

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12385-H

BIVEN HUDSON,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Biven Hudson is a federal prisoner serving 200 months' imprisonment for unlawful possession of a firearm by a convicted felon. He filed a 28 U.S.C. § 2255 motion to vacate, asserting that: (1) his sentence, which was enhanced under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e), is unconstitutional; (2) appellate counsel ineffectively failed to challenge his ACCA enhancement; (3) trial counsel ineffectively failed to investigate whether he was mentally competent; and (4) trial counsel ineffectively failed to request a downward departure for diminished capacity, pursuant to U.S.S.G. § 5K2.13. The district court denied Hudson's motion and denied a certificate of appealability ("COA"), which he now seeks from this Court.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the

constitutional claims debatable or wrong,” or that the issues “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation omitted).

Claims 1 and 2: ACCA Enhancement

Under the ACCA, a defendant convicted of unlawful possession of a firearm by a convicted felon is subject to a mandatory minimum sentence of 15 years if he has 3 prior “violent felony” convictions. 18 U.S.C. § 924(e)(1). Hudson’s prior Florida convictions for robbery, armed robbery, and resisting an officer with violence qualify as violent felonies under the ACCA. *See e.g.*, *United States v. Lee*, 886 F.3d 1161, 1164-65 (11th Cir. 2018) (recognizing that Florida robbery and armed robbery are violent felonies); *United States v. Hill*, 799 F.3d 1318, 1322 (11th Cir. 2015) (concluding that Florida resisting an officer with violence is a violent felony).

Accordingly, Hudson’s argument that his sentence was unconstitutionally enhanced is foreclosed by binding precedent, and no COA is warranted as to Claim 1. *See Hamilton v. Sec’y, Fla. Dep’t of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015) (“[N]o COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law.”). Similarly, no COA is warranted as to Claim 2, as Hudson has not shown that his appellate counsel was ineffective for failing to challenge the enhancement. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (stating that an ineffective assistance claim requires a showing of counsel’s deficient performance and resulting prejudice); *Freeman v. Att’y Gen.*, 536 F.3d 1225, 1233 (11th Cir. 2008) (“A lawyer cannot be deficient for failing to raise a meritless claim.”).

Claims 3 and 4: Mental Competence and Diminished Capacity

“Counsel is not necessarily required to seek independent mental evaluations in order to render effective assistance.” *Holladay v. Haley*, 209 F.3d 1243, 1250 (11th Cir. 2000). Instead, counsel has a duty to pursue reasonable investigation, or to make reasonable decisions that render

investigation unnecessary. *Strickland*, 466 U.S. at 691. A defendant is competent to stand trial if “he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960). Section 5K2.13 provides that a downward departure may be warranted if: (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) his significantly reduced mental capacity contributed substantially to the commission of the offense. U.S.S.G. § 5K2.13.

Prior to trial, counsel requested that Hudson be evaluated by a psychologist, who opined that Hudson “demonstrated no symptoms of an active mental illness that would interfere with his rational understanding of the proceedings or his ability to assist toward his defense.” The psychologist further concluded that Hudson should be held criminally responsible for his offense, as there was “no evidence to suggest that he was experiencing symptoms of mental illness [at the time of the offense] that would detract from his understanding of the illegal nature of his actions.”

In light of these results, Hudson has not demonstrated that counsel’s decision not to pursue further investigation of his mental competence was deficient. In addition, he has not established prejudice, as he has not shown that further evaluation would have resulted in a finding that he was incompetent to stand trial, or suffered from a significantly reduced mental capacity at the time of the offense. Based on the foregoing, Hudson’s motion for a COA is DENIED.



Elizabeth P. Palko
UNITED STATES CIRCUIT JUDGE