Appendix

FILED

OCT 1 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. EDWARD COLEMAN, AKA Keith, AKA Tiny Keith, Defendant-Appellant.	No. 17-56131 D.C. Nos. 2:16-cv-07830-TJH 2:04-cr-00425-GHK-4 Central District of California, Los Angeles ORDER

Before: HAWKINS and FRIEDLAND, Circuit Judges.

The stay entered on January 19, 2018 (Docket Entry No. 5), is lifted.

The request for a certificate of appealability (Docket Entry No. 4) is denied because appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *Beckles v. United States*, 137 S. Ct. 886 (2017); *United States v. Dominguez*, 954 F.3d 1251, 1260-61 (9th Cir. 2020); *United States v. Blackstone*, 903 F.3d 1020, 1027-28 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 2762 (2019).

Any pending motions are denied as moot.

DENIED.

United States District Court
Central District of California
Western Division

EDWARD COLEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CV 16-07830 TJH
CR 04-00425 GHK

Order

JS-6

The Court has considered Petitioner Edward Coleman's amended motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 or, in the alternative, request for a certificate of appealability as to his claim pursuant to 28 U.S.C. § 2253(c)(2), together with the moving and opposing papers.

Petitioner challenges his sentence under 18 U.S.C. § 924(c), which is predicated on interference with commerce by robbery, in violation of 18 U.S.C. § 1951(a) ["Hobbs Act robbery"]. Petitioner, further, challenges his sentence to the extent the sentence is based on U.S.S.G. § 4B1.1.

Section 924(c) defines "crime of violence" under § 924(c)(3)(A) [the "Force Clause"] and § 924(c)(3)(B) [the "Residual Clause"]. This Court held that the Residual

Clause is unconstitutionally vague, and that certain convictions — convictions that, under the categorical approach, *see Taylor v. United States*, 495 U.S. 575 (1990), fall outside the Force Clause because the statutory elements of the conviction includes conduct falling outside the Force Clause's definition of a "crime of violence" — must be vacated. *See Juan Becerra-Perez v. United States*, No. 2:16-cv-07046-TJH (C.D. Cal. Feb. 15, 2017). The Force Clause defines a "crime of violence" as a felony that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another[.]" § 924(c)(3)(A).

The Hobbs Act robbery is a crime of violence under the Force Clause, as defined in 18 U.S.C. § 924(c)(3)(A). Under Subsection (b)(1), Hobbs Act robbery punishes, *inter alia*, the "fear of injury." 18 U.S.C.A. §1951(b)(1). As this Court has previously, and persuasively, held, the "fear of injury" prong of Hobbs Act robbery categorically falls under the Force Clause because a Hobbs Act conviction under that prong satisfies both the force and intent requirements of § 924(c)(3)(A). *United States v. Bailey*, No. 14-328, 2016 WL 3381218, at *4–5 (C.D. Cal. June 8, 2016). Thus, even in view of the most innocent statutory element, Hobbs Act robberies constitute crimes of violence under the Force Clause.

On March 6, 2017, the Supreme Court issued its decision in *Beckles v. United States*, 137 S. Ct. 886 (2017), holding that the advisory Sentencing Guidelines are not subject to a due process vagueness challenge. 137 S. Ct. at 895. The Court held that unlike the Armed Career Criminal Act, which was subject to the Court's decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015), the advisory Guidelines "merely guide the exercise of a court's discretion in choosing an appropriate sentence within the statutory range." *Beckles*, 137 S. Ct. at 892. Indeed, on this basis, the Supreme Court held that § 4B1.2(a)(2) specifically was not void for vagueness. *Beckles,* 137 S. Ct. at 895. As a result, to the extent Petitioner challenges his sentence under § 4B1.2(a)(2), Petitioner's motion is foreclosed by *Beckles*.

A district court may 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). Such a showing requires the petitioner to "demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (alterations in original, emphasis omitted). Petitioner has not made a substantial showing of the denial of a constitutional right under any of the above bases.

Accordingly,

It is Ordered that the motion to vacate Petitioner's sentence under 18 U.S.C. § 924(c) and § 4B1.2(a)(2) be, and hereby is, **Denied**.

It is Further Ordered that Petitioner's request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2) be, and hereby is, **Denied**.

Date: July 31, 2017

Terry J. Hatter, Jr.
Terry J. Hatter, Jr.
Senior United States District Judge

CC:BOP