

APPENDIX "A"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUITC.A. No. 18-3433

ADONIJAH LINDSAY, Appellant

vs.

UNITED STATES OF AMERICA

(D.N.J. Civ. No. 16-cv-03281)

Present: CHAGARES, RESTREPO, and SCIRICA, Circuit Judges

Submitted is appellant's application for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above captioned case.

Respectfully,

Clerk

ORDER

Appellant's application for a certificate of appealability is denied. Appellant has argued that, in light of Sessions v. Dimaya, 138 S. Ct. 1204 (2018), he is actually innocent and that McQuiggin v. Perkins, 569 U.S. 383, 392 (2013), could act as a gateway, pursuant to a Fed. R. Civ. P. 60(b)(6) motion to reopen the § 2255 judgment, see Satterfield v. District Attorney of Philadelphia, 872 F.3d 152, 160-61 (3d Cir. 2017), through which his due process claim concerning the residual clause in 18 U.S.C. § 924(c) may be addressed on the merits. Reasonable jurists could not debate, however, that extraordinary circumstances do not exist for granting appellant's Rule 60(b)(6) motion, see Martinez-McBean v. Gov't of Virgin Islands, 562 F.2d 908, 911 (3d Cir. 1977), at this time. The District Court originally held that the contemporaneous convictions in this case, when read together, support the determination that appellant's Hobbs Act robbery qualifies as a crime of violence under § 924(c)(1)(A)(3)(A)'s "elements/force" clause. The statute at issue in Dimaya, 18 U.S.C. § 16(b) -- as well as the residual clause of the Armed Career Criminal Act, which was the subject of Johnson -- determines the impact of prior convictions on later, entirely separate proceedings. Both statutes require courts to make decisions about the nature of a past conviction based only on the elements of the prior offense (that is, to make decisions based on a categorical analysis). Appellant's case does not require the use of a categorical analysis where the convictions are contemporaneous, and thus nothing in Dimaya calls into question the District Court's

original § 2255 determination. We will summarily vacate that portion of the District Court's order declining to accept future filings from appellant on this issue. As appellant notes, the U.S. Supreme Court recently granted certiorari in United States v. Davis, 2019 WL 98544 (U.S. Jan. 4, 2019), to address whether the definition of "crime of violence" found in § 924(c)'s residual clause is unconstitutionally vague in the context of a Hobbs Act robbery. If the Supreme Court's ultimate decision in United States v. Davis is favorable to appellant, his pursuit of relief based on it would not be vexatious.

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: February 22, 2019
Tmm/cc: Adonijah Lindsay
Mark E. Coyne, Esq.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

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February 22, 2019

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RE: Adonijah Lindsay v. USA
Case Number: 18-3433
District Court Case Number: 2-16-cv-03281

ENTRY OF JUDGMENT

Today, **February 22, 2019** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App.

P. 32(g).
15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszeit, Clerk

By: *Timothy McIntyre*
Timothy McIntyre, Case Manager
267-299-4953

APPENDIX "B"

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ADONIJAH LINDSAY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No. 16-3281 (SDW)

ORDER

This matter having come before the Court on Petitioner Adonijah Lindsay's motion seeking relief from this Court's dismissal of his amended motion to vacate sentence brought pursuant to Federal Rule of Civil Procedure 60(b) (ECF No. 20), the Court having reviewed the motion and the record of proceedings in this matter, and for the reasons set forth in the accompanying memorandum opinion,

IT IS on this 10th day of July, 2018,

ORDERED that the Clerk of the Court shall re-open this matter for the purposes of this Order only; and it is further

ORDERED that, to the extent Petitioner's motion is in fact a second or successive motion to vacate sentence brought without leave of the Court of Appeals, Petitioner's motion is **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED that, to the extent Petitioner's current motion properly seeks relief from this Court's prior decisions pursuant to Rule 60(b), Petitioner's motion (ECF No. 20) is **DENIED**; and it is finally

ORDERED that the Clerk shall serve a copy of this Order and the accompanying Memorandum Opinion upon Petitioner by regular mail, and shall CLOSE the file.

s/ Susan D. Wigenton
Hon. Susan D. Wigenton,
United States District Judge