

Petitioner's Appendices

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14073-A

DAVID STARKS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

David Starks'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/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

FILED IN CHAMBERS
U.S.D.C. - ATLANTA

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

AUG 28 2020

UNITED STATES OF AMERICA :
v. : CRIMINAL ACTION NO.
DAVID STARKS : 1:13-CR-421-2-ODE

James M. McRae, Clerk
Amy Carver, Deputy Clerk

ORDER

This closed criminal case is before the Court on Defendant's motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255 [Doc. 82]. The Government has filed a response in opposition to the motion [Doc. 86].

Defendant Starks was charged in a five count indictment with (1) conspiring to commit a Hobbs Act robbery (Count One); (2) attempting to commit a Hobbs Act robbery (Count Two); (3) carjacking (Count Three); (4) attempting to commit a Hobbs Act robbery (Count Four); and (5) brandishing a firearm while attempting to commit a Hobbs Act Robbery as charged in Count Four (Count Five). Starks pleaded guilty to the carjacking charge, the attempted Hobbs Act robbery charge, and the brandishment charge which was brought under 18 U.S.C. § 924(c). On August 21, 2014 he was sentenced to 147 months in prison, consisting of 63 months on Counts Three and Four and 84 months on Count Five to run consecutively to the sentences on the other counts.

On September 19, 2019, Defendant filed an initial pro se motion under 28 U.S.C. § 2255 [Doc. 80] and then a counseled motion [Doc. 82], which are treated herein as one motion. Defendant asks the Court to set aside his conviction and

sentence under Count Five, the § 924(c) count. The Government responded in opposition [Doc. 86].

The Government's argument is that, while the United States Supreme Court ruled in United States v. Davis, 139 S. Ct. 2319 (2019) that the residual clause of 18 U.S.C. § 924(c) is unconstitutionally vague, this case involves not the residual clause but rather a different clause of § 924, namely the so-called elements or use of force clause under § 924(c)(3)(A) which was not affected by Davis. In United States v. St. Hubert, the Eleventh Circuit 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). Defendant does not disagree with the Government's reading of the St. Hubert decision, but states he wishes to stake out his position in opposition, should the law change.

Accordingly, Defendant's § 2255 motion [Doc. 80, 82] is DENIED. Because the law in this Circuit is clearly against Defendant's position, the Court declines to issue a certificate of appealability.

SO ORDERED this 27 day of August, 2020.


ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE