App'x A

Rehearing 16-CO-1191

5/13/21

District of Columbia
Court of Appeals

No. 16-CO-1191

LEXTON PELLEW, Appellant,

v.

CF3-24268-07

UNITED STATES, Appellee.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Thompson, * Beckwith, * Easterly, and Deahl, Associate Judges; Steadman, * Senior Judge.

ORDER

On consideration of appellant's petition for rehearing or rehearing *en banc*, appellee's response to appellant's petition for rehearing or rehearing *en banc*, and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

ORDERED by the merits division* that appellant's petition for rehearing is denied, it is

FURTHER ORDERED that appellant's petition for rehearing *en banc* is denied.

PER CURIAM

Associate Judge McLeese did not participate in this case.

No. 16-CO-1191

Copies to:

Honorable Lynn Leibovitz

Director, Criminal Division

Copy e-served to:

Jenifer Wicks, Esquire

Elizabeth Trosman, Esquire
Assistant United States Attorney

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APP'X B

DC APP DENIAL

NO 16-CO-1191

SEPT 9, 2020

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 16-CO-1191

LEXTON PELLEW, APPELLANT,

v.

UNITED STATES, APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(CF3-24268-07)

(Hon. Lynn Leibovitz, Trial Judge)

(Argued January 10, 2019 Decided September 9, 2020)

Before THOMPSON and BECKWITH,* *Associate Judges*, and STEADMAN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant, Lexton Pellew, appeals the Superior Court's denial of his motion under D.C. Code § 23-110 (2018 Repl.). He argues that the Superior Court erred in denying his claim that his counsel at his June 2008 trial was ineffective because he failed to ask for a clarifying supplement to an aiding and abetting instruction. Applying the familiar standard of *Strickland v. Washington*, 466 U.S. 668 (1984), we conclude that appellant has failed to show that, but for the alleged error, there was a reasonable probability that the result of the proceeding would have been different. Accordingly, we affirm the denial of the motion.

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* Judge Beckwith dissents separately. (See page 6).

A.

This case stems from a 2006 robbery of a Georgetown jewelry store in which the storeowner, Moshe Motai, was shot in the abdomen. Appellant was tried jointly with Jose Lucas – one of the four other men who participated in the robbery with appellant.[1] The two defendants were convicted by a jury on all counts with which they were both charged, none of which is at issue in this appeal. Appellant, however, was the lone participant charged with and convicted of the two counts germane to this appeal – those related to the shooting of Mr. Motai: namely, aggravated assault while armed (AAWA) in violation of D.C. Code §§ 22-404.01., -4502, and possession of a firearm during a crime of violence (PFCV) in violation of D.C. Code § 22-4504(b).[2] For the AAWA offense, he was sentenced to a term of 120 months in addition to his lengthy sentences on the other counts. We affirmed all of appellant's convictions on direct appeal in *Lucas v. United States*, 20 A.3d 737 (D.C. 2011). *Lucas* sets forth the overall facts of the planning, execution, and post-robbery activity; we need not restate those facts at length here.

Appellant's claim of ineffective assistance of counsel arises out of an event that occurred on the second day of jury deliberations. The jury sent a note, asking "does the aiding and abetting element apply to counts eleven through fourteen [being the four counts related to the shooting for which appellant was the only person charged]?" In its original instructions to the jury, the trial court gave an overall aiding and abetting instruction following precisely the first four paragraphs of the standard jury instruction.[3] Following a lengthy discussion, the trial court answered the note simply "Yes." Appellant's primary claim of ineffectiveness rests on the assertion that counsel should have "asked that a sentence be added to it

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[1] The other three men entered into a plea bargain and testified at the joint trial.

[2] In addition to AAWA, appellant was charged with assault with intent to kill while armed in violation of D.C. Code §§ 22-401, -4502. The jury acquitted him of that count as well as of the associated PFCV charge. The sentence for the PFCV conviction related to the AAWA offense was concurrent with all other charges and did not affect the total term.

[3] At the time, the instruction was numbered 4.02. Subsequently, the aidin and abetting instruction was renumbered as 3.200.

