

NO:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2021

DERRICK HARRELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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December 13, 2021

APPENDIX

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A-1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-11374-G

DERRICK HARRELL,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Derrick Harrell moves for a certificate of appealability to appeal the denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. His motion 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

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

**Case Number: 20-21870-CIV-MORENO
(10-20800-CR-MORENO)**

DERRICK HARRELL,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND ORDER DENYING MOTION TO VACATE**

THE MATTER was referred to the Honorable Jared M. Strauss, United States Magistrate Judge, for a Report and Recommendation on Motion to Vacate, Set Aside or Correct Sentence, filed on **May 5, 2020**. The Magistrate Judge filed a Report and Recommendation (**D.E. 20**) on **November 30, 2020**. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation present, and being otherwise fully advised in the premises, it is

ADJUDGED that Magistrate Judge Strauss's Report and Recommendation is **AFFIRMED** and **ADOPTED**. Accordingly, it is

ADJUDGED that Motion to Vacate, Set Aside or Correct Sentence is DENIED for the reasons stated in the Report and Recommendation. The Court agrees that Hobbs Act Robbery qualifies as a crime of violence under 18 U.S.C. § 924(c)'s elements clause, which forecloses relief in this case. *United States v. St. Hubert*, 909 F.3d 335, 346, 351 (11th Cir. 2018), *abrogated in part on other grounds by United States v. Davis*, 139 S. Ct. 2319, 2336 (2019). It is

further

ADJUDGED that no certificate of appealability issue.

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd of February 2021.

A handwritten signature in black ink, reading "Federico A. Moreno". The signature is written in a cursive style with a horizontal line underneath the name.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

United States Magistrate Jared M. Strauss

Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CV-21870-MORENO/STRAUSS
(CASE NO. 10-CR-20800-MORENO)

DERRICK HARRELL,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

_____ /

REPORT AND RECOMMENDATION

This cause comes before the Court on Movant Derrick Harrell's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence ("Motion"). (DE 1).¹ This matter has been referred to me by the Honorable Federico A. Moreno, pursuant to 28 U.S.C. § 636 and the Magistrate Judge Rules of the United States District Court for the Southern District of Florida, to take all necessary and proper action as required by law, with respect to any and all pretrial matters. (DE 18). I have reviewed the Motion (DE 1), the Government's Response (DE 9) to the Court's Order to Show Cause (DE 4, 5), Movant's Reply (DE 10), and Movant's one-page "Supplemental Motion for 2255 Objection." (DE 13). Based on my review of these filings and other pertinent portions of the record, and being otherwise duly advised in the premises, I respectfully **RECOMMEND** that the Motion be **DENIED**.

¹ Herein, citations to "DE" refer to the docket in the instant civil proceeding, 20-CV-21870-MORENO/STRAUSS. Citations to "CR DE" refer to the docket in the underlying criminal proceeding, 10-CR-20800-MORENO.

I. BACKGROUND

Movant was charged by way of a Second Superseding Indictment with one count of conspiracy to commit Hobbs Act robbery, in violation of Title 18, United States Code, Section 1951(a) (Count 1); two substantive counts of Hobbs Act robbery, in violation of Title 18, United States Code, Sections 1951(a) and 2 (Counts 2 and 4); and two counts of brandishing a firearm in furtherance of a crime of violence, in violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2 (Counts 3 and 5). (CR DE 283). Notably, the crime of violence alleged as the predicate for Count 3 was the substantive Hobbs Act robbery alleged in Count 2. *Id.*

On February 20, 2015, Movant pled guilty to conspiracy to commit Hobbs Act robbery (Count 1), both counts of substantive Hobbs Act robbery (Counts 2 and 4), and one count of brandishing a firearm in furtherance of a crime of violence (Count 3), with the Government ultimately dismissing the remaining Count 5. (CR DE 296, 297, 307). According to the facts Movant admitted at his change of plea hearing, the charges stemmed from two robberies that Movant committed, with others, on June 26, 2010 – one of a Walgreens pharmacy and one of a McDonald’s restaurant. (CR DE 323 at 18-20). During those robberies, Movant brandished a .357 magnum, caused fear in the people in the stores, and took money and miscellaneous property from those people and the stores. *Id.* The Court entered an Amended Judgment sentencing Movant to 115 months’ imprisonment on Counts 1, 2, and 4, followed by a consecutive sentence of 84 months on Count 3. (CR DE 307).²

² The judgment was later further amended to correct a clerical error. (CR DE 314, 318).

Movant filed an Amended Notice of Appeal. (CR DE 321). However, the Eleventh Circuit Court of Appeals dismissed the appeal as untimely and barred by the appeal waiver in Movant's plea agreement. (CR DE 328).

Movant now seeks to vacate his conviction for brandishing a firearm in furtherance of a crime of violence (and potentially his conviction on other counts) arguing, based on *United States v. Davis*, 139 S. Ct. 2319 (2019) and related decisions, that Hobbs Act robbery and conspiracy to commit Hobbs Act robbery no longer qualify as "crimes of violence."

