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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10994



A True Copy
Certified order issued Aug 31, 2018

John W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DESHAWN MAURICE MOFFETT,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas

ORDER:

Deshawn Maurice Moffett, federal prisoner # 52152-177, was convicted of bank robbery and sentenced to 71 months in prison. Now, Moffett moves this court for a certificate of appealability (COA) challenging the district court's denial of his 28 U.S.C. § 2255 motion and his post-judgment motion for reconsideration, which is properly characterized as an unauthorized successive § 2255 motion. *See Williams v. Thaler*, 602 F.3d 291, 302-04 (5th Cir. 2010). Moffett asserts that he is entitled to resentencing in light of the invalidation of his 2015 Texas theft conviction, which had increased his criminal history score and his resulting advisory imprisonment range under the Sentencing Guidelines.

A prisoner seeking a COA must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The COA applicant

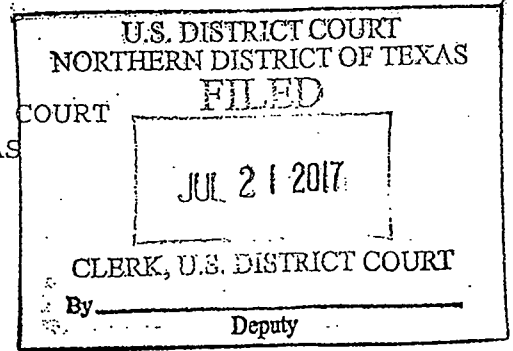
No. 17-10994

must demonstrate “that reasonable jurists could debate whether (or, for that matter, agree that) the [motion] should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (internal quotation marks and citation omitted). Moffett cannot make that showing because the district court stated that it would not change the sentence even if the now-invalidated state conviction were not included in the criminal history score. Because Moffett has failed to make the required showing, his motion for a COA is DENIED.



GREGG J. COSTA
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



DESHAWN MAURICE MOFFETT,

Movant,

VS.

UNITED STATES OF AMERICA,

Respondent.

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NO. 4:17-CV-587-A
(NO. 4:15-CR-268-A)

FINAL JUDGMENT

In accordance with the court's order of even date herewith,

The court ORDERS, ADJUDGES, and DECREES that all relief sought by Deshawn Maurice Moffett in the motion he filed on July 20, 2017, under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody be, and is hereby, denied.

SIGNED July 21, 2017.



JOHN McBRIDE
United States District Judge

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DeShawn Maurice Moffett — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

PROOF OF SERVICE

I, DeShawn Maurice Moffett, do swear or declare that on this date, November 29th, 2018, as required by Supreme Court Rule 29 I have ~~served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS~~ and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States
Room 5614, Dept. of Justice, 950 Pennsylvania Ave, NW
Washington, DC 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 29th, 2018


(Signature)