

APPENDIX A

US v Smith 20-7656 (4th Cir. Sept. 14, 2021) Denial

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-7656

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DALTON LAQUANE SMITH,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. Joseph F. Anderson, Senior District Judge. (3:13-cr-01038-JFA-1)

Submitted: August 25, 2021

Decided: September 14, 2021

Before KING, AGEE, and FLOYD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Dalton Laquane Smith, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dalton Laquane Smith appeals the district court's order denying his postjudgment motion to withdraw his guilty plea. Our review of the record confirms that the district court properly denied Smith's motion. *See* Fed. R. Crim. P. 11(e). Accordingly, we affirm the district court's order.

Consistent with our decision in *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003), we construe Smith's notice of appeal and informal brief as an application to file a second or successive 28 U.S.C. § 2255 motion. Upon review, we conclude that Smith's claims do not meet the relevant standard. *See* 28 U.S.C. § 2255(h). We therefore deny authorization to file a successive § 2255 motion.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: September 14, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7656, US v. Dalton Smith
3:13-cr-01038-JFA-1

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED

COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

APPENDIX B

US v Smith 3:13-cr-01038 (District Court Denial 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

UNITED STATES OF AMERICA)	CR No.: 3:13-1038-JFA
)	
v.)	ORDER
)	
DALTON LAQUANE SMITH)	
_____)	

The defendant has filed a motion styled as one to withdraw his guilty plea (ECF No. 133). The government has responded and suggests that the defendant is, in effect, raising a challenge to his conviction pursuant to 28 U.S.C. § 2255. The government also points out that the defendant has already filed one such § 2255 petition in this court and that he has not obtained permission from the United States Court of Appeals for the Fourth Circuit to file a second, successive § 2255 action.

In response to the government's response, the defendant has replied that he is not, in fact, pursuing relief under § 2255 but is actually seeking to withdraw his guilty plea. For this reason, the court will consider the motion as one with to withdraw his guilty plea, standing alone, and summarily denies the motion.

PROCEDURAL HISTORY

The defendant was indicted in 2013 on a 12-count indictment charging him with a number of criminal violations. The government filed an Information pursuant to 28 U.S.C. § 851, notifying the defendant that he would be subjected to increased penalties as a result of his six prior felony drug convictions. In October 2014, the defendant signed a written plea agreement and pleaded guilty to Counts 5 and 6 of the Indictment. Count 5 charged the defendant with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)

and § 924(e). Count 6 charged the defendant with possession of a firearm during and in relation to, and possession of a firearm in furtherance of, a drug trafficking crime in violation of 18 U.S.C. § 924(c).

After a full Rule 11 colloquy, the court accepted the defendant's plea. After receiving a Presentence Report (PSR) (ECF No. 66), sentenced the defendant as an armed career criminal and as a career offender. This court sentenced the defendant to 262 months imprisonment, consisting of 202 months as to Count 5 and 60 months as to Count 6, with the terms running consecutive to each other.


Thereafter, in October 2015, the defendant filed a motion pursuant to § 2255 to vacate, modify or correct his sentence. He relies upon the Supreme Court decision in *Johnson v. United States*, 125 S.Ct. 2551 (2015). This court granted the government's motion for summary judgment and denied the § 2255 petition in October 2018.

The defendant's motion to withdraw his guilty plea is based upon *Rehaif v. United States*, 139 S.Ct. 2191 (2019). He claims that after *Rehaif*, he is actually innocent of the crime to which he pled guilty and this provides a basis for withdrawing his guilty plea.

The court respectfully disagrees. This court has no authority to allow the withdrawal of a guilty plea entered nearly 7 years ago. The motion is respectfully denied.

IT IS SO ORDERED.

October 16, 2020
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge

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from this filing is
available in the
Clerk's Office.**