II. ANALYSIS

"[Section] 924(c) provides for a mandatory consecutive sentence for any defendant who uses a firearm during a crime of violence or a drug-trafficking crime." *In re Sams*, 830 F.3d 1234, 1237 (11th Cir. 2016) (citing 18 U.S.C. § 924(c)(1)). Under § 924(c), "crime of violence" means an offense that is a felony and:

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3)(A)-(B).

The former clause is referred to as the "use-of-force clause" or "elements clause" and the latter as the "residual clause." *Davis*, 139 S. Ct. at 2324; *Sams*, 830 F.3d at 1237. *Davis* invalidated § 924(c)'s residual clause as unconstitutionally vague, 139 S. Ct. at 2336, but not its elements clause, *In re Pollard*, 931 F.3d 1318, 1320 (11th Cir. 2019).

A § 2255 movant "bear[s] the burden of showing that he is actually entitled to relief on his *Davis* claim, meaning he [must] show that his § 924(c) conviction resulted from application of

solely the [now defunct] residual clause [in § 924(c)(3)(B)].” *In re Hammoud*, 931 F.3d 1032, 1041 (11th Cir. 2019) (citing *Beeman v. United States*, 871 F.3d 1215, 1222-25 (11th Cir. 2017); *In re Moore*, 830 F.3d 1268, 1271-73 (11th Cir. 2016)).

Movant alleges four grounds for relief in his Motion:

1. Conspiracy to commit Hobbs Act robbery does not qualify as a “crime of violence” because it relies on the “residual clause” part of the definition of “crime of violence”;
2. Plaintiff “was not given the proper elements instruction of the charges before pleading guilty” and the “elements in the indictment were incorrect”;
3. Hobbs Act robbery does not qualify as a “crime of violence”; and
4. Conspiracy to commit Hobbs Act robbery cannot support a conviction for 18 U.S.C. § 924(c).

Even assuming that Movant’s claims are not procedurally barred,³ none of his claims merit relief.

³ The Government argues that Movant is procedurally barred from raising his *Davis* claim in a § 2255 motion and, in the alternative, that Movant’s claims fail on the merits. (DE 9). Here, the Court need not decide whether any procedural bars apply because *Davis* simply does not afford Movant any relief. As a result, Movant’s claim should be denied on the merits. *See, e.g., Mims v. United States*, 758 F. App’x 890, 892 (11th Cir. 2019) (affirming a district court’s denial of a § 2255 motion even though the motion was untimely); *Goodloe v. United States*, 448 F. App’x 980, 981 (11th Cir. 2011) (affirming a district court’s merits denial of a § 2255 motion even though the claim was also procedurally barred). At any rate, because Movant’s claims fail on the merits, he would be unable to overcome any applicable procedural bars. First, actual prejudice under the cause-and-prejudice standard could not be shown if *Davis* has no applicability to Movant’s case. *See Bousley v. United States*, 523 U.S. 614, 622 (1998); *Lynn v. United States*, 365 F.3d 1225, 1234 (11th Cir. 2004). Second, the actual innocence exception would not permit Movant to overcome any applicable procedural bar because his filings do not rely on any factual evidence of innocence. Instead, he apparently relies on *Davis* to prove his innocence. (DE 10 at 1) (asserting actual innocence without any discussion of factual evidence). Of course, because *Davis* does not apply to Movant’s case, the issuance of *Davis* would not support his contention that he is actually innocent.

A. Conspiracy to Commit Hobbs Act Robbery (Grounds 1 & 4)

Movant's Grounds 1 and 4 seek relief on the premise that conspiracy to commit Hobbs Act robbery, to which Movant pled guilty in Count 1, cannot satisfy the definition of "crime of violence." Movant is correct that, following *Davis's* invalidation of the residual clause in § 924(c)'s definition of "crime of violence," conspiracy to commit Hobbs Act robbery does not constitute a crime of violence. *Brown v. United States*, 942 F.3d 1069, 1075 (11th Cir. 2019) (finding that conspiracy to commit Hobbs Act robbery does not qualify as a "crime of violence" under § 924(c)'s elements clause). Therefore, conspiracy to commit Hobbs Act robbery can no longer serve as the predicate offense for a conviction under § 924(c). *Id.* at 1076. However, that fact offers Movant no actual relief. As noted above, the predicate crime of violence for Movant's § 924(c) conviction in Count 3 was the substantive Hobbs Act robbery alleged in Count 2, not the conspiracy to commit Hobbs Act robbery alleged in Count 1.

Furthermore, to the extent Movant is suggesting that his conviction on Count 1 itself is invalid because conspiracy to commit Hobbs Act robbery is not a crime of violence,⁴ his claim is meritless. Qualification as a crime of violence, under the definition established in § 924(c) or any other provision, is not an element of Hobbs Act robbery or conspiracy to commit Hobbs Act robbery. *See* 18 U.S.C. § 1951(a). Movant has not identified any authority suggesting to the contrary or otherwise suggesting that § 1951(a) is unconstitutionally vague. Nor is the Court aware of any such authority. Therefore, Grounds 1 and 4 fail to justify any relief.

