

A P P E N D I X

Appendices

Eleventh Circuit Opinion

Robinson v. United States, --- F. App'x ---,
2019 WL 2070448 (11th Cir. May 10, 2019)A

District Court Order Denying Motion to Vacate

Robinson v. United States, Case No. 5:16-cv-363-Oc-10PRLB

Appendix A

2019 WL 2070448

Only the Westlaw citation is currently available.

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2. United States Court of Appeals, Eleventh Circuit.

Michael Lawrence ROBINSON,
Petitioner - Appellant,
v.
UNITED STATES of America,
Respondent - Appellee.

No. 16-16114

Non-Argument Calendar

(May 10, 2019)

Synopsis

Background: Defendant, who had been convicted of possession with intent to distribute cocaine base and carrying a firearm during and in relation to a drug trafficking offense, and sentenced as a career offender, moved to vacate his sentence. The United States District Court for the Middle District of Florida denied the motion, and defendant appealed.

[Holding:] The Court of Appeals held that defendant could not challenge residual clause of career offender guideline as unconstitutionally vague in violation of due process.

Affirmed.

West Headnotes (1)

[1] Courts

🔑 Number of judges concurring in opinion, and opinion by divided court

Criminal Law

🔑 Particular issues and cases

Defendant could not challenge residual clause of career offender guideline as unconstitutionally vague in violation of due process, even in the context of second or successive § 2255 motions to vacate, pursuant to the prior panel precedent rule and the holding in *In re Griffin*, 823 F.3d 1350, U.S. Const. Amend. 14; 28 U.S.C.A. § 2255; U.S.S.G. § 4B1.2(a)(2).

Cases that cite this headnote**Attorneys and Law Firms**

Conrad Benjamin Kahn, Rosemary Cakmis, Donna Lee Elm, Federal Public Defender's Office, Orlando, FL, for Petitioner-Appellant

Linda Julin McNamara, U.S. Attorney's Office, Tampa, FL, David Rodney Brown, U.S. Attorney's Office, Jacksonville, FL, for Respondent-Appellee

Appeal from the United States District Court for the Middle District of Florida, D.C. Docket Nos. 5:16-cv-00363-WTH-PRL; 5:99-cr-00048-WTH-PRL-1

Before JILL PRYOR, BRANCH and JULIE CARNES, Circuit Judges.

Opinion

PER CURIAM:

*1 Michael Robinson appeals the district court's denial of his 28 U.S.C. § 2255 motion to vacate. The district court granted Robinson a certificate of appealability on whether, in light of *Johnson v. United States*, — U.S. —, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015), he was denied his constitutional right to due process when he was sentenced as a career offender under the residual clause of U.S.S.G. § 4B1.2(a)(2). After careful review, we affirm.

I.

Robinson was convicted of possession with intent to distribute cocaine base and carrying a firearm during and in relation to a drug trafficking offense. The presentence investigation report ("PSR"), which the district court adopted at sentencing, classified Robinson as a career offender

under U.S.S.G. § 4B1.1. The career offender enhancement resulted in a total offense level of 29, which was the same offense level the PSR calculated in the absence of the career offender enhancement. With a criminal history category of VI, Robinson's guidelines range was 151 to 188 months' imprisonment, plus a mandatory consecutive sentence of 60 months' imprisonment for the firearm offense.

At the time of his sentencing, before the United States Supreme Court's decision in *United States v. Booker*, the Sentencing Guidelines were mandatory—the district court was required to sentence Robinson within the range in the adopted PSR. 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005) (holding that the guidelines, when considered to be mandatory, violated defendants' Sixth Amendment right to a jury trial and effectively rendering the guidelines advisory in all later cases). The district court sentenced Robinson to a total of 228 months' imprisonment.

After the Supreme Court decided *Johnson*, Robinson moved under § 2255 to vacate his sentence. He argued that *Johnson*, which invalidated the so-called residual clause in the Armed Career Criminal Act as unconstitutionally vague in violation of due process, *Johnson*, 135 S.Ct. at 2557, also rendered invalid the residual clause of the pre-*Booker* mandatory career offender guideline, U.S.S.G. § 4B1.2(a)(2) (2001). The district court denied Robinson's motion with prejudice, concluding that although Robinson's PSR classified him as a career offender, his guidelines range was the same whether the enhancement applied or not; thus, *Johnson* could have no effect on his sentence.

Robinson moved for reconsideration and to stay proceedings pending the Supreme Court's resolution of *Beckles v. United States*, in which the Court was set to decide whether the post-*Booker* advisory guidelines were subject to a due process vagueness challenge. See *Beckles v. United States*, — U.S. —, 136 S.Ct. 2510, 195 L.Ed.2d 838 (2016) (granting certiorari). In his motion, Robinson conceded that his challenge to the mandatory career offender guideline was foreclosed by this Court's decision in *In re Griffin*, 823 F.3d 1350 (11th Cir. 2016), which held that the pre-*Booker* guidelines were not subject to a vagueness challenge. *Id.* at 1354-56. But, Robinson argued, *Beckles* could affect the validity of *Griffin* and could bear on the constitutionality of the mandatory career offender guideline. He also argued that even though he may not have been sentenced under the career offender guideline, his career offender designation affected his ability to seek and receive a sentence reduction pursuant

to retroactive amendments to the Sentencing Guidelines and that he therefore stood to benefit from a favorable decision in *Beckles*.

*2 The district court denied Robinson's motion but granted him a certificate of appealability. Robinson appealed. The Supreme Court in *Beckles* then decided that the advisory guidelines are not subject to a due process vagueness challenge. *Beckles v. United States*, — U.S. —, 137 S.Ct. 886, 890, 197 L.Ed.2d 145 (2017).

II.

