

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

John Martin Spaulding PETITIONER
(Your Name)

VS.

United States — RESPONDENT(S)

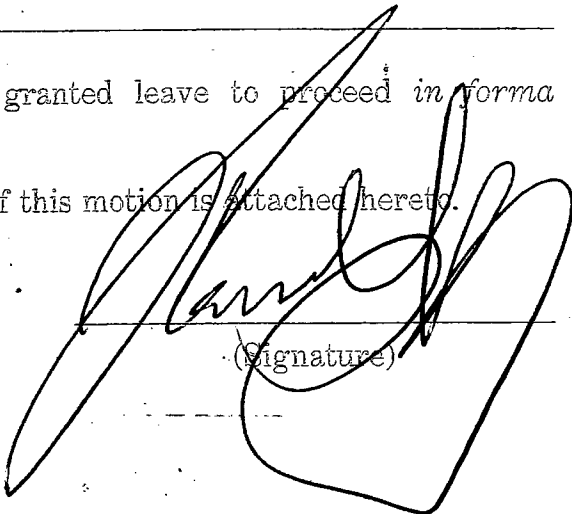
MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

☒ Petitioner has not previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.


(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, John Martin Spaulding, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Self-employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Gifts	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Alimony	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Child Support	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____
Total monthly income:	\$ _____	\$ _____	\$ _____	\$ _____

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
N/A		\$	\$
		\$	\$
		\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value

☐ Motor Vehicle #2
Year, make & model N/A
Value

☐ Other assets
Description N/A
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ N/A	\$ N/A
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
N/A		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ N/A	\$ N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ N/A	\$ N/A
Home maintenance (repairs and upkeep)	\$ N/A	\$ N/A
Food	\$ N/A	\$ N/A
Clothing	\$ N/A	\$ N/A
Laundry and dry-cleaning	\$ N/A	\$ N/A
Medical and dental expenses	\$ N/A	\$ N/A

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>N/A</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>N/A</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>N/A</u>	\$ <u>N/A</u>
Life	\$ <u>N/A</u>	\$ <u>N/A</u>
Health	\$ <u>N/A</u>	\$ <u>N/A</u>
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: _____	\$ <u>N/A</u>	\$ <u>N/A</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>N/A</u>	\$ <u>N/A</u>
Installment payments		
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Credit card(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Department store(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: _____	\$ <u>N/A</u>	\$ <u>N/A</u>
Alimony, maintenance, and support paid to others	\$ <u>N/A</u>	\$ <u>N/A</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other (specify): _____	\$ <u>N/A</u>	\$ <u>N/A</u>
Total monthly expenses:	\$ <u>N/A</u>	\$ <u>N/A</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Inmate is incarcerated, has no spouse, no assets and receives approximately fifty-dollars (\$50.00) a month as the Education/Library Clerk for the institution

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 13, 2022

(Signature)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

John Martin Spaulding — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Martin Spaulding #57503-018
(Your Name)

U.S.P. Lee, P.O. Box 305
(Address)

Jonesville, Virginia 24263-0305
(City, State, Zip Code)

Not Applicable
(Phone Number)

QUESTION(S) PRESENTED

- 1). Is attempted Hobbs Act robbery a crime of violence under 18 U.S.C. § 924(c)?
- 2). Is the Eleventh Circuit's holding in *St. Hubert*, 909 F.3d 335 (11th Cir. 2018) a proper application of the Categorical Approach?
- 3). Is aiding and abetting an attempted Hobbs Act robbery a crime of violence under 18 U.S.C. § 924(c)?
- 4). Is the Eleventh Circuit correct in denying a certificate of appealability?
- 5). Does closure of an institution for corruption constitute an "extraordinary" circumstance for extending time for certiorari under the Rules of The Supreme Court?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- 1). United States v. Spaulding, Criminal No. 3:12-CR-00159-J-34JRK
Judgement entered on: September 3, 2013
- 2). Spaulding v. United States, Civil No. 3:16-cv-00841-MMH-JRK
Judgement entered on: September 9, 2020
- 3). Spaulding v. United States, Appeal No. 20-13691-F
Judgement entered on: February 2, 2021

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APPENDIX B *Judgement in Criminal Case*

APPENDIX C *District Court's order denying 28 USC § 2255*

APPENDIX D *Eleventh Circuit's order denying certificate of appealability*

APPENDIX E *Extraordinary Circumstances that created governmental impediment upon petitioner that prevented him from seeking timely certiorari, and supporting documentation.*

