

Petitioner's Appendices

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-11904-JJ

DENANDIAS WATSON,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeals from the United States District Court
for the Northern District of Georgia

Before: MARCUS, WILSON and JILL PRYOR, Circuit Judges.

BY THE COURT:

Denandias Watson appeals from the district court's denial of his 28 U.S.C. § 2255 motion to vacate his sentences. The government has filed a motion to vacate his certificate of appealability ("COA") or, alternatively, for summary affirmance and to stay the briefing schedule, arguing that our recent decision in *Beeman v. United States*, 871 F.3d 1215 (11th Cir. 2017), forecloses Watson any relief on appeal.

In a § 2255 proceeding, an appeal may not be taken to this Court unless a circuit judge issues a COA from a final order denying relief. 28 U.S.C. § 2253(c)(1)(B). A COA shall not issue unless the applicant has made a substantial showing of the denial of a constitutional right, and the COA must indicate which specific issue or issues satisfy that showing. *Id.* § 2253(c)(2)-(3).

Summary disposition is appropriate either where time is of the essence, such as “situations where important public policy issues are involved or those where rights delayed are rights denied,” or where “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

In *Beeman*, we held that a § 2255 movant seeking relief under *Johnson* must prove that his sentencing court relied solely on the residual clause to qualify a prior conviction as a violent felony, and that he did not have at least three other prior convictions that qualified as violent felonies or serious drug offenses. 871 F.3d at 1221. We noted that nothing in the district court record suggested that the court relied only on the residual clause in sentencing the defendant and, as a result, *Beeman* was not entitled to relief under *Johnson*. *Id.* at 1224.

Here, Watson concedes, and the record demonstrates that, like the movant in *Beeman*, he cannot demonstrate that he was sentenced solely under the residual clause, because the district court did not identify under which clause his state convictions qualified as serious violent felonies. *Beeman*, 871 F.3d at 1221, 1224. As a result, the government is clearly right as a matter of law that he cannot succeed on his *Johnson* claims regarding whether Georgia aggravated assault or Georgia possession of a firearm during the commission of a crime qualify as serious violent felonies. *Groendyke Transp., Inc.*, 406 F.2d at 1162. For the same reason, any *Clisby* error the district court committed in failing to address Watson’s arguments regarding Georgia possession of a firearm during the commission of a crime after *Johnson* was harmless.

Accordingly, the government’s motion for summary affirmance is GRANTED, and its motions to vacate the COA and to stay the briefing schedule are DENIED as moot.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

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| UNITED STATES OF AMERICA, Plaintiff, v. DENANDIAS WATSON, Defendant, | : : : : : : : : | Criminal Action No. 1:04-CR-0591-WBH Motion to Vacate 28 U.S.C. § 2255 |
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ORDER

A jury in this Court convicted Defendant of conspiring to commit a robbery, robbery, conspiracy to possess a firearm in furtherance of a robbery, possession of a firearm in furtherance of a crime of violence, and possession of a firearm after a prior conviction for a felony offense. This Court then sentenced Defendant to four concurrent terms of life and a concurrent term of 120 months of incarceration. This Court imposed Defendant's life sentences pursuant to 18 U.S.C. § 3559(c) because Defendant had prior drug and violent felony convictions.

After the Supreme Court issued its opinion in Johnson v. United States, 135 S. Ct. 2551 (2015), invalidating the residual clause of the Armed Career Criminal Act (ACCA), Defendant sought and received authorization from the Eleventh Circuit to file a successive 28 U.S.C. § 2255 motion, [Doc. 322], and Defendant then filed his motion in this Court, [Doc. 323].

In Johnson, the Supreme Court held that the residual clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(ii), is unconstitutionally vague. Even though this Court sentenced Defendant to life pursuant to § 3559(c)(1), the federal “three strikes” law, Defendant argues that, in light of Johnson, the predicate state convictions no longer qualify as “serious violent felonies.” According to the Eleventh Circuit in granting Defendant’s application to file his successive § 2255 motion, this Court must determine whether it defined Defendant’s state convictions for aggravated assault or possession of a firearm during the commission of a crime as serious violent felonies using the § 3559(c)(1) residual clause and, if so, whether that residual clause suffers from the same constitutional infirmities as the one in the ACCA.

Under § 3559(c), a serious violent felony includes

any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another *or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;*

18 U.S.C. § 3559(c)(2)(F)(ii) (emphasis supplied).

The italicized portion of the definition above is what would be considered the three strikes equivalent of the ACCA residual clause. Accordingly, if Defendant’s aggravated assault conviction falls within the non-italicized portion of the statutory definition, then his motion must fail. Under O.C.G.A. § 16-5-21(c), persons convicted of aggravated assault can receive a sentence of up to 20 years. Georgia’s code defines

assault as the attempt “to commit a violent injury . . . or an act places another in reasonable apprehension of immediately receiving a violent injury.” O.C.G.A.

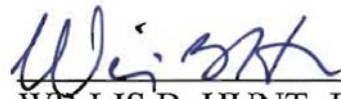
§ 16-5-20. Aggravated assault in Georgia involves an assault

(1) [w]ith intent to murder, to rape, or to rob; (2) [w]ith a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; (3) [w]ith any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in strangulation; or (4) . . . [by] discharging a firearm from within a motor vehicle toward a person or persons.

O.C.G.A. § 16-5-21(b).

Clearly, aggravated assault in Georgia is punishable by a maximum term of imprisonment of 10 years or more and it has as an element the use, attempted use, or threatened use of physical force against the person of another. It is thus equally clear that Defendant’s aggravated assault claim was not characterized as a three strikes predicate crime under the § 3559(c) residual clause, and this Court must conclude that Defendant does not have a claim under Johnson that his sentence is unconstitutional. Accordingly, Defendant’s motion to vacate, [Doc. 323], is **DENIED**.

IT IS SO ORDERED this 23rd day of February, 2017.



WILLIS B. HUNT, JR.
Judge, U. S. District Court