[the instruction], making it clear that the aider had to share the full mens rea of any principal pursuant to the en banc holding of *Wilson-Bey v. United States*, 903 A.2d 818 (D.C. 2006)."[4]

We review this ineffective assistance of counsel claim under the well-settled two-prong test of *Strickland v. Washington*, *supra*. Appellant must demonstrate both that his "trial counsel committed errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment[,]" and that "but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceedings would have been different." *Long v. United States*, 36 A.3d 363, 373 (D.C. 2012) (citations and internal quotation marks omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Blackmon v. United States*, 215 A.3d 760, 767 (D.C. 2019). We may address the two prongs in any order. *See Webster v. United States*, 623 A.2d 1198, 1203 (D.C. 1993).

B.

We assume, for present purposes, that appellant's counsel was constitutionally ineffective in failing to request some sort of additional instruction. We therefore turn to the prejudice prong. Although appellant's brief does not address the prejudice prong at great length, his concern is that the jury might have convicted appellant on the ground that he participated in the robbery as an aider and abettor, rather than on the charged counts related to the shooting and its requisite intent.[5]

On the record here, we do not think there is any reasonable probability that, had a further instruction been given, the jury would have absolved appellant of responsibility for the shooting. The evidence against him was overwhelming. The

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[4] More accurately put, the aider and abettor must have a mens rea that would be required to convict him as a principal, not necessarily the same mens rea as the principal.

[5] Appellant also asserts as ineffectiveness counsel's failure at the time of the original instructions to the jury to ask that the aiding and abetting instruction not apply to the Motai shooting. Whether such a request, if granted, would have raised a reasonable probability of a different outcome would be negated by contrary considerations similar to those set forth below.

five conspirators in planning the robbery had assigned separate responsibilities for each participant. Crucially, appellant's role, as the armed participant, was to be the initial entrant to the store and the individual charged with suppressing the occupants and making sure they were all down while another designated robber gathered up the jewelry and other valuables. After securing the three employees in the front of the store, appellant proceeded to Mr. Motai's office at the back of the store and ordered him at gunpoint to get to the ground and keep his head covered. When Mr. Motai protested that he could not breathe, appellant retorted, "If you talk too much, I will shoot you right now and you're never going to breathe again." When another of the participants broke open a glass showcase, Mr. Motai lifted his head. He was then shot from behind. Appellant and the other robbers then fled the store with their loot and drove away. During the drive, appellant said that, "he didn't want to hurt the guy, but that he resisted, and did what he had to do." Appellant was also instrumental in disposing of the revolver.

The entire trial proceeded on the government's assertion that appellant was the gunman.[6] During the discussion about responding to the jury note, appellant argued that the answer to the question should be "no" – that there was no proof of any principal other than appellant and thus no evidence to support an aiding and abetting instruction. The initial reaction of the trial court itself was that it could not "imagine why they are asking that question." The government then pointed out that the testimony included references to the presence at one time of at least one of the robbers in the back office. Because Mr. Motai was shot from behind, and therefore had not actually seen appellant pull the trigger,[7] the trial court eventually decided to answer the question in the affirmative.

The only concrete testimony about a presence of one other than Pellew in the back office was that one of the robbers entered the office at one point to gather the cash from the safe and later used a hammer to break open the jewelry case in the

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[6] Although he did not present any evidence, appellant's defense was that he was not present at and had nothing whatever to do with the robbery.

[7] Although the store camera caught portions of the action in the front of the store and showed appellant going into the back office, no video camera was located in the back office.

front of the store -- an event that led to the shooting.[8] Indeed, on appeal, appellant himself continues to assert that "there was no evidence presented that Mr. Pellew was not the principal."[9] On this record, we are strongly inclined to the view that there is no reasonable probability that the jury would opt to reject appellant as the principal.

