No. _________

IN THE SUPREME COURT OF THE UNITED STATES

TERRANCE STINSON,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX

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2019 WL 6170003
Only the Westlaw citation is currently available.
United States District Court, W.D. New York.

Terrance STINSON, Movant,
v.
UNITED STATES of America, Respondent.

Civil Case No. 6:16-cv-06323-MAT
|
Criminal Case No. 6:01-cr-06087-MAT
|
Signed 11/20/2019

Attorneys and Law Firms

Frank H. Sherman, U.S. Attorney's Office, Rochester, NY, for Respondent.

DECISION AND ORDER

HONORABLE MICHAEL A. TELESCA, United States District Judge

***1** Movant Terrance Stinson ("Stinson"), through counsel, has filed a Supplemental Motion to Vacate Under 28 U.S.C. § 2255 ("§ 2255") and Request for Expedited Resentencing ("Supplemental § 2255 Motion") (Docket No. 580), in regard to his original Motion to Vacate the Judgment and Correct the Sentence Under § 2255 ("§ 2255 Motion") (Docket No. 557) based on Johnson v. United States, 135 S. Ct. 2551 (2015). In the Supplemental § 2255 Motion, Stinson contends that his conviction under 18 U.S.C. § 924 (c) (Count 5) must be vacated in light of the Supreme Court's recent decision in United States v. Davis, 139 S. Ct. 2319, 2336 (2019).

On August 26, 2003, Stinson was convicted of, inter alia,[1] one count of violating 18 U.S.C. § 924(c) for carrying a firearm in furtherance of a "crime of violence." Specifically, Count 5 charged Stinson with carrying a firearm in furtherance of conspiracy to affect commerce by robbery, in violation of 18 U.S.C. § 1951, the Hobbs Act.

In Davis, the Supreme Court struck the residual clause of 18 U.S.C. § 924(c) as "unconstitutionally vague." 139 S. Ct. at 2336. In the absence of the now-stricken residual clause, for an offense to qualify as a "crime of violence," it must fit into 18 U.S.C. § 924(c)'s force clause, meaning it must have "as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A). However, the "United States Solicitor General has conceded that conspiracy to commit Hobbs Act robbery does not meet the requirements of the force clause: 'A Hobbs Act conspiracy need not [ ] lead to the commission of the planned robbery, and thus such a conspiracy does not "ha[ve] as an element the use, attempted use, or threatened use of physical force against the person or property of another," so as to qualify as a "crime of violence" under 18 U.S.C. 924(c)(3)(A)." ' " Docket No. 580, p. 3 (quoting United States v. Davis, Brief for the United States, 2019 WL 629976, at *50 (citation omitted in original; brackets in original); other citations omitted). Post-Davis, Stinson argues, conspiracy to commit Hobbs Act robbery cannot qualify as a "crime of violence" under the residual clause. Docket No. 580, p. 3. In addition, because this offense does not contain a necessary element of violent physical force, it also fails to qualify as a "crime of violence" under the statute's force clause. Id. Therefore, Stinson, argues, the "crime of violence" element of the 18 U.S.C. § 924(c) conviction cannot be satisfied and Stinson's conviction must be vacated. Id.

The Government has filed a Response (Docket No. 583) indicating its agreement with Stinson that, in light of Davis, his conviction under 18 U.S.C. § 924(c) (Count 5) must be vacated since the predicate offense is conspiracy to commit Hobbs Act robbery. The Government joins Stinson's request for a full resentencing hearing.

***2** The Court agrees that Stinson's conviction and sentence on Count 5 violate Due Process and that he is entitled to relief under 28 U.S.C. § 2255(b) in the form of a resentencing hearing to be held as soon as practicable. Accordingly, the Court **grants** Stinson's Supplemental § 2255 Motion (Docket No. 580) and § 2255 Motion (Docket No. 557); **vacates** the judgment of conviction on Count 5; and remands the case for resentencing before the original sentencing judge, United States District Judge Charles J. Siragusa.

SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2019 WL 6170003

Footnotes

1 Stinson was also convicted of conspiracy to possess with the intent to distribute and to distribute 50 grams or more of cocaine base (Count 1); unlawfully carrying a firearm in furtherance of a drug trafficking crime (Count 2); and conspiracy to commit Hobbs Act robbery (Count 4). See Judgment (Docket No. 302).