⁴ It is unclear whether Movant is making this argument in Ground 1. If he is not, then it appears that Ground 1 and Ground 4 are duplicative.

B. Substantive Hobbs Act Robbery (Ground 3)

As described above, the predicate crime of violence for Movant's § 924(c) conviction in Count 3 was the substantive Hobbs Act robbery alleged in Count 2. In Ground 3, Movant asserts that substantive Hobbs Act robbery does not qualify as a crime of violence under § 924(c)'s elements clause. As clarified in Movant's reply (DE 10), Movant relies upon the analysis articulated in *United States v. Chea*, Nos. 98-cr-20005-1 and 98-cr-40003-2, 2019 WL 5061085 (N.D. Cal. Oct. 2, 2019). However, this argument cannot offer Movant relief because the conclusion in *Chea* conflicts with binding Eleventh Circuit precedent holding that substantive Hobbs Act robbery is a crime of violence under § 924(c)'s elements clause.

"A federal prisoner raising a *Davis* claim cannot show that he was sentenced under § 924(c)'s residual clause if current binding precedent clearly establishes his predicate offense qualifies as a crime of violence under the elements clause." *Levatte v. United States*, 805 F. App'x 658, 659 (11th Cir. 2020) (citing *Pollard*, 931 F.3d at 1321). The Eleventh Circuit has held that Hobbs Act robbery is a crime of violence under § 924(c)'s elements clause. *United States v. St. Hubert*, 909 F.3d 335, 346, 351 (11th Cir. 2018), *abrogated in part on other grounds by Davis*, 139 S. Ct. at 2336. *Accord Brown*, 942 F.3d at 1075 (citing *In re Saint Fleur*, 824 F.3d 1337, 1340-41 (11th Cir. 2016)). The Eleventh Circuit has continued to recognize *St. Hubert*'s binding holding in recent decisions addressing claims identical or similar to Movant's. *See, e.g., Crawford v. United States*, 805 F. App'x 758, 761 (11th Cir. 2020); *United States v. Henderson*, 798 F. App'x 468, 470 (11th Cir. 2020); *United States v. Gilmore*, No. 17-10588, 2020 WL 6390209 at *6 (11th Cir. Nov. 2, 2020).

In the face of the Eleventh Circuit’s clear precedent, Movant cites to a Northern District of California decision. In *Chea*, the court found that Hobbs Act robbery could not satisfy the elements clause because the crime could be committed in such a way that did not require a sufficient amount of “physical force” as that term had been interpreted by the Ninth Circuit Court of Appeals. The *Chea* court noted that the definition of “robbery” used in the Hobbs Act indicates that the offense may be committed “by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property . . .” *Id.* at *8 (quoting 18 U.S.C. § 1951(b)(1)) (emphasis in original). Having concluded that the offense can be committed by causing fear of future injury to property, the *Chea* court concluded that causing such fear need not necessarily involve the use of “violent physical force.”⁵ *Id.* at *8-9. Thus, *Chea* found that, taking a categorical approach, Hobbs Act robbery does not qualify as a crime of violence because it

⁵ As described above, § 924(c)(3)(A) (the elements clause) defines “crime of violence” as a crime that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” Since the term “physical force” is not defined in the statute, the Ninth Circuit has imported the definition of that term as it has been interpreted in the context of a different “elements clause” – from the Armed Career Criminal Act’s (ACCA) definition of “violent felony.” The Supreme Court had previously interpreted the phrase “physical force,” as used in the ACCA, to require “violent force – that is, force capable of causing physical pain or injury to another person.” *Johnson v. United States*, 559 U.S. 133, 140 (2010) (emphasis added) (citation omitted). The *Chea* court noted that the Ninth Circuit had applied the definition from *Johnson* to the term “physical force” in § 924(c)(3)(A), even while recognizing that § 924(c)(3)(A) encompasses crimes involving a threat of physical force against persons or property whereas the ACCA elements clause at issue in *Johnson* only applied to physical force against persons. *Chea*, 2019 WL 5061085, at *8 (citing *United States v. Watson*, 881 F.3d 782, 784 (9th Cir. 2018)). The *Chea* court further acknowledged that the Ninth Circuit had not yet applied the *Johnson* standard in the § 924(c) context to a crime involving threatened physical force against property. *Id.* Importantly, the Eleventh Circuit has questioned the applicability of the *Johnson* standard in this context. *See St. Hubert*, 909 F.3d at 350 n.14 (“[I]n the § 924(c) context, *Curtis Johnson* may be of limited value in assessing the quantum of force necessary to qualify as a ‘use, attempted use, or threatened use of physical force’ against property within the meaning of § 924(c)(3)(A).”).

“sweeps more broadly than the definition of a ‘crime of violence’ under the elements clause of § 924(c)(3).” *Id.* at *9-10.