But even if, as we think unlikely, the jury decided to settle on an aiding and abetting theory of guilt, we fail to see how appellant has shown that a different outcome would probably have resulted had the sentence that he now advocates been added to the jury instructions. The instruction given on aiding and abetting was an accurate statement of the law, a proposition that appellant does not contest. The very opening of the instruction states: "As to each of the counts, you may find a defendant guilty of the crime charged in the indictment," thus focusing on the specific count and crime charged in the indictment. The jury, at the point of asking the question, obviously was addressing the specific counts relating to the Motai shooting and viewing the aiding and abetting instruction in that context. The trial court's instructions had included the standard phrase that the jury "must give separate consideration and return separate verdicts with respect to . . . each count." "Jurors are presumed to have followed instructions." *See Holder v. United States*, 700 A.2d 738, 742 (D.C. 1997). As set forth above, everything in the evidence showed appellant involved as an active on-the-spot participant in the shooting of Mr. Motai, even if he was not the actual puller of the trigger. The shooting carried out his role as the suppressor of the occupants. It fulfilled the threat he had made. During the robbery, he possessed the revolver used in the shooting and it necessarily came from his hand. He shared responsibility for its disposition after fleeing with the others from the robbery. To think that appellant was merely an

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[8] The testimony was silent about whether the other robber who had entered the store, co-defendant Lucas, had ever entered the back office. Evidence as to Lucas's actions and location was thin; he was "just in and outside the store . . . making sure that no one [came in] the store" and his exact location at the time of the shooting was unclear. There was testimony that eventually he went out of the store to serve as a lookout.

[9] Appellant raised no such issue in his direct appeal. In any event, as we have said, an instruction is warranted if there is "any evidence, however weak," sufficient to support a jury verdict on that basis. *See Tucker v. United States*, 871 A.2d 453, 461 (D.C. 2005) (citations omitted).

innocent bystander as the shooting took place would reflect an utterly strained reconstruction of the evidence.

We simply are unpersuaded that appellant has met his burden of showing that, absent the error, the outcome of the proceeding would have been different. Accordingly, the order of the trial court denying appellant's motion must be, and is hereby

Affirmed.

BECKWITH, *Associate Judge*, dissenting: Where the jury's note (echoed by the prosecutor's statement that the jurors were "hung up on the fact that maybe they're not fully convinced" that Mr. Pellew was the shooter) demonstrated that the jury had doubts about whether Mr. Pellew was the shooter in this case, and where the aiding and abetting instruction that was given diluted the government's burden of proving every element beyond a reasonable doubt, *see* Criminal Jury Instructions for the District of Columbia, No. 3.200 cmt. ("Aiding and Abetting") (5th ed. rev. 2019); *United States v. Peoni*, 100 F.2d 401 (2nd Cir. 1938), I would hold that if the jury had been properly instructed that it had to find that Mr. Pellew had a purposive attitude toward *the shooting*, there is a reasonable probability the jury would have absolved Mr. Pellew of the shooting.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies to:

Honorable Lynn Leibovitz

Director, Criminal Division

Copies e-served to:

Jennifer Wicks, Esquire

Elizabeth Trosman, Esquire
Assistant United States Attorney

App'x C

Dist of Col 23-110 Denial

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION—FELONY BRANCH

UNITED STATES	:	Case No: 2007 CF3 24268
	:	
v.	:	
	:	
LEXTON PELLEW	:	Judge Lynn Leibovitz
	:	

ORDER

Before the court is defendant's *pro se* Memorandum of Law in Support of Application for Relief to D.C. Code § 23-110, filed November 3, 2015, the government's opposition, filed April 12, 2016, defendant's *pro se* Response filed May 5, 2016, a Supplement to the defendant's memorandum filed by appointed counsel on June 23, 2016, and defendant's second *pro se* Memorandum of Law in Support of Motion to Vacate and or Set Aside Petitioner's Conviction and Sentence Pursuant to DC Code 23-110, received in chambers on June 30, 2016. For the following reasons, the court will deny the defendant's motions.

PROCEDURAL HISTORY

On June 17, 2008, a jury found defendant guilty of conspiracy to rob, second degree burglary while armed, threats, aggravated assault while armed ("AAWA"), carrying a pistol without a license, possession of an unregistered firearm, possession of ammunition, 3 counts of armed robbery, 3 counts of kidnapping while armed, and 8 counts of possession of a firearm during a crime of violence ("PFCV"), all arising from a group robbery of a jewelry store. The AAWA and one of the PFCV counts arose from the alleged shooting of victim Moshe Motai in a

back room of the jewelry store during the robbery. Defendant was acquitted of one count of assault with intent to kill while armed and the related PFCV arising from the alleged shooting of Mr. Motai. On August 22, 2008, the Honorable Robert I. Richter sentenced defendant to a total of 288 months incarceration. The District of Columbia Court of Appeals affirmed the convictions on May 26, 2011. *Lucas v. United States*, 20 A.3d 737 (D.C. 2011).

