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APPENDIX A

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**C.A. No. 21-1545

UNITED STATES OF AMERICA

VS.

WILLIE DAVIS, Appellant

(M.D. Pa. Crim. No. 4:16-cr-00138-001)

Present: AMBRO, SHWARTZ and PORTER, Circuit Judges

Submitted are:

- (1) Appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- (2) By the Clerk is the within appeal for possible summary action under 3rd Cir. LAR 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures; and
- (3) Appellant's Response to Legal Division Letter

in the above-captioned case.

Respectfully,

Clerk

**ORDER**

To the extent that Davis needs a certificate of appealability to appeal, his request for a certificate of appealability is denied. See 28 U.S.C. § 2253(c)(1)(A); Morris v. Horn, 187 F.3d 333, 339-41 (3d Cir. 1999). Jurists of reason would not debate the District Court's decision to construe Davis's motion as an unauthorized second or successive motion under 28 U.S.C. § 2255 to the extent that it challenged his sentence under 18 U.S.C. § 1791(a)(2) and to deny relief on that basis. See 28 U.S.C. §§ 2244(b), 2255(h); Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also Robinson v. Johnson, 313 F.3d 128, 139 (3d Cir. 2002). To the extent that a certificate of appealability is not required for this appeal, we will summarily affirm the District Court's order of March 1,

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2021, because no substantial issue is presented on appeal. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam). The District Court properly concluded that there was no “ongoing controversy” — Davis was convicted in 2016 and sentenced in 2017, and his sentence is final because he challenged his conviction on direct appeal and collaterally before this Court. His statute of conviction specifically provides that any sentence imposed on an inmate who violates § 1791 will be consecutive to the sentence he was serving when the § 1791 offense was committed.

By the Court,

s/ David J. Porter  
Circuit Judge

Dated: August 6, 2021  
Tmm/cc: Willie Davis  
Geoffrey W. MacArthur, Esq.

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APPENDIX B

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :  
: CRIMINAL NO. 4:16-138  
v. : (JUDGE MANNION)  
WILLIE DAVIS, :  
Defendant :  
:

ORDER

On December 8, 2020, defendant Willie Davis filed, *pro se*, a "motion to resolve an ongoing controversy under Article III," (Doc. 147), and a brief in support, (Doc. 148). In his motion, Davis states that the court has "an ongoing duty to conform to the jurisdictional requirement that was imposed by the 1994 amended version of 18 U.S.C. §1791(c)." The government filed its brief in opposition to the motion. (Doc. 158). Davis filed a reply brief on February 23, 2021. (Doc. 165).

The court does not repeat the background of this case since it has been stated in the court's prior decisions. Suffice to say that Davis was convicted by a jury of possession of contraband in prison, *i.e.*, a shank, in violation of 18 U.S.C. §1791(a)(2), and the court sentenced him to 37

months' imprisonment, consecutive to the federal sentence he was serving at the time. (Doc. 102).

The court has reviewed the filings of the parties and Davis' instant motion, (Doc. 147), will be denied for the following reasons.

First, an ongoing controversy does not exist in Davis' case since his judgment and conviction are final, contrary to Davis' unfounded contention that it is not final. After his sentencing, Davis' direct appeal was denied by the Third Circuit, see 728 Fed.Appx. 125 (3d Cir. 2018), and his petition for a writ of *certiorari*, as well as his petition for rehearing, were denied by the U.S. Supreme Court. On July 11, 2019, this court denied Davis' motion to vacate, set aside or correct his sentence, (Doc. 121), filed under 28 U.S.C. §2255. (Docs. 132 and 133). Davis filed a request for a certificate of appealability with the Third Circuit and it was denied because he did not "ma[ke] a substantial showing of the denial of a constitutional right." (Doc. 136) (citing 28 U.S.C. §2253(c)(2)).

As such, Davis' judgment and conviction are final.

Second, insofar as Davis is deemed as attacking the validity of his sentence and argues that if the court "compl[ies] with the jurisdictional requirement" of 18 U.S.C. §1791(c), his sentence became final when

imposed, and could not run consecutive to the federal sentence he was serving. A judgment of conviction becomes final on the date on which the time for filing a timely direct appeal expires. See Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999). Here, Davis' judgment of conviction was entered on June 28, 2017, (Doc. 102), and he timely filed a notice of appeal on July 3, 2017. (Doc. 107). See Fed.R.App.P.4(b)(1)(A)(i). On April 3, 2018, the Third Circuit affirmed his judgment of sentence. (Docs. 112 & 113). The Supreme Court then denied *certiorari*. See 18-7317. Therefore, Davis' judgment of conviction became final on June 28, 2017, when it was imposed.

Notwithstanding Davis' claim attacking the validity of his sentence, since he has already filed a §2255 motion, in which he attacked the jurisdiction of this court, like he did in his direct appeal, and this court denied the motion on its merits, he cannot file a second or successive motion under §2255 without first obtaining authorization from the Third Circuit under 28 U.S.C. §2255(h). Because Davis has not obtained permission from the Third Circuit to file a second or successive motion under §2255, his instant motion, (Doc. 147), is denied on this basis as well.

Third, even considering the merits of Davis' instant motion, as the government explains, (Doc. 158 at 5), in its brief:

[Davis] argues that he was or should have been sentenced under the 1994 version of the §1791 statute. The statute that Davis was indicted, tried, convicted, and sentenced under plainly provides in subsection (c) that any sentence imposed upon an inmate who violates §1791 shall be consecutive to the sentence he was serving at the time the §1791 offense was committed. The 1994 statute has no bearing on Davis's case. His sentence was proper under the law.

The court finds that Davis' sentence was valid and that it was properly ordered to run consecutive to the sentence he was serving at the time he committed the §1791 offense. See U.S. v. Santana, 2014 WL 11398144, \*2 n. 2 (M.D. Pa. Dec. 12, 2014) ("As Defendant was serving his original sentence at the time of his violation of 18 U.S.C. §1791, he falls squarely within this provision and his sentences are statutorily mandated to run consecutively.").

Accordingly, **IT IS HEREBY ORDERED** that Davis' "motion to resolve an ongoing controversy," (Doc. 147), is **DENIED**.

*s/ Malachy E. Mannion*  
MALACHY E. MANNION  
United States District Judge

**Dated: March 1, 2021**

16-138-19