

Petitioner's Appendices

Brandon Lee Edwards v. United States
May 26, 2020

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-14112-D

BRANDON LEE EDWARDS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ORDER:

Brandon Lee Edwards is a federal prisoner serving a total term of 264 months' imprisonment after pleading guilty to, among other charges, 3 counts of attempted Hobbs Act robbery ("Counts 1, 3, and 4"), in violation of 18 U.S.C. § 1951(a), and 1 count of possession of a firearm in relation to a crime of violence ("Count 2"), in violation of 18 U.S.C. § 924(c), which was predicated on Counts 1, 3, and 4. In 2016, Mr. Edwards filed the instant 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, asserting, in relevant part, that, in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015)—which struck down the residual clause of the Armed Career Criminal Act as unconstitutionally vague—attempted Hobbs Act robbery no longer qualified as a crime of violence and, thus, could not support a § 924(c) conviction.

The government moved to dismiss Mr. Edwards's § 2255 motion, and, upon Mr. Edwards's motion, the district court stayed his case pending the Supreme Court's resolution of *United States*

v. *Davis*, 139 S. Ct. 2319 (2019). After the Supreme Court issued its opinion in *Davis*, Mr. Edwards responded to the government's motion to dismiss, arguing that his conviction for attempted Hobbs Act robbery did not qualify as a crime of violence. He argued that attempted Hobbs Act robbery could have qualified as a crime of violence under only § 924(c)(3)(B)'s residual clause, which *Davis* confirmed was unconstitutionally vague. He then argued that attempted Hobbs Act robbery did not qualify as a crime of violence under § 924(c)(3)(A)'s elements clause, and that, thus, his Count 2 conviction was unconstitutional. Although Mr. Edwards conceded that his argument was foreclosed by this Court's binding precedent, he noted that he wished "to preserve the argument for appellate review."

The district court denied Mr. Edwards's § 2255 motion on the merits. Specifically, it noted that binding precedent provided that attempted Hobbs Act robbery qualified as a crime of violence under § 924(c)(3)(A)'s elements clause. Mr. Edwards appealed, and he now moves this Court for a certificate of appealability ("COA").

In order 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 movant 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).

Section 924(c) provides for a mandatory consecutive sentence for any defendant who uses a firearm during a crime of violence or a drug-trafficking crime. 18 U.S.C. § 924(c)(1). For the purposes of § 924(c), "crime of violence" means an offense that is a felony and:

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3).

Here, reasonable jurists would not debate the district court's denial of Mr. Edwards's § 2255 motion. *See Slack*, 529 U.S. at 484. Regardless of *Davis*'s holding that § 924(c)(3)(B)'s residual clause is unconstitutionally vague, we have held that attempted Hobbs Act robbery categorically qualifies as a crime of violence under § 924(c)(3)(A)'s elements clause. *United States v. St. Hubert*, 909 F.3d 335 (11th Cir. 2018). Thus, binding precedent dictates that Mr. Edwards's § 924(c) conviction in Count 2 is valid, and he is not entitled to the relief requested. *See Hamilton v. Sec'y, Fla. Dep't of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015) ("[N]o COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law.") Accordingly, Mr. Edwards's motion for a COA is DENIED.



UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

BRANDON LEE EDWARDS,

v.

CRIMINAL ACTION FILE
NO. 4:14-CR-004-01-HLM

CIVIL ACTION FILE
NO. 4:16-CV-0120-HLM

UNITED STATES OF AMERICA.

ORDER

This case is before the Court on Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 ("§ 2255 Motion") [16] and on the Government's Motion to Dismiss Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 ("Motion to Dismiss") [34].

I. Background

On January 23, 2014, the United States Attorney filed an information against Petitioner. (Information (Docket Entry No. 1).) Count one of the information charged Petitioner with knowingly attempting to obstruct, delay, and affect commerce and the movement of any articles and commodities in commerce by robbery, alleging that, on or about March 6, 2012, Petitioner “did unlawfully attempt to take and obtain property from the presence of R.S., an employee of Sav-a-ton, a business then engaged in an activity affecting interstate commerce, the said property consisting of United States currency, without the consent of R.S., by means of actual and threatened force, violence and fear of injury to the person of R.S.,” in violation of 18 U.S.C. § 1951(a). (Id. at 1.) Count two charged Petitioner with

knowingly brandishing a firearm during and in relation to the attempted armed robbery alleged in count one, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). (Id. at 2.)

