

# APPENDIX

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4 **UNITED STATES DISTRICT COURT**

5 **DISTRICT OF NEVADA**

6 UNITED STATES OF AMERICA,

)

7 Plaintiff,

)

8 ) 2:06-cr-00239-RCJ-PAL-1

9 vs.

)

10 KURT J. MYRIE et al.,

)

11 ) **ORDER**

Defendants.

)

)

12 Defendant Kurt Myrie pled guilty to: (1) conspiracy to commit bank robbery; (2) armed  
13 bank robbery; (3) brandishing a firearm during, in relation to, and in furtherance of a conspiracy  
14 to commit bank robbery; and (4) brandishing a firearm during and in relation to a crime of  
15 violence. The Court sentenced him to a total of 194 months of imprisonment. He appealed, and  
16 the Court of Appeals affirmed his convictions and sentences. Defendant filed a habeas corpus  
17 motion under 28 U.S.C. § 2255, arguing that the bank robbery that formed the basis for the  
18 brandishing offense was not a “crime of violence” under 18 U.S.C. § 924(c)(3), because the  
19 residual clause thereunder defining “crime of violence” was similar to the residual clause of  
20 § 924(e)(2), which the Supreme Court had struck down as unconstitutionally vague. *Johnson v.*  
21 *United States (Johnson II)*, 135 S. Ct. 2551 (2015). The Court denied the motion. Myrie asked  
22 the Court to stay or withdraw its order because he had not yet received permission from the Court  
23 of Appeals under § 2255(h) to file the successive motion. The Court denied the motion.

24 The Court of Appeals has since granted Defendant permission to file a successive § 2255  
25 motion, and Defendant has asked the Court to stay its ruling until the Supreme Court resolves a

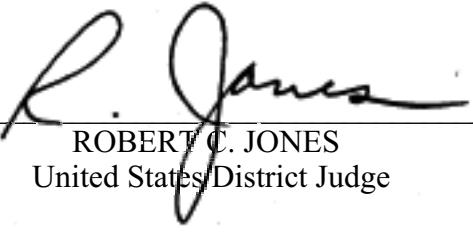
1 certiorari petition as to *United States v. Blackstone*, --- F.3d ----, 2018 WL 4344096 (9th Cir.  
2 2018). The Court denies the motion to stay, because no result of *Blackstone* can aid Defendant.  
3 The Court can assume for the sake of argument that the present motion is timely under  
4 § 2255(f)(3)—the relevant contested issue in *Blackstone*—and the merits will still require denial.  
5 Since Defendant first filed his motion, the Court of Appeals has held that bank robbery remains a  
6 categorical “crime of violence” under the physical force clause of § 924(c)(3)(A), regardless of  
7 *Johnson II*’s invalidation of the residual clause of § 924(c)(3)(B). *United States v. Watson*, 881  
8 F.3d 782 (9th Cir. 2018) (agreeing with every other Court of Appeals to decide the issue).

9 **CONCLUSION**

10 IT IS HEREBY ORDERED that the Motion to Stay (ECF No. 247), the Motion to Vacate  
11 (ECF No. 216), and a certificate of appealability are DENIED.

12 IT IS SO ORDERED.

13 Dated: This 7th day of November, 2018.

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16 ROBERT C. JONES  
17 United States District Judge  
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**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JAN 10 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KURT J. MYRIE, AKA Kurt James Myrie,

Defendant-Appellant.

No. 18-17336

D.C. Nos. 2:16-cv-01489-RCJ  
2:06-cr-00239-RCJ-PAL-1

District of Nevada,  
Las Vegas

ORDER

Before: SCHROEDER and CHRISTEN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *United States v. Watson*, 881 F.3d 782 (9th Cir.), *cert. denied*, 139 S. Ct. 203 (2018).

Any pending motions are denied as moot.

**DENIED.**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAR 15 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KURT J. MYRIE, AKA Kurt James Myrie,

Defendant-Appellant.

No. 18-17336

D.C. Nos. 2:16-cv-01489-RCJ  
2:06-cr-00239-RCJ-PAL-1

District of Nevada,  
Las Vegas

ORDER

Before: CANBY and WARDLAW, Circuit Judges.

Petitioner's motion for reconsideration (Docket Entry No. 5) is denied. *See*  
9th Cir. R. 27-10.

No further filings will be entertained in this closed case.