

***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:

Patricia S. Dodszeit

Patricia S. Dodszeit, 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

MEMORANDUM

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 guilty¹ of both offenses, Hobbs Act robbery qualifies as a crime of violence under §

¹ 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