

## **Petitioner's Appendices**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-14209-F

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MARTEZ HOWARD,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Georgia

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ORDER:

Martez Howard moves for a certificate of appealability on appeal from the district court's denial of his 28 U.S.C. § 2255 motion to vacate his conviction and sentence. Howard's motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

/s/ Britt C. Grant  
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CHAMBERS  
U.S.D.C. - Atlanta  
SEP 09 2020  
James M. Hatten, Clerk  
A. M. Carver, Deputy Clerk

UNITED STATES OF AMERICA :  
 :  
v. : CRIMINAL ACTION NO.  
 : 1:10-CR-121-ODE  
 :  
MARTEZ HOWARD :

ORDER

This closed criminal case is before the Court on Defendant Howard's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 [Doc. 94]. The Government has filed a response in opposition to the motion [Doc. 97].

In 2010, a grand jury charged Mr. Howard with the following: (1) attempted Hobbs Act robbery (Count One); (2) using and carrying a firearm during and in relation to a crime of violence, that is, the attempted Hobbs Act robbery of Count One (Count Two); (3) an additional Hobbs Act robbery (Count Three); (4) using and carrying a firearm during and in relation to the additional Hobbs Act robbery in violation of 18 U.S.C. § 924(c)(1)(A)(iii) (Count Four); and (5) possession of a firearm by a convicted felon on December 30, 2009, in violation of 18 U.S.C. § 922(g)(1) (Count Five) [Doc. 1].

On June 14, 2011, Mr. Howard entered a non-negotiated plea of guilty to Counts Three and Four. The Government subsequently dismissed Counts One, Two and Five [Docs. 63, 65].

On October 27, 2011, Mr. Howard was sentenced to a term of imprisonment of 190 months, consisting of 70 months on Count Three and 120 months on Count Four, with the Count Four sentence to run consecutive to the Count Three sentence. Mr. Howard did not appeal his sentence.

On October 31, 2019, Mr. Howard filed the instant § 2255 motion which sets out a claim under United States v. Davis, 139 S. Ct. 2319 (2019) in which the Supreme Court held that the residual clause of 18 U.S.C. § 924(c) is unconstitutionally vague.

The Government agrees that Mr. Howard's § 2255 claim is timely because it was brought within one year of the date of the Davis decision.

In its brief in opposition to the § 2255 motion, the Government asserts that Defendant's motion fails because it does not state a claim for relief under Davis. The Government points to the Court of Appeals' decision in United States v. St. Hubert, in which the Court of Appeals held that "the predicate offense of attempted Hobbs Act robbery qualifies as a crime of violence under § 924(c)(3)(A)'s use-of-force clause." 909 F.3d 335, 352 (11th Cir. 2018), cert. denied, 139 S. Ct. 1394 (2019).

Because the St. Hubert decision clearly bars Defendant's instant claim, his § 2255 motion is DENIED and the Court declines to issue a certificate of appealability.

SO ORDERED this 9 day of September, 2020.

  
ORINDA D. EVANS  
UNITED STATES DISTRICT JUDGE