However, the Eleventh Circuit clearly came to the opposite conclusion in *St. Hubert*. After conducting its own analysis of Hobbs Act robbery using the same categorical approach, the Eleventh Circuit concluded

St. Hubert does not offer a plausible scenario, and we can think of none, in which a Hobbs Act robber could take property from the victim against his will and by putting the victim in fear of injury (to his person or property) without at least threatening to use physical force capable of causing such injury. *See Curtis Johnson v. United States*, 559 U.S. 133, 140, 130 S. Ct. 1265, 1271, 176 L.Ed.2d 1 (2010) (stating that the phrase “physical force” as used in the ACCA’s “violent felony” definition means “violent force—that is, force capable of causing physical pain or injury to another person”).

St. Hubert, 909 F.3d at 350. Thus, not only does Eleventh Circuit precedent foreclose the conclusion that Movant urges this Court to make, it also rejects the analysis on which Movant seeks to rely.

In his supplemental filing,⁶ Movant also cites to *United States v. Eason*, 953 F.3d 1184 (11th Cir. 2020), for the proposition that substantive Hobbs Act robbery is not a crime of violence. However, *Eason*’s holding is not applicable in this context. In *Eason*, the court found that substantive Hobbs Act robbery does not qualify as a “crime of violence” as defined in the United

⁶ Movant styled this filing as a “Supplemental Motion for 2255 ‘Objection’” (DE 13). He filed it on June 22, 2020, approximately one week after his initial reply (DE 10) (which itself was mis-styled as a “response” to “Government[’s] Motion to 28 U.S.C. 2255).” Still, the supplemental filing is clearly a further reply to the arguments the Government advanced in its response to the order to show cause. While the Court could strike this filing as an additional memorandum of law filed without leave of Court, *see* S.D. Fla. L.R. 7.1(c), I nevertheless consider the lone argument and citation it contains.

States Sentencing Guidelines § 4B1.2(a). That definition is very similar to, but materially different from, the definition of “crime of violence” at issue here.

The “elements clause” of the Guidelines’ provision defines “crime of violence” to mean “any offense . . . that . . . has as an element the use, attempted use, or threatened use of physical force against the person of another.” U.S.S.G. § 4B1.2(a) (emphasis added). As discussed above, Hobbs Act robbery can be committed through threats of force against “a person or property.” 18 U.S.C. § 1951(b)(1) (emphasis added). Because Hobbs Act robbery could be committed through a threat of force against property without a threat of force against a person, the *Eason* court concluded that the crime was broader than the Guidelines’ definition of crime of violence and thus could not qualify as a crime of violence using the categorical approach. 953 F.3d at 1190. However, the definition of crime of violence at issue here – from 18 U.S.C. § 924(c)(3)(A) – encompasses crimes that “ha[ve] as an element the use, attempted use, or threatened use of physical force against the person or property of another.” In other words, this definition is broader than the Sentencing Guidelines’ definition in a way that encompasses the full definition of Hobbs Act robbery and addresses the issue identified in *Eason*. In fact, the Eleventh Circuit noted this exact distinction in *Eason* in explaining why its holding in *St. Hubert* (that Hobbs Act robbery is a crime of violence under § 924(c)(3)(A)) did not compel the same holding under the Guidelines’ definition. 953 F.3d at 1191 (“There is nothing incongruous about holding that Hobbs Act robbery is a crime of violence for purposes of . . . § 924(c)(3)(A), which includes force against a person or property, but not for purposes of U.S.S.G. § 4B1.2(a)(1), which is limited to force against a person.”) quoting *United States v. O’Connor*, 874 F.3d 1147, 1158 (10th Cir. 2017))). Thus, *Eason*

is not applicable here and does not support Movant's argument. Therefore, Movant's Ground 3 fails.

C. Elements of Offense of Conviction (Ground 2)

Movant's remaining ground for relief is that he "was not given the proper elements instruction before I plead guilty." (DE 1 at 5). The only further explanation Movant gives is that "[t]he elements in the indictment were incorrect." *Id.* Movant fails to identify what elements in the indictment were incorrect, why they were incorrect, or even to what count of conviction he is referring. He fails to provide any legal support for this ground and does not mention it in his reply (DE 10) or his supplemental reply (DE 13). In other words, even construing his pleadings liberally, he fails to provide the Court with sufficient information to determine that he is entitled to any relief.

The Government presumes that Movant is alleging that the indictment's § 924(c) count failed to properly allege a valid crime of violence. (DE 9 at 11). It bases this assumption on Movant's explanation that he did not present this argument on direct appeal because "it was not a change of law at that time," the same explanation he offered as to each other ground. (DE 1 at 5; DE 9 at 1). As *Davis* is the only "change of law" Movant cites to, it is reasonable to conclude that Ground 2 refers to essentially the same *Davis* claim Movant asserts in Grounds 1, 2, and 4. As described above, Movant's claims based on *Davis* all fail. The Court need not speculate any further whether Movant is attempting to articulate a claim based on something other than *Davis* because, without identifying some other recent "change in law" made retroactive on collateral review giving rise to his claim, any other such claim would be untimely. *See* 28 U.S.C. § 2255(f).

