

**\*AMENDED**  
BLD-110

**May 24, 2018**  
February 7, 2018

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

C.A. No. **17-2297**

UNITED STATES OF AMERICA

v.

GEORGE STONEY, a/k/a Butchy,  
Appellant

(M.D. Pa. No. 14-cr-00015-002)

Present: RESTREPO, BIBAS, and NYGAARD, Circuit Judges

Submitted are:

- 1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- \*2) Appellant's response to Court's order dated February 13, 2018;**
- \*3) Appellant's status report/update;**
- \*4) Appellee's motion to file response out of time; and**
- \*5) Appellee's response**

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's request for a certificate of appealability is denied. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Appellant argues that his conviction under 18 U.S.C. § 924(c) is invalid because the residual clause of § 924(c)(3)(B) is unconstitutionally vague under Johnson v. United States, 135 S. Ct. 2551 (2015). As

appellant concedes, however, his plea of guilty for violating 18 U.S.C. § 924(c) in connection with a Hobbs Act robbery establishes that the Hobbs Act robbery qualifies as a “crime of violence” under the elements clause of § 924(c). See United States v. Robinson, 844 F.3d 137, 144 (3d Cir. 2016), cert. denied, 138 S. Ct. 215 (2017); see also United States v. Galati, 844 F.3d 152, 155 (3d Cir. 2016), cert. denied, 138 S. Ct. 636 (2018). Jurists of reason would not debate that conclusion under our case law.

The issue resolved by the Supreme Court in Sessions v. Dimaya, 138 S. Ct. 1204 (2018) (i.e., that 18 U.S.C. § 16(b) – a residual clause similarly worded to that of § 924(c)(3)(B) – is unconstitutionally vague under Johnson,) has no bearing on § 924(c)’s elements clause. See Robinson, 844 F.3d at 141. Appellee’s motion to file its response out of time is granted.

By the Court,

s/Stephanos Bibas  
Circuit Judge

Dated: May 30, 2018  
PDB/cc: All Counsel of Record



A True Copy:

A handwritten signature in black ink, appearing to read "Patricia S. Dodsweit".

Patricia S. Dodsweit, Clerk  
Certified Order Issued in Lieu of Mandate

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Crim. No. 1:14-cr-015  
: :  
: :  
v. : :  
: :  
: :  
GEORGE STONEY : Judge Sylvia H. Rambo

**M E M O R A N D U M**

Before the court is a motion filed pursuant to 18 U.S.C. § 2255 by Defendant George Stoney (“Stoney”). In the motion, Stoney claims that Hobbs Act robbery, in violation of 18 U.S.C. § 1951, is not a crime of violence pursuant to *Johnson v. United States*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2551 (2015), a case in which the Supreme Court held that the residual clause of the Armed Career Criminal Act (“ACCA”) is unconstitutionally vague. Stoney claims that the application of § 924(c)(3)(B)’s residual clause is the same as the residual clause contained in the ACCA, and is therefore unconstitutional.

**I. Discussion**

A stay of the motion was granted pending a decision in *United States v. Robinson*, 844 F.3d 137 (3d Cir. 2016). On December 19, 2016, the Third Circuit rendered a decision and held that, where the offense of robbery and brandishing a gun have been tried together and the defendant has been found guilty<sup>1</sup> of both offenses, Hobbs Act robbery qualifies as a crime of violence under §

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<sup>1</sup> Stoney pleaded guilty to both offenses.

924(c)(3)(A)'s elements clause. *Id.* at 141. Therefore, the application of § 924(c)(3)(A)'s residual clause is not necessary.

**II. Conclusion**

For the foregoing reason, the motion will be denied. An appropriate order will issue.

s/Sylvia H. Rambo

SYLVIA H. RAMBO

United States District Judge

Dated: May 16, 2017