On appeal, Robinson argues that the mandatory career offender guideline is void for vagueness under *Johnson*'s reasoning.¹ He argues that *Griffin* is not an impediment to relief for two reasons: first, *Griffin* is not binding outside of the second or successive § 2255 motion context in which it was decided; and second, *Beckles* abrogated it. We cannot agree.

As Robinson acknowledged in the district court, *Griffin* forecloses his challenge to the mandatory career offender enhancement. See *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (explaining that a prior panel precedent binds subsequent panels unless and until it is overruled or undermined to the point of abrogation by this Court sitting en banc or by the Supreme Court). Although Robinson argues on appeal that *Griffin* is not binding in the context of a first § 2255 motion, this Court has rejected the argument that published orders deciding requests for authorization to file a second or successive § 2255 motion, like *Griffin*, do not bind panels outside the second or successive context. See *United States v. St. Hubert*, 909 F.3d 335, 346 (11th Cir. 2018).

Moreover, the Supreme Court's decision in *Beckles* did not abrogate *Griffin* because *Beckles* did not decide or squarely address whether due process vagueness principles apply to the mandatory guidelines. For a Supreme Court decision to overcome the prior panel precedent rule, it must be "squarely on point" and "actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel." *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009). *Beckles* touched on the distinction between the mandatory and advisory guidelines when it held that the advisory guidelines were not subject to a vagueness challenge. See *Beckles*, 137 S.Ct. at 894. But the Supreme Court did not make any decision as to the mandatory guidelines and vagueness

principles, instead “leav[ing] open the question” of whether the pre-*Booker* guidelines could be subject to a vagueness challenge. *Id.* at 903 n.4 (Sotomayor, J., concurring in judgment). Because *Beckles* is not “squarely on point” and does not directly conflict with *Griffin*, we remain bound by *Griffin*.

III.

Griffin forecloses Robinson’s challenge to the mandatory career offender guideline. Although we acknowledge that the

government has advanced several other arguments in support of the district court’s judgment, we need not consider them here. We affirm the district court’s denial of Robinson’s § 2255 motion to vacate.

AFFIRMED.

All Citations

--- Fed.Appx. ----, 2019 WL 2070448

Footnotes

- 1 “In a [s]ection 2255 proceeding, we review legal issues *de novo* and factual findings under a clear error standard.” *United States v. Walker*, 198 F.3d 811, 813 (11th Cir. 1999).

Appendix B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

MICHAEL LAWRENCE ROBINSON,

Petitioner,

-vs-

Case Nos. 5:16-cv-363-Oc-10PRL
5:99-cr-48-Oc-10PRL

UNITED STATES OF AMERICA,

Respondent.

_____ /

**ORDER DENYING MOTION
UNDER 28 U. S. C. §2255**

Michael Robinson was convicted and sentenced in 2001 for two offenses: possession with intent to distribute cocaine base (Count Three), and carrying a firearm during and in relation to a drug trafficking offense (Count Four).

At sentencing, under the Sentencing Guidelines as to Count Three, Robinson was determined to be within Total Offense Level 29, Criminal History Category VI, with a sentencing range of 151 to 188 months.¹ The sentence imposed by the court

¹ Robinson was held accountable for 127 grams of cocaine base. Under U.S.S.G. § 2D1.1(a)(3) of the applicable sentencing manual at that time, offenses involving 50 but less than 150 grams of cocaine base had a Base Offense Level of 32. There were no enhancements or reductions by way of specific offense characteristics, obstruction of justice, victim related or role adjustments, so that the Adjusted Offense Level was also Level 32. The Defendant was given a three level reduction for his acceptance of responsibility resulting in a Total Offense Level of 29. (Presentence Report, ¶ 21, page 4). He was then determined to have 18 Criminal History Points placing him in Criminal History Category VI (Presentence Report, ¶ 48, page 14); and at Total Offense Level 29, Criminal History Category VI, the applicable sentencing range was 151 to 188 months.

was a mid-range term of commitment of 168 months as to Count Three (followed by a mandatory consecutive term of 5 years as to Count Four).

The presentence report also revealed that Robinson qualified as a career offender under U.S.S.G. § 4B1.1 because he was over 18 years of age at the time of the offense of conviction and had two prior felony convictions for a crime of violence or a controlled substance offense, namely, a state court conviction for sale of cocaine and a state court conviction for escape. Because the maximum sentence for the offense of conviction was 20 years, the adjusted Offense Level as specified in U.S.S.G. § 4B1.1(b) was 32, and the offender was automatically placed in Criminal History Category VI. Reducing the adjusted offense level by three levels for acceptance of responsibility produced a Total Offense Level of 29, Criminal History Category VI, and a sentencing range of 151 to 188 months (Presentence Report, ¶¶ 22-29, page 5) the same sentencing range applicable to the case without the Chapter 4, Career Criminal classification.

In his present motion under § 2255, Robinson seeks to avail himself of the benefit of Johnson v. United States, ___ U. S. ___, 135 S. Ct. 2551 (2015) in order to challenge his escape conviction as a non-violent offense that should not properly be used as an enhancer for purposes of his classification as a Career Offender thereby undermining his sentence. The effort fails, however, because he was not sentenced as a Career Offender. His unenhanced Guidelines sentence would be the same even if one disregarded his status as a career offender as unlawfully applied because his conviction for escape cannot be treated as a violent felony.

The motion under 28 U.S.C. §2255 is DENIED with prejudice. The Clerk is Directed to enter Judgment to that effect and close the file.

IT IS SO ORDERED.

DONE AND ORDERED at Ocala, FL this 21st day of June, 2016.

A handwritten signature in blue ink, appearing to read "Pamela Hodgson", is written above a horizontal line.

UNITED STATES DISTRICT JUDGE

Copies to: Michael Lawrence Robinson
Counsel of Record