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- 1). Johnson v. United States, 135 S.Ct. 2551 (2015)
- 2). United States v. St. Hubert, 909 F.3d 335 (11th Cir. 2018)
- 3). Sessions v. Dimaya, 138 S.Ct. 1204 (2018)
- 4). United States v. Davis, 139 S.Ct. 2319 (2019)
- 5). United States v. Taylor, 142 S.Ct. 2015 (2022)

STATUTES AND RULES

- 1). 18 U.S.C. § 2
- 2). 18 U.S.C. § 924(c)
- 3). 18 U.S.C. § 1951
- 4). 28 U.S.C. § 2255
- 5). 28 USC § 2253
- 6). Rule 22, Federal Rules of Appellate Procedure

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

☒ reported at 2021 U.S. App LEXIS 24601; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☒ reported at 2020 U.S. Dist LEXIS 1164342; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 2, 2021.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1). United States Constitution:
 - a). V Amendment, Due Process Clause
- 2). United States Code:
 - a). 18 U.S.C. Section 2;
 - b). 18 U.S.C. Section 924(c);
 - c). 18 U.S.C. Section 1951;
 - d). 28 USC. Section 2253;
 - e). 28 U.S.C. Section 2255

STATEMENT OF THE CASE

In early 2012, Spaulding went on a string of armed robberies in Jacksonville, Florida. For three of those, Spaulding got away. During his attempt at a fourth robbery, Spaulding and a co-defendant were caught in the act. In October, 2012, Spaulding was indicted by a Grand Jury. In April, 2013, Spaulding pled guilty pursuant to a plea agreement. On September 3, 2013, Spaulding was sentenced to 456-months in the BOP. Spaulding did not appeal. In 2016, Mr. Spaulding filed a § 2255 pursuant to Johnson, 135 S.Ct. 2551 (2015). The 2255 motion was stayed pending resolution by this Court in Dimaya, 138 S.Ct. 1204 (2018) and Davis, 139 S.Ct. 2319 (2019). Following Dimaya the Eleventh Circuit held in St. Hubert, 909 F.3d 335 (11th Cir 2018) that an attempted Hobbs Act robbery is a crime of violence. After Davis Spaulding's 2255 was denied pursuant to the holding in St. Hubert. Spaulding appealed and the Eleventh Circuit denied a certificate of appealability. Four months later the institution that Spaulding was confined at, U.S.P. Atlanta, was closed down due to corruption purposes. Spaulding was hindered from seeking certiorari by such emergency governmental action. Spaulding was subsequently transferred without his property or any legal materials.

REASONS FOR GRANTING THE PETITION

In light of the questions presented and due to this Court's most-recent holding in *Taylor*, this Court has effectively over-ruled circuit precedent that was adverse to Spaulding during the § 2255 proceedings.

This court should issue a limited order granting the certiorari, vacating and remanding the case back to the Eleventh Circuit for reconsideration in light of this Court's holding in *United States v. Taylor*, 142 S.Ct. 2015 (2022).

Spaulding could not seek review from this court sooner due to the fact that USF Atlanta was closed down for serious corruption and that Spaulding recently received his legal materials. This Court should grant this out-of-time petition for certiorari under extraordinary circumstances.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date:

September 13, 2022

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

John Martin Spaulding — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

PROOF OF SERVICE

I, John Martin Spaulding, do swear or declare that on this date, September 13, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Ashley Washington, Assistant United States Attorney
300 North Hogan Street
Jacksonville, Florida 32202

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 13, 2022


(Signature)

APPENDIX - A

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

JOHN MARTIN SPAULDING

CASE NO. 3:12-cr- 159-J-99mmH-JRK

Cts. 1, 2 & 4: 18 U.S.C. § 1951(a)

Cts. 3, 5 & 7: 18 U.S.C. § 924(c)

Ct. 6: 18 U.S.C. § 1951(a) and

18 U.S.C. § 2

Forfeiture: 18 U.S.C. § 981(a)(1)(C)

and 28 U.S.C. § 2461(c);

18 U.S.C. § 924(d) and

28 U.S.C. § 2461(c)

INDICTMENT

The Grand Jury charges:

COUNT ONE

On or about May 20, 2012, in Duval County, in the Middle District of Florida,

JOHN MARTIN SPAULDING,

the defendant herein, did knowingly commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), that is, to unlawfully take and obtain personal property, that is, United States currency, from the person and presence of an employee of CVS Pharmacy, a business located at 4475 San Juan Avenue in Jacksonville, Florida, against the employee's will, by means of actual and threatened force, violence and fear of injury, and in doing so did, in some way and degree, obstruct, delay and affect commerce as that term is defined in Title 18, United States Code, Section 1951(b)(3).

