

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11138-H

ERIC MACK,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Alabama

ORDER:

Erik Mack is a federal prisoner who is serving a 96-month sentence after pleading guilty in 2014 to brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). As background, Mack also was charged with aiding and abetting a Hobbs Act robbery, in violation of 18 U.S.C. § 1951. That count was dismissed under his plea agreement, but it served as the companion “crime of violence” for Mack’s § 924(c) conviction. Mack thereafter filed a 28 U.S.C. § 2255 motion to vacate his sentence, arguing that, under *Johnson v. United States*, 135 S. Ct. 2551 (2015) (striking down the residual clause of the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), as unconstitutionally vague), aiding and abetting Hobbs Act robbery no longer was a “crime of violence” to support his § 924(c)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ERIC MACK,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 2:16-CV-487-WKW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

Before the court is Petitioner’s motion for a certificate of appealability (“COA”). (Doc. # 31.) A COA is necessary before a petitioner may pursue an appeal in a habeas corpus proceeding. *See* 28 U.S.C. § 2253(c). To mandate the issuance of a COA, a petitioner must make a “substantial showing of the denial of a constitutional right.” *Id.* § 2253(c)(2). A petitioner satisfies this requirement by showing that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (cleaned up).

Applying these standards, the court is of the opinion, for the reasons stated in the Recommendation of the Magistrate Judge (Doc. # 18), which was adopted as the

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ERIC MACK,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 2:16-CV-487-WKW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

FINAL JUDGMENT

In accordance with the order entered on this date adopting the Recommendation of the Magistrate Judge, it is the ORDER, JUDGMENT, and DECREE of the court that this case is DISMISSED with prejudice.

The Clerk of the Court is DIRECTED to enter this document on the civil docket as a Final Judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DONE this 14th day of January, 2019.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

Order of the court (Doc. # 27), that Petitioner fails to make the required showing for the issuance of a COA.

Accordingly, it is ORDERED that Petitioner's motion for a COA (Doc. # 31) is DENIED.

DONE this 1st day of April, 2019.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE

conviction.¹ The district court denied the § 2255 motion, finding that aiding and abetting Hobbs Act robbery qualified as a crime of violence under § 924(c)(3)(A)'s elements clause. Mack now moves this Court for a certificate of appealability ("COA") to appeal the district court's denial of his § 2255 motion.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

Reasonable jurists would not debate the district court's denial of Mack's § 2255 motion. Mack's § 924(c) conviction was tied to his conviction for aiding and abetting Hobbs Act robbery. This Court has held that aiding and abetting Hobbs Act robbery categorically qualifies as a crime of violence under § 924(c)(3)(A)'s elements clause. *In re Colon*, 826 F.3d 1301, 1305 (11th Cir. 2016). Even though this holding was made in the context of a second or successive application, it remains binding precedent. *United States v. St. Hubert*, 909 F.3d 335, 346 (11th Cir. 2018), *cert. denied*, 139 S. Ct. 1394 (2019). Accordingly, Mack's motion for a COA is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

¹ Mack also argued that his predicate offense could not be considered a crime of violence under § 924(c)(3)(B)'s residual clause. This Court need not address this issue, as the district court addressed only whether Mack's predicate offense qualified under § 924(c)(3)(A).

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

May 22, 2019

Clerk - Middle District of Alabama
U.S. District Court
PO BOX 711
MONTGOMERY, AL 36101-0711

Appeal Number: 19-11138-H
Case Style: Eric Mack v. USA
District Court Docket No: 2:16-cv-00487-WKW-SRW
Secondary Case Number: 2:13-cr-00072-WKW-SRW-2

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gerald B. Frost, H
Phone #: (404) 335-6182

Enclosure(s)

DIS-4 Multi-purpose dismissal letter