Count three of the information charged Petitioner with knowingly attempting to obstruct, delay, and affect commerce and the movement of any articles and commodities in commerce by robbery, alleging that, on or about March 7, 2012, Petitioner “did unlawfully take and obtain property from the presence of D.B., an employee of Marathon (Mapco) Oil Corporation, a business then engaged in an activity affecting interstate commerce, the said property consisting of United States currency, without the consent of D.B., by means of actual and threatened force, violence and fear of injury to the person of D.B.,” in violation of 18 U.S.C. § 1951(a). (Information at 2-3.)

Count four charged Petitioner with knowingly attempting to obstruct, delay, and affect commerce and the movement of any articles and commodities in commerce by robbery, alleging that, on or about March 7, 2012, Petitioner “did unlawfully take and obtain property from the presence of M.I. and M.A., employees of Citgo Petroleum Corporation, a business then engaged in an activity affecting interstate commerce, the said property consisting of United States currency, without the consent of M.I. and M.A., by means of actual and threatened force, violence and fear of injury to the person of M.I. and M.A.,” in violation of 18 U.S.C. § 1951(a). (Id. at 3.) Count five charged Petitioner with being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). (Id. at 3-4.) The

information also contained a forfeiture provision. (Id. at 4-5.)

On January 23, 2014, Petitioner waived indictment and pleaded guilty to the charges contained in the information. (Waiver of Indictment (Docket Entry No. 2); Minute Entry (Docket Entry No. 3); Plea Agreement (Docket Entry No. 3).) On April 17, 2014, Senior United States District Judge Robert L. Vining, Jr. sentenced Petitioner to sixty-three months of imprisonment on count one, to eighty-four months of imprisonment on count two, to be served consecutively to the sentence imposed on count five, to sixty-three months of imprisonment on each of counts three and four, to be served consecutively to the sentence imposed on count one, and to 180 months of imprisonment on count five, to be served concurrently with the sentence on count one, for a total term of imprisonment of 264

months. (Minute Entry (Docket Entry No. 10).) On April 21, 2014, Judge Vining entered his Judgment and Commitment Order. (Judgment & Commitment (Docket Entry No. 11).)

On May 10, 2016, Petitioner filed his § 2255 Motion. (§ 2255 Mot. (Docket Entry No. 16).) Petitioner argued that, with respect to count two, a Hobbs Act robbery under 18 U.S.C. § 1951(a) could not qualify as a crime of violence under 18 U.S.C. § 924(c)(3). (Id. at 6-9.) Petitioner also argued that, as to count two, his Georgia burglary convictions no longer qualified as violent felonies for purposes of the Armed Career Criminal Act (the “ACCA”). (Id. at 10-11.)

The Government filed a response to Petitioner’s § 2255 Motion. (Resp. § 2255 Mot. (Docket Entry No. 19).) In that response, the Government argued that: (1) the grounds

raised in Petitioner's § 2255 Motion did not arise from Johnson v. United States, 576 U.S. —, 135 S. Ct. 2551 (2015) (id. at 9-11); (2) an appeal waiver provision in Petitioner's plea agreement barred the § 2255 Motion (id. At 12-13); (3) the § 2255 Motion was time-barred (id. at 13-14); and (4) Petitioner's § 2255 Motion failed on its merits because Hobbs Act robbery is a crime of violence under § 924(c) (id. at 15-17).