In violation of Title 18, United States Code, Section 1951(a).

COUNT TWO

On or about June 13, 2012, in Duval County, in the Middle District of Florida,
JOHN MARTIN SPAULDING,
the defendant herein, did knowingly commit robbery, as that term is defined in
Title 18, United States Code, Section 1951(b)(1), that is, to unlawfully take and
obtain personal property, that is, United States currency, from the person and
presence of an employee of Walgreens, a business located at 7221 Normandy
Boulevard in Jacksonville, Florida, against the employee's will, by means of
actual and threatened force, violence and fear of injury, and in doing so did, in
some way and degree, obstruct, delay and affect commerce as that term is
defined in Title 18, United States Code, Section 1951(b)(3).

In violation of Title 18, United States Code, Section 1951(a).

COUNT THREE

On or about June 13, 2012, in Duval County, in the Middle District of Florida,
JOHN MARTIN SPAULDING,
the defendant herein, did knowingly possess and brandish and discharge a
firearm, in furtherance of a crime of violence for which he may be prosecuted in
a court of the United States, that is, robbery affecting commerce, as charged in
Count Two of this Indictment and incorporated by reference as though fully set
forth herein verbatim.

In violation of Title 18, United States Code, Section 924(c).

COUNT FOUR

On or about June 17, 2012, in Duval County, in the Middle District of Florida,

JOHN MARTIN SPAULDING,

the defendant herein, did knowingly commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), that is, to unlawfully take and obtain personal property, that is, United States currency and cigarettes, from the person and presence of an employee of Convenience Holding Inc., doing business as a Shell gasoline station and convenience store, a business located at 8391 US Highway 301 South in Jacksonville, Florida, against the employee's will, by means of actual and threatened force, violence and fear of injury, and in doing so did, in some way and degree, obstruct, delay and affect commerce as that term is defined in Title 18, United States Code, Section 1951(b)(3).

In violation of Title 18, United States Code, Section 1951(a).

COUNT FIVE

On or about June 17, 2012, in Duval County, in the Middle District of Florida,

JOHN MARTIN SPAULDING,

the defendant herein, did knowingly possess and brandish a firearm, in furtherance of a crime of violence for which he may be prosecuted in a court of the United States, that is, robbery affecting commerce, as charged in Count Four

of this Indictment and incorporated by reference as though fully set forth herein verbatim.

In violation of Title 18, United States Code, Section 924(c).

COUNT SIX

On or about July 18, 2012, in Duval County, in the Middle District of Florida,

JOHN MARTIN SPAULDING,

the defendant herein, did knowingly attempt to commit robbery and aid and abet in an attempt to commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), that is, to unlawfully attempt to take and obtain personal property, that is, United States currency and prescription medication, from an employee of Walgreens, a business located at 2703 Park Street in Jacksonville, Florida, against the employee's will, by means of actual and threatened force, violence and fear of injury, and in doing so did potentially, in some way and degree, obstruct, delay and affect commerce as that term is defined in Title 18, United States Code, Section 1951(b)(3).

In violation of Title 18, United States Code, Sections 2 and 1951(a).

COUNT SEVEN

On or about July 18, 2012, in Duval County, in the Middle District of Florida,

JOHN MARTIN SPAULDING,

the defendant herein, did knowingly possess and brandish and discharge a firearm, in furtherance of a crime of violence for which he may be prosecuted in

a court of the United States, that is, attempted robbery affecting commerce, as charged in Count Six of this Indictment and incorporated by reference as though fully set forth herein verbatim.

In violation of Title 18, United States Code, Section 924(c).

FORFEITURE

1. The allegations contained in Counts One through Seven of this Indictment are incorporated by reference for the purpose of alleging forfeitures pursuant to the provisions of Title 18, United States Code, Sections 924(d) and 981(a)(1)(C), as well as Title 28, United States Code, Section 2461(c).

2. Upon conviction of a violation of Title 18, United States Code, Section 1951(a), as charged in Counts One, Two, Four and Six of this Indictment, the defendant, JOHN MARTIN SPAULDING, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which is derived from proceeds traceable to the violation.