III. EVIDENTIARY HEARING

Movant is not entitled to an evidentiary hearing. “[T]he [M]otion and the files and records of the case conclusively show that [Movant] is entitled to no relief[.]” *See* 28 U.S.C. § 2255(b).

IV. CERTIFICATE OF APPEALABILITY

“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11(a), Rules Governing § 2255 Proceedings. “If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2).” *Id.* “If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.” *Id.* “A timely notice of appeal must be filed even if the district court issues a certificate of appealability.” Rule 11(b), Rules Governing § 2255 Proceedings.

“A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When a district court rejects a § 2255 movant’s constitutional claims on the merits, the movant “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (citation and internal quotation marks omitted).

Here, the undersigned recommends denial of a certificate of appealability. If Movant disagrees, he may so argue in any objections filed with the district court.

V. RECOMMENDATIONS

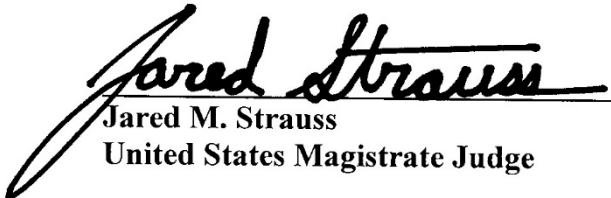
Based on the foregoing, I respectfully **RECOMMEND** that:

1. Movant’s Motion to Vacate (DE 1) be **DENIED**;

2. no certificate of appealability issue;
3. final judgment be entered; and
4. this case be **CLOSED**.

The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable Federico A. Moreno, United States District Judge. Failure to file objections timely shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

DONE AND SUBMITTED in Fort Lauderdale, Florida, this 30th day of November 2020.


Jared M. Strauss
United States Magistrate Judge

Copies furnished via CM/ECF to:

Hon. Federico A. Moreno

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95711-004
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Jonesville, VA 24263
PRO SE

Counsel of record

AO 243 (Rev. 01/15)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

FILED BY _____	D.C. _____
MAY 05 2020	
ANGELA E. NOBLE CLERK U.S. DIST. CT. S. D. OF FLA. - MIAMI	

United States District Court	District
Name (under which you were convicted): <u>DERRICK HARRELL</u>	Docket or Case No.: <u>10-20800-CR-MORENO</u>
Place of Confinement: <u>USP LEE</u>	Prisoner No.: <u>95711-004</u>
UNITED STATES OF AMERICA	Movant (include name under which convicted) <u>DERRICK HARRELL</u>

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: FLORIDA, SOUTHERN DISTRICT, 301 NORTH MIAMI AVENUE, MIAMI, FL 33136
 (b) Criminal docket or case number (if you know): 10-20800-CR-MORENO
- cat/div 570-2255/MIA
 Case # 10 CR 20800
 JUDGE MORENO Mag REID
 Motion # Fee pd \$
 Receipt #

2. (a) Date of the judgment of conviction (if you know): 02-20-15
 (b) Date of sentencing: 04-30-2015
3. Length of sentence: 16 YEARS, 7 MONTHS
4. Nature of crime (all counts): COUNT ONE: 18:1951 (A), Conspiracy to Commit Hobbs Act Robbery
COUNT TWO: 18:1951 (A) Hobbs Act Robbery,
COUNT THREE: 18:424 (c) (1) (A) (II), Brandishing of a Firearm in Furtherance of a
Crime of Violence.
COUNT FOUR: 18:1951 (A) Hobbs Act Robbery

5. (a) What was your plea? (Check one)
- (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐

No ☒

(2) Second petition:

Yes ☐

No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: UnConstitutional Vague

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Conspiracy To Commit hobbs act Robbery is no longer a Crime of Violence Because It depends ON The residual Clause. It doesn't by it's Nature Involves a Substantial risk that Physical Force may be used In the Course of Committing the offense, therefore, the Statute is Vague...

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

It was not a Change of law at that time.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: It was not A Change of law at that time

GROUND TWO: Constitutional Violation/Due Process

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I was not Given the Proper elements Instruction of the Charges before I Plea guilty. the elements in the Indictment were Incorrect..

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

It was not a Change of law at that time

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

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(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: IT was not a Change OF law at THAT TimeGROUND THREE: Hobbs Act Robbery
Not a Crime OF Violence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The alternate means of Committing the Crime was to instill fear
of Injury Fear of Injury does not equate to fear of use of
Physical Force Against a Person

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

It was not a change of law at that time**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: It was not a Change of law at THAT Time

GROUND FOUR: Unconstitutional Vague

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Conspiracy to Commit Hobbs Act Robbery Can not Support a brandishing of a Firearm In Furtherance of a Crime of Violence. because brandishing Falls under the term of Crime of Violence. Also Conspiracy as a Predicate Crime of Violence Is Vague