On July 12, 2016, the Court granted the Government's Motion to Withdraw its Response in Opposition to Petitioner's § 2255 Motion and to Stay Filing of New Response, and it stayed the deadline for the Government's response pending a ruling by the United States Court of Appeals for the Eleventh Circuit on the treatment of the Georgia burglary statute under the ACCA in United States

v. Heard, Appeal No. 15-10612, and United States v. Gundy, Appeal No. 14-12113. (Order of July 12, 2016 (Docket Entry No. 22).) On January 9, 2017, the Court entered an Order noting that the Eleventh Circuit had decided Gundy, but continuing to stay the case pending the Eleventh Circuit's ruling in Heard. (Order of Jan. 9, 2017 (Docket Entry No. 25).) On February 23, 2017, the Eleventh Circuit resolved Heard. (Mot. Extend Stay Attach. B (Docket Entry No. 26-2).)

On March 9, 2017, Petitioner filed his first Motion to Extend Stay, in which he requested that the Court extend the stay of proceedings in this case until June 30, 2017, to allow counsel in Heard and Gundy to file petitions for writs of certiorari ("petitions for certiorari") to the United States Supreme Court. (See generally Mot. Extend Stay (Docket

Entry No. 26).) On March 17, 2017, the Court granted the Motion to Extend Stay, and extended the stay of proceedings in this case through and including June 30, 2017. (Order of Mar. 17, 2017 (Docket Entry No. 29).)

On June 29, 2017, Petitioner filed a Second Motion to Extend Stay. (Second Mot. Extend Stay (Docket Entry No. 30).) In that Motion, Petitioner noted that the Supreme Court denied the petition in the Heard case, but that the Gundy petition remained pending. (Id. at 4.) On July 17, 2017, the Court granted the Second Motion to Extend Stay, and extended the stay of proceedings in this action through and including October 9, 2017. (Order of July 17, 2017 (Docket Entry No. 31).)

On October 4, 2017, Petitioner filed a Notice Regarding Stay. (Notice Regarding Stay (Docket Entry No. 32).) In his

Notice, Petitioner stated, among other things, that the Supreme Court denied the petition for certiorari in Gundy on October 2, 2017. (Id. at 1.) Petitioner noted that his “ACCA challenge to the Georgia burglary statute has come to an end,” and stated that “[t]his Court must now deny that portion of [Petitioner’s] § 2255 motion that challenged his ACCA sentence.” (Id.) Petitioner, however, contended that his § 2255 motion was not over, noting that he “also challenged his § 924(c) conviction and sentence under Johnson, and it appears that this portion of the § 2255 motion is now ripe for resolution.” (Id. at 2.)

On October 5, 2017, the Court entered an Order lifting the stay of proceedings in this action, and directing counsel for the Government to file the Government’s response to Petitioner’s remaining claims within thirty days. (Order of

Oct. 5, 2017 (Docket Entry No. 33).) The Government responded by filing a Motion to Dismiss. (Mot. Dismiss (Docket Entry No. 34).)

On November 8, 2017, Petitioner filed another Motion to Stay. (Mot. Stay (Docket Entry No. 35).) Petitioner requested that the Court stay his § 2255 Motion until the United States Court of Appeals for the Eleventh Circuit issued its mandate in Ovalles v. United States, 861 F.3d 1257 (11th Cir. 2017). On November 28, 2017, the Court granted that Motion and stayed the proceedings in the case, including Petitioner's obligation to respond to the Motion to Dismiss, through and including January 31, 2018. (Order of Nov. 28, 2017 (Docket Entry No. 36).)

On January 31, 2018, Petitioner filed a Notice Regarding Stay, stating that: (1) the Eleventh Circuit had

not yet issued its mandate in Ovalles; (2) the defendant in Ovalles had filed a petition for rehearing en banc; and (3) the Eleventh Circuit had not yet responded to that petition. (Notice (Docket Entry No. 37) at 1.) Petitioner requested that the Court extend the stay for another three months or until the Eleventh Circuit issued its mandate in Ovalles. (*Id.* at 1-2.) On January 31, 2018, the Court extended the stay of proceedings in this case through the earlier of: (1) the issuance of the mandate in Ovalles; or (2) April 30, 2018. (Order of Jan. 31, 2018 (Docket Entry No. 38).)

On May 2, 2018, Petitioner filed a Notice Regarding Stay. (Notice (Docket Entry No. 40).) In that Notice, Petitioner noted that the Eleventh Circuit had not yet issued the mandate in Ovalles, but that the Eleventh Circuit had requested the parties in that action to file supplemental

briefs. (Id. at 2.) Petitioner requested that the Court extend the stay of proceedings in this case through the earlier of: (1) an additional three additional months; or (2) the issuance of the Ovalles mandate. (Id.) On May 3, 2018, the Court extended the stay of proceedings in this case through and including the earlier of the issuance of the Ovalles mandate or July 5, 2018. (Order of May 3, 2018 (Docket Entry No. 41).)

On May 18, 2018, Petitioner filed a Notice of Supplemental Authority in which Petitioner, among other things, noted that the Eleventh Circuit had agreed to re-hear Ovalles en banc. (Notice of Suppl. Auth. (Docket Entry No. 42).) The Court extended the stay of proceedings in this case through and including the earlier of the issuance of the

en banc decision in Ovalles or September 15, 2018. (Order of May 18, 2018 (Docket Entry No. 43).)

On September 14, 2018, Petitioner filed another Notice Regarding Stay. (Notice Regarding Stay (Docket Entry No. 44).) In that Notice, Petitioner indicated that the Eleventh Circuit held oral arguments in Ovalles on July 9, 2018, but that the Eleventh Circuit had not yet issued its en banc decision in that case. (Id. at 2.) Petitioner requested that the Court extend the stay of proceedings in this case through the earlier of the issuance of the en banc opinion in Ovalles or December 15, 2018. (Id.) On September 14, 2018, the Court entered an Order extending the stay of proceedings in this case through the earlier of: (1) the issuance of the en banc decision in Ovalles; or (2)

December 15, 2018. (Order of Sept. 14, 2018 (Docket Entry No. 45).)

On October 4, 2018, the Eleventh Circuit issued its en banc decision in Ovalles. Ovalles v. United States, 905 F.3d 1231 (11th Cir. 2018) (en banc). The Eleventh Circuit found that 18 U.S.C. § 924(c)'s residual clause is not void for vagueness, and remanded the matter to the panel. Id. at 1251-52. On October 9, 2018, the panel issued a new opinion and affirmed the denial of the petitioner's § 2255 Motion. Ovalles v. United States, 905 F.3d 1300 (11th Cir. Oct. 9, 2018).

On October 10, 2018, Petitioner filed a notice with the Court stating that his counsel planned to file a petition for a writ of certiorari in Ovalles. (Notice Regarding Stay (Docket Entry No. 46) at 3.) Petitioner requested that the Court

extend the stay of proceedings in this case through the Supreme Court's decision whether to grant or deny certiorari in Ovalles. (*Id.*) On October 11, 2018, the Court entered an Order extending the stay of proceedings in this case through the earlier of: (1) the issuance of the Supreme Court's decision granting or denying certiorari in Ovalles; or (2) March 15, 2019. (Order of Oct. 11, 2019 (Docket Entry No. 47).)

On January 8, 2019, Petitioner filed a Consent Notice Regarding Stay. (Consent Notice Regarding Stay (Docket Entry No. 48).) In that notice, Petitioner noted that the Supreme Court had granted certiorari in a case challenging the constitutionality of § 924(c), United States v. Davis. (*Id.* at 2.) Petitioner requested that the Court extend the stay of proceedings in this action through the issuance of the

Supreme Court's opinion in Davis. (Id.) Petitioner stated that counsel for the Government joined in that request. (Id. at 1.) On January 9, 2019, the Court extended the stay of proceedings in this case through and including the issuance of the Supreme Court's decision in Davis. (Order of Jan. 9, 2019 (Docket Entry No. 49).)

On June 25, 2019, Petitioner filed a Notice of Supplemental Authority. (Notice of Suppl. Auth. (Docket Entry No. 50).) In that Notice, Petitioner stated that the Supreme Court had issued its decision in Davis, holding that the residual clause in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague. (Id. at 2.) Petitioner noted that it appeared that his § 2255 Motion was ready to move forward, and he requested that the Court allow him an opportunity to file a response to the Government's pending

Motion to Dismiss. (Id.) The Government also filed a Notice Regarding Stay, disputing that Davis entitled Petitioner to relief. (Notice Regarding Stay (Docket Entry No. 52).) On June 28, 2019, the Court entered an Order lifting the stay of proceedings and directing Petitioner to file a response to the Government's Motion to Dismiss within forty-five days. (Order of June 28, 2019 (Docket Entry No. 53).) Petitioner filed his response as directed. (Resp. Mot. Dismiss (Docket Entry No. 54).) The Court finds that no reply from the Government is necessary, and it concludes that the matter is ripe for resolution.

II. Discussion¹

Petitioner conceded that, in light of Gundy and Heard, his challenge to his sentence on count five failed. (Notice Regarding Stay (Docket Entry No. 32) at 1.) The Court agrees, and it denies this portion of Petitioner's § 2255 Motion.

The remaining portion of Petitioner's § 2255 Motion, in which Petitioner contends that Hobbs Act robbery is not a crime of violence under 18 U.S.C. § 924(c), remains pending. Petitioner concedes that binding Eleventh Circuit

¹In his response to the Motion to Dismiss, Petitioner argues that the appeal waiver in his plea agreement does not bar this § 2255 Motion and that his § 2255 Motion is not time-barred. (Resp. Mot. Dismiss at 2-4.) Although the Government made those arguments in its initial response to the § 2255 Motion, it later withdrew that filing. The Government did not renew those arguments in its Motion to Dismiss. (See generally Mot. Dismiss.) The Court therefore finds that the Government did not intend to pursue its arguments concerning waiver and timeliness, and it declines to address those arguments.

authority currently requires the Court to deny this claim, but he seeks to preserve the argument for appellate review. (Resp. Mot. Dismiss at 5.)

The Court finds that binding Eleventh Circuit authority bars Petitioner's remaining claim. The Eleventh Circuit recently explained:

Under the Armed Career Criminal Act ("ACCA"), a defendant convicted of being a felon in possession of a firearm under 18 U.S.C. § 922(g) who has three or more prior convictions for a "violent felony" faces a mandatory minimum 15-year sentence. 18 U.S.C. § 924(e)(1). The ACCA defines a "violent felony" as any crime punishable by a term of imprisonment exceeding one year that:

- (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
- (ii) is burglary, arson, or extortion, involves use of explosives, or

otherwise involves conduct that presents a serious potential risk of physical injury to another.

Id. § 924(e)(2)(B) (emphasis added). The first prong of this definition is referred to as the “elements clause,” the first part of the second prong contains the “enumerated crimes clause,” and the latter part of the second prong contains the “residual clause.” See United States v. Owens, 672 F.3d 966, 968 (11th Cir. 2012). In Johnson v. United States, — U.S. —, 135 S. Ct. 2551, 192 L.Ed.2d 569 (2015), the Supreme Court struck down as unconstitutionally vague the ACCA’s residual clause. Id. at 2555-58, 2563 (2015). The Court held that the requirement for courts to apply the “imprecise ‘serious potential risk’ standard” in the “residual clause” to the “judicially imagined ‘ordinary case’” of a crime, utilizing the categorical approach, resulted in indeterminacy that “denie[d] fair notice to defendants and invite[d] arbitrary enforcement by judges.” Id. at 2557-58, 2563. Thereafter, the Supreme Court held in Welch that Johnson announced a new substantive rule that applies retroactively to cases on collateral review. Welch v. United States, — U.S. —, 136 S. Ct. 1257, 1264-65, 1268, 194 L.Ed.2d 387 (2016).

More recently, in Sessions v. Dimaya, — U.S. —, 138 S. Ct. 1204, 200 L.Ed.2d 549 (2018), the Supreme Court reviewed the Board of Immigration Appeals's determination that California convictions for first-degree burglary were "crimes of violence," as defined in 18 U.S.C. § 16(b), thereby rendering an alien removable for having been convicted of an aggravated felony. Id. at 1211. In contrast to the language of the ACCA that was invalidated in Johnson, the "residual clause" in § 16(b), which had been incorporated into the Immigration and Nationality Act, defined a "crime of violence" as "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." Id. (quoting 18 U.S.C. § 16(b)). Discounting the "textual discrepancies" between the statutory language of the ACCA and § 16(b), the Court in Dimaya struck down § 16(b)'s "residual clause," repeatedly stating that a "straightforward application" of the Johnson decision to § 16(b) demonstrated that it also was void for vagueness. Id. at 1210, 1213-16, 1218-23. The Court explained that, because § 16(b) possessed the same two "fatal feature[s]"—the ordinary-case requirement and an ill-defined risk threshold—as did the ACCA's residual clause, it likewise produced "more unpredictability and

arbitrariness than the Due Process Clause tolerate[d].” Id. at 1213-16 (quotation marks omitted).

Distinct from the ACCA and § 16(b), 18 U.S.C. § 924(c) provides for a mandatory consecutive sentence for any defendant who uses or carries a firearm during a “crime of violence” or a “drug-trafficking crime.” 18 U.S.C. § 924(c)(1). For the purposes of § 924(c), “crime of violence” means an offense that is a felony and:

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Id. § 924(c)(3)(A), (B) (emphasis added). Section 924(c)(3)(A) is referred to as the “elements clause,” while § 924(c)(3)(B) is referred to as the “residual clause.” United States v. Davis, — U.S. —, 139 S. Ct. 2319, 2323-25, — L.Ed.2d — (2019).

United States v. McCain, No. 18-11662, — F. App’x —, ----, 2019 WL 3430261, at *1-2 (11th Cir. July 30, 2019). In Davis, the Supreme Court held that § 924(c)(3)(B)’s residual clause was unconstitutionally vague. Davis, 139 S. Ct. at 2335-37. Notwithstanding Petitioner’s reliance on Davis, his § 924(c)(3) challenge still fails. Binding precedent in this Circuit “holds that Hobbs Act robbery . . . qualifies as a ‘crime of violence’ under § 924(c)(3)(A)’s elements clause.” McCain, — F. App’x at —, 2019 WL 3430261, at *2; see also United States v. St. Hubert, 909 F.3d 335, 351 (11th Cir. 2018) (“Hobbs Act robbery is a crime of violence under § 924(c)(3)(A).”), petition for cert. filed, No. 19-5267 (U.S. July 18, 2019). Petitioner’s § 924(c)(3) conviction thus remains valid despite Davis’s holding that § 924(c)(3)(B)’s residual clause is unconstitutionally vague. McCain, — F.

App'x at —, 2019 WL 3430261, at *2. Although the Court understands and appreciates Petitioner's arguments to the contrary, the Court must apply binding Eleventh Circuit authority. The Court therefore denies this portion of Petitioner's § 2255 Motion.

In sum, Petitioner cannot obtain relief under § 2255 based on the claims he raises in his Motion. The Court therefore denies the § 2255 Motion on its merits. Given this conclusion, the Court denies as moot and without prejudice the Government's Motion to Dismiss.

The Court further declines to issue a certificate of appealability. 28 U.S.C. foll. § 2255, Rule 11(a). 28 U.S.C. § 2253(c)(2) provides that a court should issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §

2253(c)(2). A substantial showing of the denial of a constitutional right “includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the [§ 2255 Motion] 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) (internal quotation marks and citation omitted). Here, the Court finds that the resolution of the issues presented by Petitioner’s § 2255 Motion is not debatable among jurists of reason. The Court therefore declines to issue a certificate of appealability. Petitioner may, however, seek a certificate of appealability directly from the Eleventh Circuit. 28 U.S.C. foll. § 2255, Rule 11(a).

III. Conclusion

ACCORDINGLY, the Court **DENIES** Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 [16]. The Court **DENIES AS MOOT AND WITHOUT PREJUDICE** the Government's Motion to Dismiss [34]. The Court **DIRECTS** the Clerk to **CLOSE** the civil action file associated with Petitioner's § 2255 Motion: Civil Action File No. 4:16-CV-0120-HLM. Finally, the Court **DECLINES** to issue a certificate of appealability.

IT IS SO ORDERED, this the 14th day of August, 2019.

/s/ Harold L. Murphy

SENIOR UNITED STATES DISTRICT JUDGE