

UNPUBLISHED

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

No. 18-6988

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAYMOND DAVID WILSON,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge. (2:05-cr-00279-DCN-1; 2:14-cv-02467-DCN)

Submitted: August 27, 2019

Decided: September 4, 2019

Before WILKINSON, NIEMEYER, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Raymond David Wilson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Raymond David Wilson seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Wilson has not made the requisite showing. Accordingly, we deny Wilson's motions for a certificate of appealability and to correct his sentence and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Raymond D. Wilson,)
Petitioner,) No. 2:05-cr-00279
v.)
United States of America)
Respondent.)

)

ORDER

This matter comes before the court on a petition to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255 filed by petitioner Raymond D. Wilson (“Wilson”). For the reasons set forth below, the court declines the petition.

I. FACTUAL AND PROCEDURAL HISTORY

Petitioner Raymond D. Wilson (“Wilson”) was charged with one count of armed robbery affecting interstate commerce (Hobbs Act robbery) in violation of 18 U.S.C. § 1951 (Count 1), one count of possession of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. §924(c)(1)(A)(ii) (Count 2), one count of possession of a firearm by a felon, in violation of 18 U.S.C §§ 922(g)(1), 924(a)(2), 924(e)(1) (Count 3), and one count of possession of crack cocaine, in violation of 21 U.S.C. § 844(a) (Count 4). After a jury trial, Wilson was found guilty of all counts in September 2005. Following Wilson’s conviction, he was sentenced to 360 months of imprisonment under the sentencing guidelines for career offenders, U.S.S.G. § 4B1.1. Wilson subsequently appealed his conviction, which the Fourth Circuit Court of Appeals affirmed.

In February 2008, Wilson filed a motion to vacate under 28 U.S.C. § 2255 challenging his convictions, which the district court denied. Following the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015), Wilson obtained authorization to file a successive § 2255 motion. In this motion, Wilson argued that his conviction for Hobbs Act robbery could no longer serve as a predicate crime of violence to support his § 924(c) conviction. The district court denied his motion, and Wilson appealed. The Fourth Circuit Court of Appeals dismissed the appeal for lack of jurisdiction and remanded to this court to consider Wilson's claim that his § 924(c) conviction is no longer valid because Hobbs Act robbery is not a crime of violence.

II. STANDARDS OF REVIEW

The burden of proof rests upon Wilson to establish the allegations of his petition by a preponderance of the evidence. See, e.g., Miller v. United States, 261 F.2d 546, 547 (4th Cir. 1958). In deciding a § 2255 motion, the court shall grant a hearing “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b).

III. DISCUSSION

Wilson first argues that Hobbs Act robbery does not constitute a crime of violence under the force clause of § 924(c)(3)(A) and that the residual clause § 924(c)(3)(B) is unconstitutional under Johnson. Moreover, Wilson claims that Hobbs Act robbery does not fit within § 924(c) and therefore cannot serve as the appropriate predicate offense for the sentencing enhancement. He asks the court to vacate his sentence on these grounds. Because the court determines that Hobbs Act robbery is a

crime of violence, it need not address Wilson's remaining arguments. His petition is denied.

In the last few years, a number of courts have found that Hobbs Act robbery constitutes a crime of violence under the force clause of 18 U.S.C. § 924(c). The Eastern District of Virginia recently found that Hobbs Act robbery was a crime of violence and denied petitioner's motion to vacate his sentence. United States v. Bennett, 2016 WL 354753 (E.D. Va. Jan 27, 2016). In Bennett, the petitioner pleaded guilty to Hobbs Act robbery and brandishing a firearm in furtherance of a commercial robbery. Id. at *1. Following his conviction, he moved to dismiss the charge seeking an enhanced penalty on the grounds that Hobbs Act robbery does not qualify as a crime of violence under the force clause of § 924(c)(3)(A), and because the residual clause of § 924(c)(3)(B) is unconstitutionally vague under the Supreme Court's ruling in Johnson. Id. at *2. Title 18 section §1951(a) defines Hobbs Act robbery as follows:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

The term robbery in this section means:

... [T]he unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

Id. (emphasis added). The Bennett court followed the categorical approach in evaluating the statutory definitions of the offense and concluded that since the statutory definition of Hobbs Act robbery included “threatened force,” the petitioner was appropriately convicted of a crime of violence. Id. at *3. See also United States v. Redmond, 2015 WL 5999317 (W.D.N.C. Oct. 13, 2015) (Hobbs Act robbery is a crime of violence under the modified categorical approach); United States v. Standberry, 2015 WL 5920008 (E.D. Va. Oct. 9, 2015) (Since the statutory definition of Hobbs Act robbery contains “the actual, attempted, or threatened use of physical force against the person or property of another” as one of its elements, it is considered a crime of violence under § 924(c)(3)(A)); United States v. Walker, 2016 WL 153088 (E.D. Va. Jan. 12, 2016) (Hobbs Act robbery is a crime of violence because a person who commits this crime by “fear of injury” necessarily commits it by “fear of physical force”).

Here too, Wilson is also convicted of Hobbs Act robbery and possession of a firearm in furtherance of a crime of violence. Following Bennett and other district court cases, Hobbs Act robbery is considered a crime of violence under the force clause of § 924(c)(3)(A). The statutory language of Wilson’s charge for Hobbs Act robbery includes the “threatened force” language also found in the force clause, so his charge was appropriately categorized as a crime of violence. Thus, this court declines to vacate his sentence.¹

¹ Because the court has determined that Hobbs Act robbery is a crime of violence under the force clause of § 924(c)(3)(A), it need not consider Wilson’s argument regarding the residual clause of § 924(c)(3)(B).

IV. CONCLUSION

For the reasons set forth above, the court **DENIES** Wilson's motion to vacate his sentence.

IT IS FURTHER ORDERED that a certificate of appealability is denied because petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

AND IT IS SO ORDERED.



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

June 6, 2018
Charleston, South Carolina