3. Upon conviction of any violation of Title 18, United States Code, Section 1951(a) or 924(d), as charged in Counts One through Seven of this Indictment, the defendant, JOHN MARTIN SPAULDING, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c), any firearms and ammunition involved in the commission of the offense, including but not limited to, a 9 mm pistol.

4. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL,



Foreperson

ROBERT E. O'NEILL
United States Attorney

By


FRANK TALBOT
Assistant United States Attorney

By:


MAC D. HEAVENER, III
Assistant United States Attorney
Deputy Chief, Jacksonville Division

No.

UNITED STATES DISTRICT COURT

Middle District of Florida
Jacksonville Division

THE UNITED STATES OF AMERICA

vs.

JOHN MARTIN SPAULDING

INDICTMENT

Violations:

Cts. 1, 2, 4 & 6: 18 U.S.C. § 1951(a)

Cts. 3, 5 & 7: 18 U.S.C. § 924(c)

A true bill,


Foreperson

Filed in open court this 20th day

of September, A.D. 2012.


Clerk

Bail \$ _____

APPENDIX - B

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA

v.

JOHN MARTIN SPAULDING

JUDGMENT IN A CRIMINAL CASE

**CASE NUMBER: 3:12-cr-159-J-99MMH-JRK
USM NUMBER: 57503-018**

Defendant's Attorney: Ross Scott Haine, II, cja

THE DEFENDANT:

☒ pleaded guilty to Counts Two, Three, Six, and Seven of the Indictment.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 1951(a)	Robbery Affecting Commerce	June 2012	Two
18 U.S.C. § 924(c)	Possessing, Brandishing, and Discharging a Firearm in Furtherance of a Crime of Violence	June 2012	Three
18 U.S.C. §§ 2 and 1951(a)	Attempted Robbery and Aiding and Abetting an Attempted Robbery Affecting Commerce	July 2012	Six
18 U.S.C. § 924(c)	Possessing, Brandishing, and Discharging a Firearm in Furtherance of a Crime of Violence	July 2012	Seven

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, as modified by United States v. Booker, and 18 U.S.C. §§ 3551 and 3553.

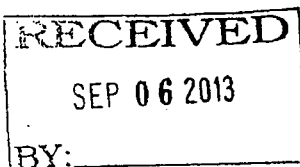
Counts One, Four, and Five are dismissed on the motion of the United States and pursuant to the Plea Agreement.

IT IS FURTHER ORDERED that the defendant shall 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 shall notify the court and United States Attorney of any material change in economic circumstances.

Date of Imposition of Sentence: September 3, 2013

Marcia Morales Howard
MARCIA MORALES HOWARD
UNITED STATES DISTRICT JUDGE

DATE: September 4, 2013



CERTIFIED A TRUE COPY
SHERYL L. LOESCH, CLERK
U.S. DISTRICT COURT
By: *S. M.*
Deputy Clerk

58

John Martin Spaulding
3:12-cr-159-J-99MMH-JRK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **FOUR HUNDRED FIFTY-SIX (456) MONTHS**, consisting of **THIRTY-SIX (36) MONTHS** as to each Count Two and Count Six to run concurrently, **ONE HUNDRED TWENTY (120) MONTHS** as to Count Three to run consecutively with Counts Two and Six, and **THREE HUNDRED (300) MONTHS** as to Count Seven to run consecutively with Counts Two, Three, and Six.

✓ The court makes the following recommendations to the Bureau of Prisons:

- Incarceration at a facility located as close as possible to Atlanta, Georgia.
- Defendant participate in any substance abuse treatment programs for which he may be eligible.
- Defendant enroll in any educational and vocational programs as are available.
- Defendant receive mental health treatment.

✓ 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

By: _____
Deputy U.S. Marshal

John Martin Spaulding
3:12-cr-159-J-99MMH-JRK

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **TWO (2) YEARS, consisting of TWO (2) YEARS as to Counts Two and Six and TWO (2) YEARS as to Counts Three and Seven, to run concurrently.**

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, 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 a 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 in a manner and frequency directed by the court or probation officer;
- 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 (10) 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 by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two (72) 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;
- 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.

John Martin Spaulding
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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

- ✓ The defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon the completion of this program, defendant is directed to submit to random drug testing.
- ✓ The defendant shall participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Mental Health Treatment Services.
- ✓ The defendant shall submit to a search of his person, residence, place of business, any storage units under his control, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition. Failure to submit to a search may be grounds for revocation.

