

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Todd Michael Vincent,

petitioner,

vs.

United States of America,

respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
Appeal No. 18-13880

MOTION FOR EXTENSION OF TIME

On February 12, 2020, Todd Vincent's petition for writ of certiorari is due to be filed in this Court. Because Mr. Vincent is filing his certiorari pro se as a federal prisoner, he requests an extension of time until April 12, 2020 to file his petition.

Mr. Vincent is imprisoned at the Coleman Correction Complex (Low) in Coleman, Florida. As a pro se prisoner, Mr. Vincent has little knowledge of the law, thus he requires extra time in order to properly research and prepare his petition. The prison resources he uses to prepare his pleading are limited: 12 electronic library computer terminals (no physical books); 6 non-memory typewriters (with 4 power cords); one copier (operated under highly restricted hours); and a lone law clerk (who works the desk once a week for two hours). Worse, these resources must be shared among about 2,000 inmates.



Further complicating matters, prison daily life is in constant flux. A fight, shakedown, or any perceived threat to the security of the facility shuts down the compound, preventing Mr. Vincent from accessing the resources that he needs to prepare his pleadings.

Unpredictability aside, the prison itself is understaffed. Frequently, staff from non-essential departments, such as education or recreation, are pulled from their position for correction officer duty. Unfortunately for Mr. Vincent, pulling staff from the Education department results in its closure, depriving Mr. Vincent of an opportunity to prepare his petition.

Mr. Vincent therefore requests an extension of time up to and including April 12, 2020.

Respectfully submitted by Todd Michael Vincent on this 5th day of January, 2020:

Todd Michael Vincent
Todd Michael Vincent

VERIFICATION

Under penalty of perjury as authorized in 28 U.S.C. § 1746, I declare the factual allegations and factual statements contained in this document are true and correct to the best of my knowledge.

Todd Vincent
Todd Vincent

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PROOF OF SERVICE

I, Todd Michael Vincent, do swear and declare that on this date, January 5, 2020, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR EXTENSION OF TIME on each party to the above proceeding, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

United States Supreme Court, Office of the Clerk. 1 First Street N.E., Washington, D.C. 20543

Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 5, 2020.

Todd Vincent
Todd Vincent

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13880-B

TODD MICHAEL VINCENT,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

Todd Michael Vincent is a federal prisoner serving a total sentence of 130 months' imprisonment after pleading guilty in 2015 to bank robbery, in violation of 18 U.S.C. § 2113(a) & (d), and brandishing a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). He seeks a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") to appeal the denial of his Fed. R. Civ. P. 60(b) motion, in which he argued that his underlying 28 U.S.C. § 2255 motion to vacate, which was filed in 2016, was timely. Specifically, he argued that, in light of the Supreme Court's decision in *Sessions v. Dimaya*, 138 S. Ct. 1204, 1211 (2018), the district court erred in determining that his claim under *Johnson v. United States*, 135 S. Ct. 2551 (2015), was inapplicable to his conviction and sentence.

This Court has held that "a [COA] is required for the appeal of any denial of a Rule 60(b) motion for relief from a judgment in a § 2254 or § 2255 proceeding." *Gonzalez v. Sec'y for Dep't*

of *Corrs.*, 366 F.3d 1253, 1263 (11th Cir. 2004) (*en banc*). To merit a COA, a movant must show that reasonable jurists would find debatable both (1) the merits of an underlying claim and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

The appeal of a Rule 60(b) motion is limited to a determination of whether the district court abused its discretion in denying the motion, and shall not extend to the validity of the underlying judgment *per se*. *Rice v. Ford Motor Co.*, 88 F.3d 914, 918-19 (11th Cir. 1996). A Rule 60(b) motion permissibly may assert that a federal court's previous habeas ruling that precluded a merits determination (*i.e.*, a procedural ruling such as failure to exhaust, a procedural bar, or a statute-of-limitations bar) was in error. *Gonzalez v. Crosby*, 545 U.S. 524, 532 n.4 (2005).

Here, reasonable jurists would not debate the denial of Vincent's Rule 60(b) motion. This Court already determined that, even if § 924(c)(3)(B)'s residual clause was invalidated, Vincent's conviction under § 924(c) would remain valid because his bank-robbery conviction qualifies as a crime of violence under § 924(c)(3)(A). *See In re Hines*, 824 F.3d 1334, 1336-37 (11th Cir. 2016). Accordingly, because Vincent failed to make the requisite showing, his motion for a COA is DENIED and his motion for IFP status is DENIED AS MOOT. *See Slack*, 529 U.S. at 484.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13880-B

TODD MICHAEL VINCENT,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: WILSON and NEWSOM, Circuit Judges.

BY THE COURT:

Todd Michael Vincent has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's August 20, 2019, order denying a certificate of appealability and leave to proceed on appeal *in forma pauperis* in his appeal from the order denying his Fed. R. Civ. P. 60(b) motion for relief from the judgment denying his underlying 28 U.S.C. § 2255 motion to vacate his sentence. Upon review, Vincent's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.