In his motions, defendant claims that 1) it was error for the court to instruct the jury on aiding and abetting as to the counts in which he was charged with shooting Mr. Motai; 2) counsel was ineffective in his handling of a jury note sent mid-deliberations concerning the aiding and abetting instruction; 3) counsel was ineffective for failing to seek a mistrial after the prosecution commented on defendant's post-arrest silence; and 4) his conviction or sentence must be vacated because his sentence may be affected by the decisions of the Supreme Court of the United States in *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Welch v. United States*, 136 S. Ct. 1257 (2016), regarding sentences enhanced pursuant to 18 U.S.C. § 924 (Armed Career Criminal Act). The court will deny defendant's motions.

ANALYSIS

A prisoner in custody under sentence of the Superior Court may move the court to vacate his sentence if it was imposed in violation of the United States Constitution or the laws of the District of Columbia. *See* D.C. Code § 23-110(a). When a motion is filed pursuant to D.C. Code § 23-110, a defendant is procedurally entitled to a hearing on the motion. *See e.g., Webster v. United States*, 623 A.2d 1198, 1206 (D.C. 1993). However, D.C. Code § 23-110 provides that a motion to vacate, set aside, or correct a sentence may be denied without a hearing if the motion presents (1) vague or conclusory allegations, (2) palpably incredible claims, or (3) assertions that

would not merit relief even if true. *Dobson v. United States*, 711 A.2d 78, 83 (D.C. 1998) (citing *Ramsey v. United States*, 569 A.2d 142, 147 (D.C. 1990)).

To prevail on a claim of ineffective assistance of counsel, a defendant must show that his attorney's conduct was deficient, and such deficiency actually had an adverse effect on the defense. *See Strickland v. Washington*, 466 U.S. 668, 693 (1984). To prove that counsel's performance was deficient, a defendant must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687.

Defendant's primary claim, *pro se* and through counsel, is that the court erred when it instructed the jury as to aiding and abetting with respect to the counts charging defendant with the shooting of Moshe Motai. He further claims that counsel was ineffective in his performance with respect to the court's decision to instruct on aiding and abetting. Specifically, he argues that he had insufficient notice of the government's aiding and abetting theory, that there was no evidence upon which a jury could find that the defendant, a clear principal if involved at all, had aided and abetted anyone; that court's the aiding and abetting instruction did not comport with the holding in *Wilson Bey v. United States*, 903 A.2d 818 (D.C. 2006)(en banc) because it did not expressly instruct the jury that it must find defendant had the *mens rea* of a principal to convict him of the offenses arising from the shooting of Mr. Motai, and that the jury must have confused their finding that he participated in the overall robbery of the jewelry store with what they must find in order to find that he aided and abetted the shooting. Defendant also claims that counsel was ineffective in that he did not understand DC law on aiding and abetting, he failed to make proper argument at trial because of this, and failed to raise it on appeal because the trial court told him he had waived any challenge to the aiding and abetting instruction on appeal.

The circumstances in which this issue arose are important to understanding defendant's claims. Defendant was the only one of the defendants charged with the offenses arising from the shooting of Mr. Motai. In its original instructions, the court instructed the jury as to aiding and abetting with respect to all counts in the case, including the ones relating to defendant's shooting of Mr. Motai, without objection. Though during initial discussion of jury instructions, the court proposed a so-called *Pinkerton* instruction on conspiracy liability, the government declined it.

Mid-deliberations, despite the fact that it had been instructed on aiding and abetting without limitation as to counts, the jury sent a note asking whether it could consider aiding and abetting as to the charges that defendant shot Mr. Motai. The court and government acknowledged at that time that the government had tried the case on a theory that defendant was the principal, but the government now asked the court to respond to the jury that it could consider aiding and abetting with respect to those counts. The defendant objected to the application of aiding and abetting to the counts charging the shooting of Mr. Motai, arguing that the government had proceeded upon a theory that defendant was the principal in the shooting, that there was no evidence upon which a jury could find that the defendant had aided and abetted anyone, and that he had received insufficient notice of the government's aiding and abetting theory.