UNITED STATES DISTRICT COURT

Western District Of New York

UNITED STATES OF AMERICA
V.

Terrance Stinson

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 6:01CR06087-008
USM Number: 10890-055

Anne Burger
Defendant's Attorney

Date of Original Judgment: 1/7/2004
(Or Date of Last Amended Judgment)

THE DEFENDANT:

☐ pleaded guilty to count(s) ________

☐ pleaded nolo contendere to count(s) ________ which was accepted by the court.

☒ was found guilty on count(s) 1, 2 and 4 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(B) and 21 U.S.C. § 846	Conspiracy to Possess with Intent to Distribute and to Distribute 50 Grams or More of Cocaine Base	February 2001	1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) ________

☒ Count(s) 5 ☒ is ☐ are dismissed on the motion of the United States.

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.

October 19, 2020
Date of Imposition of Judgment

Charles J. Siragusa
Signature of Judge

Honorable Charles J. Siragusa, U.S. District Judge
Name and Title of Judge

October 21, 2020
Date

DEFENDANT: Terrance Stinson
CASE NUMBER: 6:01CR06087-008

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 924(c)(1)	Unlawfully Using and Carrying a Firearm During a Drug Trafficking Crime	February 2001	2
18 U.S.C. § 1951	Conspiracy to Obstruct Commerce by the Robbery of Money and Controlled Substances	December 1, 1999	4

DEFENDANT: Terrance Stinson
CASE NUMBER: 6:01CR06087-008

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :
239 months on Count 1 and 239 months on Count 4, to run concurrently and 60 months on Count 2, to be served consecutively to the sentence imposed on Counts 1 and 4 for a total term of 299 months.*

The cost of incarceration fee is waived.

☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant shall serve his sentence at a suitable Bureau of Prisons facility as close to Rochester, New York, as possible.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at __________ ☐ a.m. ☐ p.m. on __________ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on __________ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

____

____

____

Defendant delivered on __________ to __________

at __________ with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By ____________________
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Terrance Stinson
CASE NUMBER: 6:01CR06087-008

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:
5 years on Count 1, 5 years on Count 2 and 3 years on Count 4, to all run concurrent for a total term of 5 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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 above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: Terrance Stinson
CASE NUMBER: 6:01CR06087-008

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the court determines in consultation with your probation officer that, based on your criminal record, personal history and characteristics, and the nature and circumstances of your offense, you pose a risk of committing further crimes against another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

Upon a finding of a violation of probation or supervised release, I understand that this court may (1) revoke supervision, (2) extend the terms of supervision, and/or (3) modify the conditions of probation or supervised release. A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions,* available at: www.uscourts.gov.

Defendant's Signature ____________________ Date ____________

U.S. Probation Officer's Signature ____________________ Date ____________

DEFENDANT: Terrance Stinson
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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program for substance abuse, including substance abuse testing such as urinalysis and other testing, and shall undergo a drug/alcohol evaluation and treatment if substance abuse is indicated by the testing. The probation officer will supervise the details of any testing and treatment, including the selection of a treatment provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave treatment until completion or as ordered by the court. While in treatment and after discharge from treatment, the defendant is to abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered.

DEFENDANT: Terrance Stinson
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CRIMINAL MONETARY PENALTIES

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

	Assessment	AVAA Assessment*	JVTA Assessment**	Fine	Restitution
TOTALS	$ 300 ($100 on each Count)*	$ 0	$ 0	$ 4,000 (Count 1)	$ 0

☐ The determination of restitution is deferred until ________. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
TOTALS	$ ________	$ ________	

☐ Restitution amount ordered pursuant to plea agreement $ ________

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☒ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** 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.

