

No. ____ - ____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2017

NATHAN MOSLEY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondents.

APPENDIX
IN SUPPORT OF PETITION FOR WRIT OF
***OF CERTIORARI* TO THE UNITED STATES**
COURT OF APPEALS FOR THE THIRD CIRCUIT

Contents of Appendix

Order Denying Certificate of Appealability, United States Third Circuit Court of Appeals, May 30, 2018	1a
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***AMENDED**

BLD-111

May 24, 2018

February 7, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-2298**

UNITED STATES OF AMERICA

v.

NATHAN MOSLEY, a/k/a Nate,
Appellant

(M.D. Pa. No. 14-cr-00015-003)

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



Patricia S. Dodszeuweit

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