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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<u>Totals:</u>	\$400.00	\$0	\$144.00

✓ 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(l), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
CVS Pharmacy Attn: Store Manager 4475 San Juan Avenue Jacksonville, FL 32210		\$144.00

✓ 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 restitution.

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

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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:

The Special Assessment in the amount of **\$400.00** is due in full and immediately.

While in the custody of the Bureau of Prisons, you shall either (1) pay at least \$25.00 quarterly if working a non-Unicor position or (2) pay at least 50 percent of your monthly earnings if working in a Unicor position. Upon release from custody, you are ordered to begin making payments of \$25.00 per month and this payment schedule shall continue until such time as the Court is notified by the defendant, the victim or the government that there has been a material change in defendant's ability to pay.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be 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, unless otherwise directed by the court, the probation officer, or the United States attorney.

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

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

a Hi-Point, 9mm pistol, serial number P1441495

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.

APPENDIX - C

JOHN MARTIN SPAULDING, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE
DIVISION

2020 U.S. Dist. LEXIS 164342

Case No. 3:16-cv-841-J-34JRK, 3:12-cr-159-J-34JRK

September 9, 2020, Decided

September 9, 2020, Filed

Editorial Information: Subsequent History

Certificate of appealability denied, Motion denied by, As moot **Spaulding v. United** States, 2021 U.S. App. LEXIS 2861 (11th Cir. Fla., Feb. 2, 2021)

Editorial Information: Prior History

Spaulding v. United States, 2016 U.S. Dist. LEXIS 100272 (M.D. Fla., Aug. 1, 2016)

Counsel {2020 U.S. Dist. LEXIS 1} For **John Martin Spaulding**, Petitioner:
Conrad Kahn, LEAD ATTORNEY, Federal Public Defender's Office, Orlando, FL; Juliann Welch, LEAD ATTORNEY, Federal Public Defender's Office, Tampa, FL.
For USA, Respondent: Ashley Washington, LEAD ATTORNEY,
US Attorney's Office - FLM, Jacksonville, FL.

Judges: MARCIA MORALES HOWARD, **United** States District Judge.

Opinion

Opinion by: MARCIA MORALES HOWARD

Opinion

ORDER

This case is before the Court on Petitioner **John Martin Spaulding's** Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Civ. Doc. 35, Amended § 2255 Motion) and Supplemental Memorandum in Support (Civ. Doc. 36, Supporting Memorandum).¹ **Spaulding** argues that his sentence, to the extent it is based on two convictions under 18 U.S.C. § 924(c) for discharging a firearm in furtherance of a crime of violence, is unconstitutional in light of the Supreme Court's decisions in **Johnson v. United States**, 576 U.S. 591, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015), and **United States v. Davis**, 139 S. Ct. 2319, 204 L. Ed. 2d 757 (2019). The **United States** has filed a response in opposition. (Civ. Doc. 37, Response). **Spaulding** did not file a reply. Thus, the case is ripe for a decision.

Pursuant to 28 U.S.C. § 2255 and Rule 8(a) of the Rules Governing Section 2255 Proceedings², the Court has considered the need for an evidentiary hearing and determines that a hearing is not necessary to resolve the merits of this action. See Rosin v. United States, 786 F.3d 873, 877 (11th

Cir. 2015) (an evidentiary hearing on a § 2255 motion is not{2020 U.S. Dist. LEXIS 2} required when the petitioner asserts allegations that are affirmatively contradicted by the record or patently frivolous, or if in assuming the facts that he alleges are true, he still would not be entitled to any relief); Patel v. United States, 252 F. App'x 970, 975 (11th Cir. 2007).³ For the reasons set forth below, Spaulding's Amended § 2255 Motion is due to be denied.

I. Background

Between May 2012 and July 2012, Spaulding was involved in a string of armed robberies targeting three pharmacies and a gas station in Jacksonville, Florida. On September 20, 2012, a federal grand jury returned a seven-count indictment against him. (Crim. Doc. 1, Indictment). As relevant here, in Count Two the United States charged Spaulding with Hobbs Act robbery of a Walgreens pharmacy, in violation of 18 U.S.C. § 1951(a), and in Count Three charged him with discharging a firearm in furtherance of that robbery, in violation of § 924(c). In Count Six the United States charged Spaulding with aiding and abetting an attempted Hobbs Act robbery of a different Walgreens pharmacy and in Count Seven charged him with discharging a firearm in furtherance of that attempted robbery.

