

Appendix

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 2 2020

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALLEN PACE III,

Defendant-Appellant.

No. 17-56156

D.C. Nos. 2:17-cv-00664-TJH
2:99-cr-01007-MMM-5

Central District of California,
Los Angeles

ORDER

Before: HAWKINS and FRIEDLAND, Circuit Judges.

The stay entered on January 19, 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).

Any pending motions are denied as moot.

DENIED.

United States District Court
Central District of California
Western Division

ALLEN PACE III,
Petitioner,

V.

UNITED STATES OF AMERICA,
Respondent.

CV 17-00664 TJH
CR 99-01007 MMM

Order

JS-6

The Court has considered Petitioner Allen Pace III'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 interference with commerce by robbery, in violation of 18 U.S.C. § 1951 [“Hobbs Act robbery”].

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

17 A district court may issue a certificate of appealability “only if the applicant has
 18 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §
 19 2253(c)(2). Such a showing requires the petitioner to “demonstrate that the issues are
 20 debatable among jurists of reason; that a court could resolve the issues [in a different
 21 manner]; or that the questions are adequate to deserve encouragement to proceed
 22 further.” *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (alterations in
 23 original, emphasis omitted). Petitioner has not made a substantial showing of the denial
 24 of a constitutional right under any of the above bases.

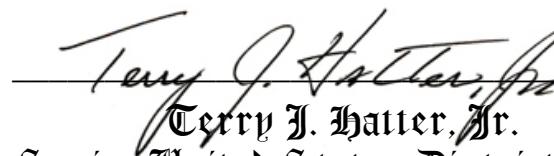
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 26 Accordingly,

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 28 **It is Ordered** that the motion to vacate Petitioner’s sentence under 18 U.S.C.

1 § 924(c) be, and hereby is, **Denied**.
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4 **It is Further Ordered** that Petitioner's request for a certificate of appealability
5 pursuant to 28 U.S.C. § 2253(c)(2) be, and hereby is, **Denied**.
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8 Date: July 27, 2017
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10 
11 Terry J. Hatter, Jr.
12 Senior United States District Judge
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15 CC:BOP
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