DEFENDANT: Terrance Stinson
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SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $ ______________ due immediately, balance due

☐ not later than ____________________ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or

C ☐ Payment in equal __________ (e.g., weekly, monthly, quarterly) installments of $ __________ over a period of __________ (e.g., months or years), to commence __________ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal __________ (e.g., weekly, monthly, quarterly) installments of $ __________ over a period of __________ (e.g., months or years), to commence __________ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within ________ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

The special assessment of $300 has already been paid in full.*

The fine of $4,000 has already been paid in full.*

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

2021 WL 5499478
Only the Westlaw citation is currently available.
United States Court of Appeals, Second Circuit.

UNITED STATES of America, Appellee,
v.
Terrance STINSON aka T-Rock, Defendant-Appellant.*

20-3744-cr
|
November 24, 2021

Appeal from the United States District Court for the Western District of New York (Siragusa, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED**.

Attorneys and Law Firms

Appearing for Appellant: Anne Burger, Assistant Federal Public Defender, Federal Public Defender's Office, Rochester, N.Y.

Appearing for Appellee: Tiffany H. Lee, Assistant United States Attorney, for James P. Kennedy, United States Attorney for the Western District of New York, Buffalo, N.Y.
Present: ROSEMARY S. POOLER, RICHARD C. WESLEY, JOSEPH F. BIANCO, Circuit Judges.

SUMMARY ORDER

***1** Terrance Stinson appeals from the October 21, 2020 amended judgment of the United States District Court for the Western District of New York (Siragusa, *J.*) sentencing Stinson to 299 months' imprisonment and five years of supervised release. We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

We review sentences for "reasonableness," applying an abuse of discretion review. *United States v. Robinson*, 702 F.3d 22, 38 (2d Cir. 2012). This abuse of discretion review encompasses both procedural review and substantive review. *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008). Procedural review focuses "on the sentencing court's compliance with its statutory obligation to consider the factors detailed in 18 U.S.C. § 3553(a)." *United States v. Canova*, 412 F.3d 331, 350 (2d Cir. 2005). Procedural unreasonableness is found where the district court "fails to calculate (or improperly calculates) the Sentencing Guidelines range, treats the Sentencing Guidelines as mandatory, fails to consider the Section 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails adequately to explain the chosen sentence." *Robinson*, 702 F.3d at 38.

Stinson argues that the district court committed procedural error when, during his resentencing, the district court discussed Stinson's original 2004 sentence and the 2004 Guidelines, but only briefly discussed Stinson's post-sentence rehabilitation. We disagree, and find that the district court's resentencing followed proper procedure. The district court started by looking at the most recent 2020 Guidelines calculations. The district court considered the Section 3553(a) factors, including Stinson's rehabilitation, as well as the seriousness of his offense and the necessity of specific and general deterrence. Stinson faults the district court for not considering his rehabilitation sufficiently. But as Stinson's citations to the record reveal, the district court noted Stinson's rehabilitation repeatedly, stating that the "[i]narguably positive contributions [Stinson] made within the prison system to try to mentor other individuals and specifically young people to get their lives on track once they get out."

The district court did discuss Stinson's 2004 sentence and the 2004 Guidelines, but only in the context of examining the conduct and the facts that shaped both his 2004 sentence and his 2020 sentence. In fact, the district court declined the government's recommendation for an upward departure of 622 months' imprisonment because the district court thought it unfair given that it was the same sentence Stinson received for a conviction that had been vacated. The record demonstrates the district court did not use the 2004 sentence, or the 2004 Guidelines, in its resentencing of Stinson. The district court properly calculated the 2020 Guidelines range, did not treat the Guidelines as mandatory, considered the Section 3553(a) factors, sentenced on the appropriate facts, and adequately explained its chosen sentence. *See Robinson*, 702 F.3d at 38.

***2** Stinson next argues that the district court violated his Fifth and Sixth Amendment rights when, during sentencing, it factored in acquitted conduct. Here, the district court considered Stinson's involvement in the theft of one-half kilogram of cocaine during the robbery of Shawn Battle, for which he had been acquitted by the jury. Stinson acknowledges that his arguments have been rejected by the Supreme Court in *United States v. Watts*, 519 U.S. 148 (1997), and by this Court in *United States v. Vaughn*, 430 F.3d 518 (2d Cir. 2005), and as such, must be rejected here.

We have considered the remainder of Stinson's arguments and find them to be without merit. Accordingly, the judgment of the district court hereby is AFFIRMED.

Footnotes

* The Clerk of Court is respectfully directed to amend the caption as set forth above.