After an initial reaction that it could not understand how the jury could be thinking defendant was an aider and abettor of the shooting, the court ultimately surmised that clearly at least one juror must believe that, though defendant participated in every way in the robbery, in herding the victim to the back room where he was shot, in the other events in that back room and in bringing about the shooting, the juror or jurors must have been having difficulty deciding whether the defendant actually pulled the trigger because there was no eyewitness to the actual

shooting or any other physical evidence establishing which robber committed that specific act. Defense counsel adamantly argued insufficiency of the evidence to support a jury determination that defendant was anything other than a principal, lack of notice of the government's reliance upon an aiding and abetting theory and the inadequacy of the aiding and abetting instruction as given. The court concluded that the jury was entitled to find that defendant aided and abetted the principal if it found that the principal was one of the other jewelry store robbers who pulled the trigger given the lack of evidence of the exact manner in which the actual shooting itself occurred. The court therefore answered the jury's question with a simple "yes," written on the note the jury had sent, over the defendant's objection.

After a lunch recess, the prosecutor asked the court to amend its response and to instruct the jury that it should instead consider *Pinkerton* liability in deciding whether the defendant committed the shooting. Defendant claims this was a concession that the aiding and abetting instruction was improper because it did not satisfy the holding in *Wilson Bey*. This court disagrees. The government expressly stated that, in asking for the *Pinkerton* instruction, it relied upon the portion of *Wilson Bey* that discussed the difference between conspiracy liability and aiding and abetting liability, citing by page number, *Wilson Bey*, 903 A.2d at 840. Defendant responded by reiterating his earlier objections to aiding and abetting and further objected to injecting a conspiracy liability theory into the jury's consideration. The court concluded that either theory would be legally valid on the facts of the case, but offered defendant the choice between what it already had instructed - that aiding and abetting applied to the shooting counts- or replacing it with a *Pinkerton* instruction. If it were to instruct on *Pinkerton* liability, the court also offered defendant the opportunity for additional argument to the jury. Counsel consulted with defendant and ultimately chose not to have the jury instructed on *Pinkerton* liability,

rejected the offer of additional argument to the jury and maintained his objection to the application of aiding and abetting to the counts charging the Motai shooting.

Defendant's claim that the aiding and abetting instruction was improperly applied to those counts is incorrect, as is his claim that counsel was ineffective with respect to his performance in addressing the jury note and the arguments regarding the application of aiding and abetting to defendant's charges. First, as the court noted, Tr. 6/7/08 at 16, the aiding and abetting instruction comported with *Wilson Bey* in that it omitted the "natural and probable consequences" language, and instructed that in order to be guilty of aiding and abetting, the defendant must have "knowingly associated himself with the commission of the crime" and "intended by his actions to make it succeed." Although the court did not expressly state that the jury must find that the defendant had the *mens rea* of a principal offender, the other language in the instruction nevertheless comported with this requirement and therefore satisfied the holding in *Wilson Bey*.

Second, for the reasons the trial court stated, there was evidence in the record upon which a reasonable juror could conclude that defendant aided and abetted a principal, in that the evidence at trial showed that defendant was present in the store and handled the firearm, and that jewelry store owner Moshe Motai was shot and injured by one of the men in the store after the defendant herded him into a back room, ordered him to the floor, and was in the process of removing property from that location at the time of the shooting. Thus, the jury could properly consider whether defendant was an aider and abettor to counts 11-14. The defendant has argued that no juror could find defendant knew the principal was armed, which the court did not expressly address at trial but which by his ruling he rejected and which the evidence clearly found by the jury belies- the defendant was himself armed with the firearm used to commit the

robbery and thus there was ample evidence that, if another used it to commit the shooting, defendant had actual knowledge of its possession.

