

APPENDIX A

(In re: Jimmie Lee Dixon, Appeal No. 18-10503)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-10503

In re: JIMMIE DIXON,

Movant

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

Before SMITH, GRAVES, and DUNCAN, Circuit Judges.

PER CURIAM:

Jimmie Dixon, federal prisoner # 29531-077, moves for authorization to file a successive 28 U.S.C. § 2255 motion challenging his conviction and sentence under 18 U.S.C. § 924(c) for use of a firearm during a crime of violence, i.e., federal kidnaping under 18 U.S.C. § 1201(a)(2).¹ According to Dixon, he is entitled to authorization based on the Supreme Court's decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). Specifically, Dixon contends that the Supreme Court's holding in *Dimaya* that the residual clause defining a crime of violence in 18 U.S.C. § 16(b) was unconstitutionally vague rendered an identical residual clause in § 924(c)(3)(B) unconstitutional as well. In addition, Dixon asserts that kidnaping does not qualify as a crime of violence

¹ Dixon was also convicted of robbery, attempted robbery, assault with a deadly weapon, and aggravated kidnapping. He is not challenging those convictions.

under the use of force clause in § 924(c)(3)(A). Thus, Dixon asserts that kidnaping no longer qualifies as a crime of violence under § 924(c), rendering his conviction and sentence unconstitutional.

We will not grant authorization to file a successive § 2255 motion absent a prisoner's *prima facie* showing that his claims rely on either: (1) newly discovered evidence establishing that no reasonable factfinder would have convicted him of the underlying offense, or (2) "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." § 2255(h); *see* 28 U.S.C. § 2244(b)(3)(C); *Reyes-Requena v. United States*, 243 F.3d 893, 897-98 (5th Cir. 2001).

Dixon has not made the required showing. In particular, 18 U.S.C. § 924(c)(3)(B) has not been invalidated, and *Dimaya* has not been made retroactively applicable to cases on collateral review by the Supreme Court. *See United States v. Williams*, __F.3d__, No. 16-20815, 2018 WL 3621979, *2 (5th Cir. July 30, 2018) (holding that "[i]f § 924(c)(3)(B) is ultimately held to be unconstitutional, that finding may open the door to future collateral challenges to sentences rendered under that statute [b]ut that has not yet come to pass, so we cannot consider such a challenge at this time."); § 2255(h)(2). Cf. *United States v. Santistevan*, __ F. App'x __, 2018 WL 1779331, at *3 (10th Cir. Apr. 13, 2018) ("[A]n initial § 2255 motion invoking *Johnson* [is] not timely under § 2255(f)(3) when the underlying statute of conviction [is] § 924(c), not the ACCA."). It would therefore be premature to authorize a successive petition at this time.

Accordingly, IT IS ORDERED that Dixon's motion for authorization to file a successive § 2255 motion is DENIED.

IT IS FURTHER ORDERED that movant's motion to stay further proceedings in this Court, pending a ruling in U.S. Supreme Court Case No. 17-97, USA v. Jenkins, is DENIED.