

FILED: June 19, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6333
(1:14-cr-00107-LO-1)
(1:16-cv-00631-LO)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LOUIS ANTHONY JACKSON

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

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

No. 20-6333

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LOUIS ANTHONY JACKSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, Senior District Judge. (1:14-cr-00107-LO-1; 1:16-cv-00631-LO)

Submitted: June 16, 2020

Decided: June 19, 2020

Before MOTZ and KING, Circuit Judges, and SHEDD, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Louis Anthony Jackson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Louis Anthony Jackson 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 could 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 Jackson 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

Alexandria Division

Case No. 1:14-cr-107
Hon. Liam O'Grady

This matter comes before the Court on Petitioner Louis Anthony Jackson's *pro se* motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.¹ Dkt. 43. Specifically, Petitioner has moved this Court to vacate Count 2, a violation of 18 U.S.C. § 924(c). For the following reasons, Petitioner's motion must fail.

Petitioner pleaded guilty to a two-count criminal information. Count 1 alleged violations of 18 U.S.C. §§ 924(c) and 2, specifically, the use, carrying, and discharge of a firearm during and in relation to a crime of violence. Count 2 alleged violations of 18 U.S.C. §§ 924(c) and 2, specifically, the use, carrying, and brandishing of a firearm during and in relation to a crime of violence. The § 924(c) charges were predicated upon two separate instances of Hobbs Act robbery. *See* Dkt. 27; *see also* Dkt. 26. On June 27, Petitioner was sentenced to thirty-five years' imprisonment, consisting of ten years on Count 1 to be served consecutively with twenty-

¹ Petitioner initially moved *pro se* and the Office of the Federal Public Defender was later appointed to represent him.

five years on Count 2, as well as five years of supervised release, \$17,134.00 restitution, and a \$200 special assessment. Dkt. 35.

Petitioner moved under 28 U.S.C. § 2255 to vacate his sentence on Count 2 on June 6, 2016. Dkt. 43. He argued that his conviction was invalid in the wake of the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), which held the "residual clause" of 18 U.S.C. § 924(e)(2), a definition of "violent felony," to be unconstitutionally vague. Dkt. 44. The Government moved to dismiss the motion on August 18, 2016, arguing that since *Johnson* did not specifically invalidate § 924(c)(3)(B), the motion was premature. Dkt. 48. This Court stayed the case pending cases pertaining to *Johnson's* application. Dkt. 52.

On April 17, 2018, the Supreme Court in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), held the residual clause of 18 U.S.C. § 16's definition of "crime of violence"—nearly identical to that in § 924(c)(3)'s residual clause—to be unconstitutionally vague. *See id.* at 1210. Then, on June 24, 2019, the Supreme Court held the § 924(c)(3) residual clause unconstitutionally vague. *See United States v. Davis*, 139 S. Ct. 2319, 2336 (2019). On August 15, 2019, this Court ordered the Office of the Federal Public Defender ("FPD") to represent Petitioner in this motion and to submit any supplemental briefing or evidence needed to support Defendant's motion.² Dkt. 60. On September 16, 2019, the FPD responded to the Order by stating it would not submit any further argument or evidence in the matter. Dkt. 62. The Government has filed its response, Dkt. 63, and the motion is now ripe for disposition.

² The Court's Order was to ensure appropriate briefing in the wake of *United States v. Simms*, 914 F.3d 229 (4th Cir. 2019), as well as *Davis*.

II. STANDARD OF REVIEW

Petitioner is entitled to relief under 28 U.S.C. § 2255 if he demonstrates that: (1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the sentencing court was without jurisdiction to impose the sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255. Petitioner bears the burden of proving his grounds for collateral relief by a preponderance of the evidence. See *Vanater v. Boles*, 377 F.2d 898, 900 (4th Cir. 1967).

Section 924(c) of Title 18 of the United States Code forbids the use, carrying, or brandishing of a firearm “during and in relation to any crime of violence.” *Id.* § 924(c)(1)(A). Section 924(c) defines “crime of violence” as any felony offense that, (A) “has an element the use, attempted use, or threatened use of physical force against the person or property of another,” or, (B) “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). Subsection (A) of the definition is known as the “force clause,” and subsection (B) is known as the “residual clause.” In *Davis* the Supreme Court held the § 924(c)(3)(B) “residual clause” to be unconstitutionally vague, and it is therefore unable to support convictions under § 924(c)(1)(A).

Pro se filings have “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Therefore, a document filed *pro se* is to be liberally construed. See, e.g., *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

a certificate of appealability from a circuit justice or judge. *See* 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). For the reasons stated above, this Court expressly declines to issue such a certificate.

January 10, 2020
Alexandria, Virginia



Liam O'Grady
United States District Judge