On April 24, 2013, Spaulding pled guilty to Counts Two, Three, Six, and Seven of the Indictment pursuant to a written plea agreement.{2020 U.S. Dist. LEXIS 3} (Crim. Doc. 46, Plea Agreement; Crim. Doc. 67, Plea Transcript). In doing so, Spaulding admitted that on June 13, 2012, he entered a Walgreens pharmacy, held a pistol in his hand, and demanded that an employee give him money from the cash register. Plea Agreement at 22; Plea Tr. at 38. Spaulding further admitted that during the robbery he fired the pistol once into the ceiling and fled the scene with about \$144 from the cash register. Plea Agreement at 22; Plea Tr. at 38. Spaulding also admitted that on July 18, 2012, he and a co-conspirator entered a different Walgreens pharmacy and demanded money and prescription drugs. Plea Agreement at 22; Plea Tr. at 38. Spaulding admitted that during the attempted robbery, he (not the co-conspirator) fired a pistol at the ceiling and several times at the pharmacy door. Plea Agreement at 22; Plea Tr. at 38. The store's duty manager heard the robbery in progress and contacted the police, who surrounded the store and arrested Spaulding. The Magistrate Judge who presided over the change-of-plea hearing recommended that the Court accept Spaulding's guilty plea because the colloquy established "that the guilty plea was knowledgeable and voluntary,{2020 U.S. Dist. LEXIS 4} and that the offenses charged are supported by an independent basis in fact containing each of the essential elements of such offenses." (Crim. Doc. 47, Report and Recommendation Concerning Guilty Plea). Without objection, the Court accepted Spaulding's guilty plea and adjudicated him accordingly. (Crim. Doc. 48, Acceptance of Guilty Plea).

The Court sentenced Spaulding to a total term of 456 months in prison. (Crim. Doc. 58, Judgment; Crim. Doc. 65, Sentencing Transcript at 21). The sentence consisted of concurrent terms of 36 months in prison as to the robbery and attempted robbery charged in Counts Two and Six, a consecutive term of 120 months in prison as to the § 924(c) offense charged in Count Three, and a term of 300 months in prison as to the § 924(c) offense charged in Count Seven, running consecutively with all other sentences. Judgment at 2. Spaulding did not appeal the sentence.

II. Course of the Proceedings

On June 22, 2016, Spaulding filed a pro se motion to vacate sentence under 28 U.S.C. § 2255. (See Civ. Doc. 1, § 2255 Motion at 5). Spaulding contended that his 18 U.S.C. § 924(c) convictions were invalid in light of the Supreme Court's decision in Johnson v. United States, 576 U.S. 591, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015). Spaulding later moved for the appointment of counsel, which the Court granted by appointing the Office{2020 U.S. Dist. LEXIS 5} of the Federal Public Defender.

(Civ. Docs. 10, 11). After the Court stayed the case pending the Supreme Court's decisions in Sessions v. Dimaya, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018), and Davis, 139 S. Ct. 2319, 204 L. Ed. 2d 757, **Spaulding** filed the Amended § 2255 Motion and Supporting Memorandum through counsel. In the Amended § 2255 Motion, **Spaulding** added a claim that his § 924(c) convictions are invalid in light of the Supreme Court's decision in Davis, which held that the so-called "residual clause" or "risk-of-force clause" of § 924(c)(3)(B) is unconstitutionally vague. 139 S. Ct. at 2336.

In its Response to the Amended § 2255 Motion, the **United States** argues that Spaulding's Johnson claim is untimely under § 2255(f) because Johnson is not applicable, Response at 6-7, that Spaulding's vagueness challenge to the § 924(c) convictions is procedurally defaulted, id. at 8-9, and that **Spaulding** cannot overcome the procedural default under the cause-and-prejudice or actual innocence exceptions, id. at 9-13. Additionally, the **United States** argues that Spaulding's claims lack merit because Davis's holding does not affect the validity of his § 924(c) convictions. Id. at 13-17. Specifically, the **United States** contends that the predicate crimes of violence - Hobbs Act robbery and aiding and abetting attempted Hobbs Act robbery - remain crimes of violence under § 924(c)(3)(A)'s elements clause. Id.

