

Appendix

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 28 2020

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ZELOS FIELDS,

Defendant-Appellant.

No. 17-56101

D.C. Nos. 5:16-cv-02051-TJH
5:96-cr-00006-RT-2

Central District of California,
Riverside

ORDER

Before: W. FLETCHER and R. NELSON, Circuit Judges.

The stay entered on January 18, 2018 (Docket Entry No. 3), is lifted.

The request for a certificate of appealability (Docket Entry No. 2) 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); *United States v. Dominguez*, 954 F.3d 1251, 1260-61 (9th Cir. 2020); *United States v. Watson*, 881 F.3d 782 (9th Cir.), *cert. denied*, 139 S. Ct. 203 (2018).

Any pending motions are denied as moot.

DENIED.

United States District Court
Central District of California
Western Division

ZELOS FIELDS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

CV 16-02051 TJH
CR 96-00006 RT-2

Order
JS-6

The Court has considered Petitioner Zelos Fields's 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 armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d), and interference with commerce by robbery ["Hobbs Act robbery"], in violation of 18 U.S.C. § 1951.

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,

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

8 Sections 2113 (a) and (d) are crimes of violence under the Force Clause defined
 9 in § 924(c)(3)(A). *United States v. Wright*, 215 F.3d 1020, 1028 (9th Cir. 2000).
 10 Since *Wright*, the Ninth Circuit has reaffirmed that armed bank robbery qualifies as a
 11 crime of violence under the Force Clause. *United States v. Pritchard*, No. 15-50278,
 12 2017 WL 2219005, at *1 (9th Cir. May 18, 2017). Subsection (a) provides for a felony
 13 conviction for bank robberies and incidental crimes committed “by force and violence,
 14 or by *intimidation*.” 18 U.S.C. § 2113(a) (emphasis added). The Ninth Circuit has
 15 defined intimidation under § 2113 to mean “wilfully to take, or attempt to take, in such
 16 a way that would put an ordinary, reasonable person in fear of bodily harm,” which
 17 comports with the requirement of a “threatened use of physical force” contained in the
 18 Force Clause. *United States v. Selfa*, 918 F.2d 749, 751 (9th Cir. 1990).

19 Similarly, subsection (d) includes “putting in jeopardy the life of any person by
 20 the use of a dangerous weapon or device.” 18 U.S.C. § 2113(d). As such, even the
 21 most innocent conduct penalized under this section would qualify as a crime of
 22 violence. *See United States v. Watson*, No. 14-00751 01 DKW, 2016 WL 866298, at
 23 *7 (D. Haw. Mar. 2, 2016). Therefore, both subsections (a) and (d) fall within the
 24 definition of a crime of violence under 18 U.S.C. § 924(c)(3)(A). *Watson*, 2016 WL
 25 866298, at *7. This conclusion is, further, supported by decisions in this Circuit
 26 reaching the same result. *See, e.g., McFarland v. United States*, No. CV 16-7166-
 27 JFW, 2017 WL 810267, at *4 (C.D. Cal. Mar. 1, 2017); *United States v. Salinas*, No.
 28 1:08 CR 0338 LJO SKO, 2017 WL 2671059, at *7 (E.D. Cal. June 21, 2017).

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

10 A district court may issue a certificate of appealability “only if the applicant has
 11 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §
 12 2253(c)(2). Such a showing requires the petitioner to “demonstrate that the issues are
 13 debatable among jurists of reason; that a court could resolve the issues [in a different
 14 manner]; or that the questions are adequate to deserve encouragement to proceed
 15 further.” *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (alterations in
 16 original, emphasis omitted). Petitioner has not made a substantial showing of the denial
 17 of a constitutional right under any of the above bases.

18
 19
 20 Accordingly,

21 **It is Ordered** that the motion to vacate Petitioner’s sentence under 18 U.S.C.
 22 § 924(c) be, and hereby is, **Denied**.

23 **It is Further Ordered** that Petitioner’s request for a certificate of appealability
 24 be, and hereby is, **Denied** as moot.

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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 26, 2017

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