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

It was not a Change of law at that time

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

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(3) Did you receive a hearing ~~on~~ your motion, petition, or application?Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: It was not a change of law at that time

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

Roderick Vereen, P.O. Box 68-0697, Miami, FL 33168

(b) At the arraignment and plea:

Roderick Vereen, P.O. Box 68-0697 Miami, FL 33168

(c) At the trial:

N/A

(d) At sentencing:

Roderick Vereen, P.O. Box 68-0697 Miami, FL 33168

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

New Substantive rules of Constitutional Law

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:

Vacate Sentence
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on x 4-28-20
(month, date, year)

Executed (signed) on x [Signature] 4-28-20
(date)

x [Signature]
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Inmate Inquiry

Inmate Reg #: 95711004
Inmate Name: HARRELL, DERRICK
Report Date: 04/28/2020
Report Time: 11:21:44 AM
Current Institution: Lee USP
Housing Unit: LEE-C-A
Living Quarters: C02-432L

[General Information](#) | [Account Balances](#) | [Commissary History](#) | [Commissary Restrictions](#) | [Comments](#)
General Information

Administrative Hold Indicator: No
No Power of Attorney: No
Never Waive NSF Fee: No
Max Allowed Deduction %: 100
PIN: 8339
PAC #: 858440220
Revalidation Date: 4th
FRP Participation Status: Participating
Arrived From: ATL
Transferred To:
Account Creation Date: 10/20/2010
Local Account Activation Date: 2/12/2020 3:15:29 AM
Sort Codes:
Last Account Update: 4/28/2020 11:20:17 AM
Account Status: Active
Phone Balance: \$2.05

Pre-Release Plan Information

Target Pre-Release Account Balance: \$0.00
Pre-Release Deduction %: 0%
Income Categories to Deduct From: ☐ Payroll ☐ Outside Source Funds

FRP Plan Information

FRP Plan Type	Expected Amount	Expected Rate
---------------	-----------------	---------------

Account Balances

Account Balance: \$28.41
Pre-Release Balance: \$0.00
Debt Encumbrance: \$0.00
SPO Encumbrance: \$0.00
Other Encumbrances: \$0.00
Outstanding Negotiable Instruments: \$0.00

Administrative Hold Balance: \$0.00
Available Balance: \$28.41
National 6 Months Deposits: \$393.00
National 6 Months Withdrawals: \$429.55
Available Funds to be considered for IFRP Payments: (\$57.00)
National 6 Months Avg Daily Balance: \$46.71
Local Max. Balance - Prev. 30 Days: \$55.31
Average Balance - Prev. 30 Days: \$51.65

Commissary History

Purchases

Validation Period Purchases: \$23.90
YTD Purchases: \$268.55
Last Sales Date: 4/28/2020 11:20:17 AM

SPO Information

SPO's this Month: 0
SPO \$ this Quarter: \$0.00

Spending Limit Info

Spending Limit Override: No
Weekly Revalidation: No
Bi-Weekly Revalidation: No
Spending Limit: \$360.00
Expended Spending Limit: \$11.15
Remaining Spending Limit: \$348.85

Commissary Restrictions

Spending Limit Restrictions

Restricted Spending Limit: \$25.00
Restricted Expended Amount: \$11.15
Restricted Remaining Spending Limit: \$13.85
Restriction Start Date: 4/8/2020
Restriction End Date: 10/4/2020

Item Restrictions

List Name	List Type	Start Date	End Date	Active
	Permitted List	4/8/2020	10/4/2020	Yes

Inmate Inquiry

Inmate Reg #: 95711004
Inmate Name: HARRELL, DERRICK
Report Date: 04/28/2020
Report Time: 11:21:44 AM
Current Institution: Lee USP
Housing Unit: LEE-C-A
Living Quarters: C02-432L

[General Information](#) | [Account Balances](#) | [Commissary History](#) | [Commissary Restrictions](#) | [Comments](#)
General Information

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No Power of Attorney: No
Never Waive NSF Fee: No
Max Allowed Deduction %: 100
PIN: 8339
PAC #: 858440220
Revalidation Date: 4th
FRP Participation Status: Participating
Arrived From: ATL
Transferred To:
Account Creation Date: 10/20/2010
Local Account Activation Date: 2/12/2020 3:15:29 AM
Sort Codes:
Last Account Update: 4/28/2020 11:20:17 AM
Account Status: Active
Phone Balance: \$2.05

Pre-Release Plan Information

Target Pre-Release Account Balance: \$0.00
Pre-Release Deduction %: 0%
Income Categories to Deduct From: ☐ Payroll ☐ Outside Source Funds

FRP Plan Information

FRP Plan Type	Expected Amount	Expected Rate
---------------	-----------------	---------------

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Commissary Restrictions

Spending Limit Restrictions

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 Restricted Expended Amount: \$11.15
 Restricted Remaining Spending Limit: \$13.85
 Restriction Start Date: 4/8/2020
 Restriction End Date: 10/4/2020

Item Restrictions

List Name	List Type	Start Date	End Date	Active
	Permitted List	4/8/2020	10/4/2020	Yes

COMMISSARY
RESTRICTION

Comments

Comments:

DHO #3383804

DERRICK HARDELL #95711-004
UNITED STATES PENITENTIARY-LEE
P.O. Box 305
Jonesville, VA, 24263-0305



U.S. PENITENTIARY - LEE COUNTY
PO Box 900 - Jonesville, VA 24263
DATE 5-1-20

Special / Legal Mail

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened or inspected. If the writer raises a question or problem over which this facility has jurisdiction you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosed to the above address.