III. Discussion{2020 U.S. Dist. LEXIS 6}

Pursuant to Title 28, **United States Code**, Section 2255, a person in federal custody may move to vacate, set aside, or correct his sentence. Section 2255 permits such collateral challenges on four specific grounds: (1) the imposed sentence was in violation of the Constitution or laws of the **United States**; (2) the court did not have jurisdiction to impose the sentence; (3) the imposed sentence exceeded the maximum authorized by law; or (4) the imposed sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255(a) (2008). Only jurisdictional claims, constitutional claims, and claims of error that are so fundamentally defective as to cause a complete miscarriage of justice will warrant relief through collateral attack. United States v. Addonizio, 442 U.S. 178, 184-86, 99 S. Ct. 2235, 60 L. Ed. 2d 805 (1979). A prisoner's challenge to his conviction and sentence under 18 U.S.C. § 924(c) is cognizable on collateral review. See In re Pinder, 824 F.3d 977 (11th Cir. 2016) (granting prisoner's application to file a second or successive motion to vacate to challenge his § 924(c) conviction based on Johnson).

A. Section 924(c), Johnson, and Davis

Under 18 U.S.C. § 924(c), a person who discharges a firearm during or in relation to a "crime of violence" or a "drug trafficking crime" is subject to a mandatory minimum sentence of ten years in prison, which must be consecutive to any sentence for the underlying crime of violence or drug trafficking{2020 U.S. Dist. LEXIS 7} crime. 18 U.S.C. § 924(c)(1)(A)(iii). And, under the statute in effect when **Spaulding** committed the offenses, "[i]n the case of a second or subsequent conviction under this subsection, the person shall - (i) be sentenced to a term of imprisonment of not less than 25 years." 18 U.S.C. § 924(c)(1)(C) (2006). The term "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.Id., § 924(c)(3). Subsection (A) is referred to as the "elements clause" or the "use-of-force clause," and subsection (B) is referred to as the "residual clause" or the "risk-of-force" clause. Ovalles v. United States, 905 F.3d 1231, 1234 & n.1 (11th Cir. 2018) (en banc) ("Ovalles II"), abrogated by Davis, 139 S. Ct. 2319, 204 L. Ed. 2d 757.

In Johnson v. United States, the Supreme Court held that language in the Armed Career Criminal Act (ACCA) that resembled § 924(c)(3)'s risk-of-force clause was unconstitutionally vague. See Johnson, 135 S. Ct. at 2563. The ACCA is a recidivist statute, which imposes a 15-year mandatory minimum prison sentence on anyone who possesses a firearm after receiving three or more convictions for a "serious drug offense" or a "violent{2020 U.S. Dist. LEXIS 8} felony," or both, committed on different occasions. See 18 U.S.C. § 924(e)(1). The ACCA defines the term "violent felony" to include "any crime punishable by imprisonment for a term exceeding one year" that -

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

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.] Id., § 924(e)(2)(B) (emphasis added). The last fifteen words of subsection (ii), which are emphasized above, constitute the ACCA's "residual clause." Beeman v. United States, 871 F.3d 1215, 1218 (11th Cir. 2017) (citation omitted). The Johnson Court focused on two features of the residual clause that, combined, create "hopeless indeterminacy" in deciding whether the clause applied to a prior conviction: (1) a hazy "serious potential risk" standard combined with (2) use of the so-called categorical approach, which "ties the judicial assessment of risk to a judicially imagined 'ordinary case' of a crime, not to real-world facts or statutory elements," and thus "leaves grave uncertainty about how to estimate the risk posed by a crime." Johnson, 135 S. Ct. at 2557-58. But

the Court made clear that application of the categorical approach was the{2020 U.S. Dist. LEXIS 9} hinge on which its vagueness determination turned: "It is one thing," the Court stressed, "to apply an imprecise 'serious potential risk' standard to real-world facts; it is quite another to apply it to a judge-imagined abstraction" of the sort required by the categorical approach. Continuing in the same vein, the Court reiterated that "[a]s a general matter, we do not doubt the constitutionality of laws that call for the application of a qualitative standard such as 'substantial risk' to real-world conduct." Ovalles II, 905 F.3d at 1238 (internal citations omitted) (quoting Johnson, 135 S. Ct. at 2558, 2561). The Supreme Court did "not call into question application of the [ACCA] to the four enumerated offenses, or the remainder of the Act's definition of a violent felony." Johnson, 135 S. Ct. at 2563. In Welch v. United States, 136 S. Ct. 1257, 194 L. Ed. 2d 387 (2016), the Supreme Court made its ruling in Johnson retroactively applicable to cases on collateral review.