Third, counsel vigorously argued in opposition to the aiding and abetting instruction. Trial counsel preferred not to agree to a *Pinkerton* instruction as an alternative to the objectionable aiding and abetting instruction the court had determined it would give, a clear strategic choice made in consultation with defendant, who when asked on the record whether he agreed with counsel's choice, stated "yes." Tr. at 21. Defendant further claims that counsel was ineffective because he was ignorant of DC law permitting indictment as a principal and proof of aiding and abetting at trial. Even if counsel was unaware of that point to begin with, the court clearly corrected him and he nevertheless made all of the appropriate arguments at the time, including a notice and prejudice argument arising from the government's change in legal theories at that stage, an argument that the government had failed to present proof of a principal other than defendant, and the inadequacy of the court's aiding and abetting instruction with respect to the counts charging the shooting. Defense counsel's performance therefore was not ineffective, and even if it was, the court considered all relevant arguments the defendant now raises and rejected them. Thus, there was no prejudice arising from the claimed deficiency in counsel's performance.

Finally, defendant's notice argument fails. As the court stated during argument on the issue, under D.C. Code § 22-1805, a defendant may be found guilty of a crime whether he acts as principal or as an aider and abettor, and the grand jury "need not include a charge of aiding and abetting in order for the theory to be presented to the jury." *Price v. United States*, 813 A.2d 169 (D.C. 2002). *See also Barker v. United States*, 373 A.2d 1215, (D.C. 1977). Thus, defendant's due process rights were not violated by an absence of aiding and abetting language in the

indictment. Nor was a mid-deliberations change in theory in the circumstances of this case prejudicial to defendant or the product of ineffectiveness. Defendant does not argue that counsel was unaware of the aiding and abetting theory at the time of closing argument and instructions, and cannot because it was in the court's initial instructions to the jury with respect to all counts.

Finally, the government argues that defendant has not justified his failure to raise the adequacy or applicability of the aiding and abetting instruction on appeal. Defendant counters that the same lawyer who represented defendant at trial represented him on appeal and that he failed to raise it because the court stated to him that he had waived a challenge to the aiding and abetting instruction as given. This is incorrect. The court in fact stated that the defense had waived a claim that a *Pinkerton* instruction should have been given in lieu of the aiding and abetting instruction. As to defendant's claim that his lawyer believed he had waived a challenge to the aiding and abetting instruction originally given, the court stated, "if the defense objects, I am not going to inject [*Pinkerton*] here. But I would perceive that as them waiving the objection later on appeal, that it should have been the conspiracy based instruction as opposed to the one I gave. If the one I gave is an error, it's preserved. You argued that up and down. That's not a problem." Tr. at 22. The court concludes that the defendant has not satisfactorily justified his failure to raise this claim on direct appeal.

Defendant's second claim, that counsel was ineffective for failing to seek mistrial after prosecution commented on defendant's post-arrest silence, was raised and rejected on appeal. *Lucas v. United States*, 20 A.3d 737, 745 (D.C. 2011). The Court of Appeals rejected the claim that court's handling of the prosecutor's comment was error, therefore counsel was not ineffective for failing to seek a mistrial because there was no need to grant one.

Defendant's final claim is that his conviction or sentence must be vacated because he believes his sentence may be affected by the decisions of the Supreme Court of the United States in *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Welch v. United States*, 136 S. Ct. 1257 (2016), regarding sentences enhanced pursuant to 18 U.S.C. § 924 (Armed Career Criminal Act). The Armed Career Criminal Act is a federal statute that has been used to enhance sentences in federal criminal cases, but was not applied to the defendant's sentence in this case in the District of Columbia Superior Court. Thus the cases cited do not affect defendant's sentence and therefore defendant is not entitled to the relief requested.

For all these reasons, it is this 27th day of November, 2016, hereby

ORDERED that defendant's Memorandum of Law in Support of Application for Relief to D.C. Code § 23-110, filed November 3, 2015, and supplemented by counsel, is **DENIED**. It further is

ORDERED that defendant's *pro se* Memorandum of Law in Support of Motion to Vacate and or Set Aside Petitioner's Conviction and Sentence Pursuant to DC Code 23-110, received in chambers on June 30, 2016, is **DENIED**.

Lynn Leibovitz
Associate Judge
(Signed in chambers)

cc:

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