COPIES INSPECTED

United State South
301 North Miami Avenue
Miami, FL 33128

UNITED STATES DISTRICT COURT**Southern District of Florida****Miami Division*******AMENDED*******UNITED STATES OF AMERICA****v.****DERRICK HARRELL****JUDGMENT IN A CRIMINAL CASE**Case Number: **10-20800-CR-MORENO**USM Number: **95711-004**Counsel For Defendant: **Roderick Vereen**Counsel For The United States: **Michael Gilfarb**Court Reporter: **Gilda Pastor-Hernandez****Correction of Sentence for Clerical Mistake (Fed. R. Crim. P.36)****The defendant pleaded guilty to Counts 1,2,3,4.**

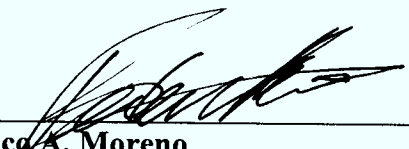
The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 1951(a)	Conspiracy to commit Hobbs Act robbery	06/30/2010	1
18 U.S.C. § 1951(a)	Hobbs Act robbery	01/20/2010	2
18 U.S.C. § 924(c)(1)(A)(ii)	Brandishing of a firearm in furtherance of a crime of violence	01/20/2010	3
18 U.S.C. § 1951(a)	Hobbs Act robbery	04/13/2010	4

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed on the motion of the government.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Original Sentence: **4/30/2015**


Federico A. Moreno
United States District Judge

Date: August 8, 2016

DEFENDANT: **DERRICK HARRELL**
CASE NUMBER: **10-20800-CR-MORENO**

*******IMPRISONMENT *******

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **199 MONTHS. Counts 1,2,4-115 months; Count 3-84 months [to run CONSECUTIVE to Counts 1,2,4].**

******This sentence is to run CONSECUTIVE to the state sentence already imposed in Case Nos. F0938257, F1019772; F146006. ******

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL



DEFENDANT: DERRICK HARRELL
CASE NUMBER: 10-20800-CR-MORENO

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) years (CONCURRENT)**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.



DEFENDANT: **DERRICK HARRELL**
CASE NUMBER: **10-20800-CR-MORENO**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$400.00	\$0.00	\$1,190.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
----------------------	------------------------	--------------------------------	-----------------------------------

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: DERRICK HARRELL
CASE NUMBER: 10-20800-CR-MORENO

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$400.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)</u>		

The Government shall file a preliminary order of forfeiture within 3 days.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



FILED by	TB	D.C.
ELECTRONIC		
JAN 13, 2015		
STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI		

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

20800

CASE NO. 10-02800-Cr-KING (s)(s)

18 U.S.C. § 1951(a)

18 U.S.C. § 924(c)(1)(A)

18 U.S.C. § 981(a)(1)(C)

18 U.S.C. § 924(d)(1)

18 U.S.C. § 853

UNITED STATES OF AMERICA

vs.

DERRICK HARRELL,

Defendant.

SECOND SUPERSEDING INDICTMENT

The Grand Jury charges that:

COUNT 1

Beginning in or around January 2010, and continuing through on or about June 2010, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

DERRICK
~~DERRICK~~ HARRELL,
Harrell

did knowingly and willfully combine, conspire, and confederate, and agree with Corwin Danztle, and Daniel Jenkins and others known and unknown to the Grand Jury, to obstruct, delay and affect commerce and the movement of articles in commerce, by robbery, as the terms "commerce" and "robbery" are defined in Title 18, United States Code, Section 1951(b)(1) and (b)(3), in that the defendant did plan to take United States currency and other property from the person and in the presence of persons employed by, and known persons patronizing, a business and company operating in interstate and foreign commerce, against the will of those people, by means of actual

and threatened force, violence, and fear of injury to said persons; in violation of Title 18, United States Code, Section 1951(a).

COUNT 2

On or about June 26, 2010, in Miami-Dade County, in the Southern District of Florida, the defendant,

DERRICK HARRELL,

did knowingly obstruct, delay and affect commerce and the movement of articles in commerce, by means of robbery, as the terms “commerce” and “robbery” are defined in Title 18, United States Code, Sections 1951(b)(1) and (b)(3), in that the defendant did take United States currency and other property from the person and in the presence of persons employed by, and persons patronizing, the Walgreens store, located at, 12711 S.W. 200th Street, Miami, Florida, a business and company operating in interstate and foreign commerce, against the will of those persons, by means of actual and threatened force, violence, and fear of injury to each person; in violation of Title 18, United States Code, Section 1951(a) and (2).

COUNT 3

On or about June 26, 2010, in Miami-Dade County, in the Southern District of Florida, the defendant,

DERRICK HARRELL,

did knowingly use and carry a firearm during and in relation to a crime of violence, and did knowingly possess a firearm in furtherance of a crime of violence, an offense for which the defendant may be prosecuted in a court of the United States, specifically, a violation of Title 18, United States Code, Sections 1951(a) and 2, as alleged in Count 2 of this Indictment, in violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.

Pursuant to Title 18, United States Code, Section 924(c)(1)(A)(ii), it is further alleged

that the firearm was brandished.

COUNT 4

On or about June 26, 2010, in Miami-Dade County, in the Southern District of Florida, the defendant,

DERRICK HARRELL,

did knowingly obstruct, delay and affect commerce and the movement of articles in commerce, by means of robbery, as the terms “commerce” and “robbery” are defined in Title 18, United States Code, Sections 1951(b)(1) and (b)(3), in that the defendant did take United States currency and other property from the person and in the presence of persons employed by, and persons patronizing, the McDonald’s, located at, 18340 S.W. 137th Avenue, Miami, Florida, a business and company operating in interstate and foreign commerce, against the will of those persons, by means of actual and threatened force, violence, and fear of injury to each person; in violation of Title 18, United States Code, Section 1951(a) and (2).

COUNT 5

On or about June 26, 2010, in Miami-Dade County, in the Southern District of Florida, the defendant,

DERRICK HARRELL,

did knowingly use and carry a firearm during and in relation to a crime of violence, and did knowingly possess a firearm in furtherance of a crime of violence, an offense for which the defendant may be prosecuted in a court of the United States, specifically, a violation of Title 18, United States Code, Sections 1951(a) and 2, as alleged in Count 4 of this Indictment, in violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.

Pursuant to Title 18, United States Code, Section 924(c)(1)(A)(ii), it is further alleged that the firearm was brandished.

CRIMINAL FORFEITURE ALLEGATION

1. The allegations of this Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeitures to the United States of America of certain property in which the defendant has an interest.


2. Upon conviction of the offenses alleged In Counts 1 through 5 of this Indictment, the defendant shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d)(1), as made applicable hereto by Title 28, United States Code, Section 2461(c), any firearm and ammunition involved in or used in the commission of said violation, including but not limited to:

- (a) a .357 Magnum revolver; and
- (b) six (6) rounds of .357 Magnum ammunition.

All pursuant to Title 28, United States Code, Section 2461(c); Title 18, United States Code, 981(a)(1)(c) and (F); Title 18, United States Code, 924(d)(1); and Title 21, United States Code, Section 853.

A TRUE BILL


FOREPERSON


WIFREDO A. FERRER
UNITED STATES ATTORNEY


MICHAEL E. GILFARB
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. 10-20800-CR-KING(s)(s)

vs.

CERTIFICATE OF TRIAL ATTORNEY*

DERRICK HARRELL,

Defendant.

Superseding Case Information: X

Court Division: (Select One)

X Miami Key West
 FTL WPB FTP

New Defendant(s) Yes No X
Number of New Defendants 0
Total number of counts 5

I do hereby certify that:

1. I have carefully considered the allegations of the information, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No

List language and/or dialect

4. This case will take 3 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<u>X</u>	Petty	<u> </u>
II	6 to 10 days	<u> </u>	Minor	<u> </u>
III	11 to 20 days	<u> </u>	Misdem.	<u> </u>
IV	21 to 60 days	<u> </u>	Felony	<u>X</u>
V	61 days and over	<u> </u>		

6. Has this case been previously filed in this District Court? (Yes or No) Yes

If yes:

Judge:

Case No. 10-20800-CR-KING

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

(Yes or No) Yes

If yes:

Magistrate Case No.

10-MJ-03411-TEB

Related Miscellaneous numbers:

Defendant(s) in federal custody as of

October 20, 2010

Defendant(s) in state custody as of
Rule 20 from the

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes X No

MICHAEL E. GILFARB
ASSISTANT UNITED STATES ATTORNEY
FLORIDA BAR NO. 0957836

*Penalty Sheet(s) attached

REV.9/11/07

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: DERRICK HARRELL,

Case No: 10-20800-CR-KING(s)(s)

Count #: 1

Conspiracy to Commit a Hobbs Act Robbery

Title 18, United States Code, Section 1951(a)

*** Max. Penalty:** Twenty (20) Years' Imprisonment

Counts #: 2 and 4

Hobbs Act Robbery

Title 18, United States Code, Section 1951(a) and (2)

***Max. Penalty:** Twenty (20) years' imprisonment

Counts #: 3 and 5

Possession of Firearm in Furtherance of a Crime of Violence

Title 18, United States Code, Sections 924(c)(1)(A)(ii) and 2

***Max. Penalty:** Life imprisonment

Count #:

***Max. Penalty:** _____

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**