-101, ECF No. 153 ("Resp. Brief").)

No reply or other submission has been received from Williams by the Court as of this date.

Williams' Pro Se Status in the District Court

Williams insisted on representing himself in the district court approximately one year after his arraignment. By letter, dated December 31, 2009, Williams applied to the district court for pro se status and to relieve his CJA attorney Allan Haber, who had been appointed as his counsel. (Mot. to Disqualify Counsel at 2, dated Dec. 31, 2009, 09-CR-101, ECF No. 32.) At a hearing held on February 11, 2010, the Court had the following exchange with Williams:

> THE COURT: So you know, Mr. Williams, that, fundamentally, you have a right to be represented by counsel even if you can't afford counsel? Do you understand that?
> MR. WILLIAMS: Yes, sir.
> THE COURT: And in fact it is on that basis we have appointed Mr. Haber to represent you. Do you realize that?
> MR. WILLIAMS: Yes, sir.
> THE COURT: But, nevertheless, you still want to go pro se throughout this case, [that is] my understanding? Is that correct?
> MR. WILLIAMS: Yes, sir.

(Hr'g Tr. 2:15-25, Feb. 11, 2010.)

[...]

> THE COURT: Let me just tell you what I think. It is ultimately your determination. My personal view is that an attorney would know better about the Rules of Evidence and objections and how to conduct themselves in front of a jury or even in front of me [...] and certainly would have deeper knowledge of criminal law than you.
> MR. WILLIAMS: I agree with that, your Honor. [...]

(Id. at 10:8-14.)

The Court ultimately determined that:

> [T]he defendant is competent to waive his Sixth Amendment right to counsel and [...] he has done so knowingly, intelligently and voluntarily, and [the Court is] going to allow him to appear throughout the rest of this case pro se. And [the Court is] going to ask Mr. Haber to serve as standby counsel, but subject to the limitations that the law imposes on standby counsel.[2]

(Id. at 13:25-14:6.)

Throughout the district court proceedings, Williams filed, pro se, more than thirty motions, memoranda in support of motions, and letters to the Court. (See, e.g., Reply Brief in Supp. of Mot. to Suppress Evidence, dated Apr. 5, 2010, 09-CR-101, ECF No. 35; Mot. to Revoke Order of Detention, dated June 28, 2010, 09-CR-101, ECF No. 47; Letter Requesting Grand Jury Tr., dated July 4, 2010, 09-CR-101, ECF No.50; Sentencing Mem., dated Mar. 15, 2012, 09-CR-101, ECF No.128.) Williams also represented himself at a suppression hearing on February 11, 2010 and throughout the jury trial between October 17, 2011 and October 20, 2011. And, he twice appealed pro se to the Second Circuit while the matter was still proceeding before

[2] At a conference before the Court on June 16, 2010, Allan Haber was relieved as standby counsel. (See Conf. Tr. 10:24-11:10, May 12, 2010 ("MR. HABER: I'm really thinking it would be wise if another attorney was assigned to help Mr. Williams. Every bit of advice that I have given him has been rejected. I have not even ever received a copy of motions that were filed [pro se] or supplementals...We're just not communicating in a way that I think would be helpful to him at trial. I've done a lot of research that he's requested. He rejects every recommendation that I make. It really isn't working to his advantage. I think it would be wise to assign another CJA attorney for purposes of trial.").

CJA attorney Harvey Fishbein was appointed by the Court to replace Mr. Haber as standby counsel. (Order, dated June 22, 2010, 09-CR-101, ECF No. 45.)

the district court. (See Mandate, dated July 11, 2011, 09-CR-101, ECF No. 108 ("Petitioner, pro se, has filed a petition for a writ of mandamus to compel the district court to conduct an evidentiary hearing…the mandamus petition is denied."); Mandate, dated Jan. 25, 2012, 09-CR-101, ECF No. 124 (denying William's appeal seeking pretrial release "because it lacks an arguable basis in law or fact"). Williams, pro se, also submitted objections to the Presentence Report, dated February 7, 2012, and he filed a thirteen-page Sentencing Memorandum with twenty-three attachments on March 15, 2012. (Sentencing Mem., dated Mar. 15, 2012, 09-CR-101, ECF No. 128.)

Mr. Fishbein, on behalf of Williams, filed a Notice of Appeal of Williams' conviction and sentence on March 30, 2012. (Notice of Appeal to the Second Circuit, dated Mar. 30, 2012.) On June 4, 2013, the Second Circuit affirmed the district court's Judgment by summary order, stating that "none of the above arguments by Williams demonstrates an error in the proceedings below" and "Williams was properly adjudicated to be an armed career criminal." United States v. Williams, 526 F. App'x 29, 37 (2d Cir. 2013). Williams' petition for a writ of certiorari to the Supreme Court of the United States, filed pro se, was denied on April 21, 2014. Williams v. United States, No. 13-9204, 2014 U.S. LEXIS 2726 (Apr. 21, 2014).

It should also be noted that, after orally imposing Williams' sentence on March 29, 2012, the Court instructed Mr. Fishbein to file a Notice of Appeal on behalf of Williams. (Sentencing Tr. 29:25, 30:14, Mar. 29, 2012.) On March 30, 2012, Mr. Fishbein filed the Notice of Appeal and signed it "per direction of Court on behalf of pro se defendant." (Notice of Appeal to the Second Circuit, dated Mar. 30, 2012.) On June 21, 2012, Mr. Fishbein wrote to Williams explaining that he had received materials from the Second Circuit regarding the appeal: "[d]ue to what can only be described as an administrative error, the Second Circuit has believed that I am

your attorney." (Petitioner's Brief Ex. C.) Mr. Fishbein moved in the Second Circuit formally to be relieved as counsel on July 3, 2012. (Mot. in the Second Circuit to be Relieved as Counsel, dated July 3, 2012.) He also stated in an affidavit filed in support of that motion that "Mr. Williams always made it crystal clear that he wished to proceed in his appeal pro se." (Id.)

II. Legal Standards

"When matters are decided by an appellate court, its rulings, unless reversed by it or a superior court, bind the lower court." Ins. Group Comm. v. Denver & Rio Grande W. R.R. Co., 329 U.S. 607, 612 (1947).

A district court may grant relief pursuant to 28 U.S.C. § 2255 "only for a constitutional error, a lack of jurisdiction in the sentencing court, or an error of law or fact that constitutes 'a fundamental defect which inherently results in a complete miscarriage of justice.'" United States v. Bokun, 73 F.3d 8, 12 (2d Cir. 1995) (quoting Hill v. United States, 368 U.S. 424, 428 (1962)).

A § 2255 petition "may not be employed to relitigate questions which were raised and considered on direct appeal." Barton v. United States, 791 F.2d 265, 267 (2d Cir. 1986); see United States v. Natelli, 553 F.2d 5, 7 (2d Cir. 1977) ("[O]nce a matter has been decided adversely to a defendant on direct appeal it cannot be relitigated in a collateral attack under section 2255[.]").

When a party proceeds pro se, the court will "read [the pro se party's] supporting papers liberally, and…interpret them to raise the strongest arguments that they suggest." Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994) (citing Mikinberg v. Baltic S.S. Co., 988 F.2d 327, 330 (2d Cir. 1993)).

III. Analysis

(1) No Appointment of Counsel by the Second Circuit

Alleged constitutional deficiencies in appellate procedures and practices should be addressed in appellate courts, not the lower courts. See Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982); Katz v. Berisford Int'l PLC, No. 96 Civ. 8695, 2000 U.S. Dist. LEXIS 17314, at *4 (S.D.N.Y. Nov. 17, 2000).

Mr. Williams' recourse regarding any appointment of counsel issue on appeal was to move to correct any alleged constitutional deficiency in the Second Circuit. "It is axiomatic that in our judicial hierarchy, the decisions of the circuit courts of appeals bind the district courts just as decisions of the Supreme Court bind the circuit courts." Doe v. Chao, 511 F.3d 461, 465 (4th Cir. 2007) quoting 28 U.S.C. § 2106 (2000).

Assuming, arguendo, that the issue of appointment of appellate counsel were properly before this Court (which it most assuredly is not), it would likely be denied. The Second Circuit considered and resolved the issue of appointment of counsel. (See Second Circuit Order, dated July 9, 2012 (noting that Fishbein "was carried over as appellate counsel," that Williams "wished to proceed pro se," and ordering that "if [Williams] wishes to have counsel appointed to represent him on appeal, he should so advise the Court in writing on or before August 3, 2012"); Second Circuit Order, dated Sept. 12, 2013 (ordering that "[c]ounsel will not be appointed at this belated stage, after the appeal has already been decided" and denying a motion for appointment of counsel).)

Williams did not request that appellate counsel be appointed by the deadline set by the Second Circuit, and he continued to represent himself throughout the appellate court proceedings. (See, e.g., Appellant's Brief, dated Dec. 4, 2012; Mot. in the Second Circuit for Extension of Time to File Brief, dated Aug. 21, 2012; Mot. in the Second Circuit for Extension of Time to File Reply Brief, dated May 2, 2013; Pet. to the Second Circuit for Rehearing, dated

Nov. 4, 2013, all of which were filed by Williams in a pro se capacity.) There would be no basis for the district court to reach a different conclusion than the Second Circuit reached. See Doe, 511 F.3d at 465; Natelli, 553 F.2d at 7.

(2) Armed Career Criminal Act Classification

Williams' § 2255 Petition states: "Petitioner was sentenced under the Armed Career Criminal Act in violation of both the Fifth and Sixth Amendments of the United States Constitution" (§ 2255 Petition at 6) but offers no further support for this claim. When a petition for a writ of habeas corpus "offers no facts, nor any reference to the record" and "fails to offer even the most cursory description of these alleged errors," it may be denied because "[s]uch vague, conclusory and unsupported claims do not advance a viable claim for habeas corpus relief." Skeete v. New York, No. 03-CV-2903, 2003 U.S. Dist. LEXIS 20675, at *5 (E.D.N.Y. Nov. 17, 2003).

Assuming, arguendo, that Williams' claim were properly supported, it, nevertheless, would be denied because this issue was previously resolved upon direct appeal by the Second Circuit, which stated:

> Here, Williams has three or more prior convictions that qualify as violent felonies: (1) a 1993 conviction for third-degree robbery, in violation of New York Penal Law ("NYPL") § 160.05; (2) a 1994 second-degree attempted robbery conviction, in violation of NYPL § 160.10; and (3) a 1997 second-degree assault conviction, in violation of NYPL § 120.05(2). We have previously determined that convictions pursuant to NYPL §§ 160.05 (robbery in the third degree) and 120.05(2) (assault) qualify, categorically, as violent felonies under the Armed Career Criminal Act. See United States v. Walker, 442 F.3d 787, 789 (2d Cir. 2006) (§ 120.05(2)); see also United States v. Brown, 52 F.3d 415, 426 (2d Cir. 1995) (§ 160.05). Furthermore, as NYPL § 160.10 adopts the same definition of robbery as § 160.05, except that the degree is second instead of third, it too qualifies as a violent felony. Accordingly, Williams was properly adjudicated to be an armed career criminal.

United States v. Williams, 526 F. App'x 29, 37 (2d Cir. 2013). This issue cannot be relitigated in a § 2255 petition, see Barton, 791 F.2d at 267; Natelli, 553 F.2d at 7, nor can

it be resolved by this Court, see United States v. Bell, 5 F.3d 64, 66 (4th Cir. 1993) ("Few legal precepts are as firmly established as the doctrine that the mandate of a higher court is 'controlling as to matters within its compass.'") (quoting Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 168 (1939)).

The Court is aware that on June 26, 2015, in Johnson v. United States, No. 13-7120, slip op. (June 26, 2015), the Supreme Court of the United States struck down the "residual clause" in the Armed Career Criminal Act, § 924(e)(2)(B)(ii) which reads "...otherwise involves conduct that presents a serious potential risk of physical injury to another," finding this phrase unconstitutionally vague. Id. at 5. But Williams was classified as an armed career criminal because his prior felony convictions involved the use, attempted use, or threatened use of physical force against the person of another pursuant to § 924(e)(2)(B)(i). Williams was not classified pursuant to the residual clause of § 924(e)(2)(B)(ii).

IV. Conclusion & Order

For the foregoing reasons, the Petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 [#1] is denied. The Clerk of Court is respectfully requested to close this case.

As the § 2255 Petition makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253.

Dated: New York, New York
July 20, 2015

RICHARD M. BERMAN, U.S.D.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 30th day of January, two thousand eighteen.

Trevor Williams,

Petitioner - Appellant,

v.

United States of America,

Respondent - Appellee.

ORDER

Docket Nos: 15-2674 (L)
15-3503 (Con)

Appellant, Trevor Williams, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk