

UNPUBLISHED

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

No. 19-7320

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUSTIN TAPP,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, District Judge. (1:06-cr-00157-AJT-1; 1:16-cv-00789-AJT)

Submitted: January 21, 2020

Decided: January 24, 2020

Before WILKINSON, KEENAN, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Justin Tapp, Appellant Pro Se. Daniel Taylor Young, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Justin Tapp seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2018) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B) (2018). 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) (2018). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). 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. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Tapp has not made the requisite showing. Accordingly, we deny a certificate of appealability 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 EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,)	
)	
v.)	Crim. Case No. 1:06-cr-157-AJT
)	Civil Action No. 1:16-cv-789 (AJT)
JUSTIN TAPP,)	
)	
Defendant-Petitioner.)	
_____)	

ORDER

On July 31, 2006, Petitioner Justin Tapp was convicted after a bench trial of conspiracy to distribute five grams or more of crack cocaine, in violation of 21 U.S.C. §§ 841 and 846; using and carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. §§ 2 and 924(c); Hobbs Act robbery, in violation of 18 U.S.C. § 951; and using and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 2 and 924(c). He was sentenced to a total of 37 years' imprisonment. [Doc. 55]. He has filed a Motion to Vacate Conviction Under 28 U.S.C. § 2255 [Doc. 80] ("the Petition") on the grounds that the underlying crime of violence serving as the predicate for one of his § 924(c) convictions, Hobbs Act robbery,¹ does not qualify under the definition of a "crime of violence" in 18 U.S.C. § 924(c)(3)(A) ("the force clause") and the definition of "crime of violence" in § 924(c)(3)(B) ("the residual clause"), under which his conviction could alternatively qualify, is unconstitutionally vague. The Government has filed a Motion to Dismiss § 2255 [Doc. 100], in which it argues, *inter alia*, that Hobbs Act robbery categorically qualifies as a "crime of violence" under the force clause.

¹ One of Petitioner's § 924(c) convictions, for carrying and using a firearm in relation to a drug trafficking offense, was not affected by the Supreme Court's decision in *Davis*, which addressed only § 924(c) convictions involved carrying and using a firearm in relation to a crime of violence.

In *United States v. Davis*, 139 S. Ct. 2319 (2019), decided after the Petition was filed, the United States Supreme Court held that the definition of “crime of violence” in the residual clause is unconstitutionally vague. However, in *United States v. Mathis*, ___ F.3d ___, No. 16-4633, 2019 WL 3437626 (4th Cir. July 31, 2019), decided after *Davis*, the Fourth Circuit held that Hobbs Act robbery categorically qualifies as a crime of violence under the force clause. *Id.* at *16 (Slip Op. at 37). *Mathis* is dispositive of the Motion, because although the Supreme Court invalidated the residual clause, the predicate offense underlying Petitioner’s § 924(c) conviction qualifies categorically as a crime of violence under the force clause, which is still valid.

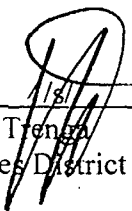
Accordingly, it is hereby

ORDERED that the Government’s Motion to Dismiss § 2255 [Doc. 100] be, and the same hereby is, GRANTED; and Petitioner’s Motion to Vacate Conviction Under 28 U.S.C. § 2255 [Doc. 80] be, and the same hereby is, DISMISSED.

This is a Final Order for the purposes of appeal. An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability, which will not issue unless the petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when 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) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). The Court finds that Petitioner has failed to satisfy this standard and therefore expressly declines to issue a certificate of appealability.

The Clerk is directed to forward copies of this Order to all counsel of record.

Alexandria, Virginia
August 26, 2019



Anthony J. Trenga
United States District Judge