Then, in Sessions v. Dimaya, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018), the Supreme Court extended Johnson's holding to the definition of the phrase "crime of violence" found in 18 U.S.C. § 16(b), as that statute is applied in the immigration context. Section 16(b) defines the term "crime of violence" to mean "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another{2020 U.S. Dist. LEXIS 10} may be used in the course of committing the offense." 18 U.S.C. § 16(b). This language is similar to the ACCA's residual clause and virtually identical to § 924(c)(3)'s risk-of-force clause. The Supreme Court reasoned that the same two features that doomed the ACCA's residual clause plagued § 16(b): (1) an imprecise "substantial risk" standard combined with (2) application of the categorical approach. Dimaya, 138 S. Ct. at 1215-16, 1223. As in Johnson, the Dimaya Court did not cast doubt on the constitutionality of a qualitative, "non-numeric standard" as applied to real-world conduct. Id. at 1215. Rather, it said that the problem comes from "applying such a standard to a 'judge-imagined abstraction' - i.e., 'an idealized ordinary case of the crime.' It is then that the standard ceases to work in a way consistent with due process." Id. at 1215-16 (internal citation omitted) (quoting Johnson, 135

S. Ct. at 2558, 2561).

Following Johnson and Dimaya, the Supreme Court in Davis confronted the fate of § 924(c)(3)(B). In Davis, all sides agreed that § 924(c)(3)(B) would be doomed as unconstitutionally vague if the categorical approach were applied. Davis, 139 S. Ct. at 2324, 2326-27. But the government argued that § 924(c)(3)(B) could be saved by reading the statute as applying to the specific facts of a defendant's actual conduct. Id. at 2327. However, upon examining the text and history of § 924(c), the Supreme{2020 U.S. Dist. LEXIS 11} Court rejected the government's interpretation and found that § 924(c)(3)(B) required application of the categorical approach. Id. at 2327-32. Ultimately, the Supreme Court concluded that § 924(c)(3)'s risk-of-force clause, just like the ACCA's residual clause and § 16(b), was void for vagueness. Id. at 2336. Notably, as in Johnson, the Court did not question the validity of the statute's elements clause, § 924(c)(3)(A). The Eleventh Circuit later held that Davis announced a substantive new rule that applies retroactively on collateral review. In re Hammoud, 931 F.3d 1032, 1038-39 (11th Cir. 2019).

B. Spaulding's § 924(c) Convictions Do Not Rely on the Risk-of-Force Clause⁴

Spaulding's Amended § 2255 Motion is due to be denied on the merits because his § 924(c) convictions do not depend on § 924(c)(3)'s risk-of-force clause. The predicate offenses underlying the § 924(c) convictions - Hobbs Act robbery and aiding and abetting attempted Hobbs Act robbery - are crimes of violence under § 924(c)(3)'s elements clause.

Spaulding's first § 924(c) conviction is for discharging a firearm in furtherance of Hobbs Act robbery, as set forth in Counts Two and Three of the Indictment, Plea Agreement, and Judgment. The Eleventh Circuit Court of Appeals has held that Hobbs Act robbery categorically qualifies as a "crime of violence" under § 924(c)(3)(A) because it has as an element the use, attempted{2020 U.S. Dist. LEXIS 12} use, or threatened use of physical force against the person or property of another. United States v. St. Hubert, 909 F.3d 335, 345 (11th Cir. 2018), cert. denied, 139 S. Ct. 1394, 203 L. Ed. 2d 625 (2019), abrogated on other grounds by Davis, 139 S. Ct. 2319, 204 L. Ed. 2d 757; In re Saint Fleur, 824 F.3d 1337, 1340-41 (11th Cir. 2016).

Spaulding's second § 924(c) conviction is for discharging a firearm in furtherance of aiding and abetting attempted Hobbs Act robbery, as set forth in Counts Six and Seven. The Eleventh Circuit Court of Appeals has held that, "[l]ike completed Hobbs Act robbery, attempted Hobbs Act robbery qualifies as a crime of violence under § 924(c)(3)(A)'s use-of-force clause because that clause expressly includes 'attempted use' of force." St. Hubert, 909 F.3d at 351 (emphasis in original). Moreover, the Eleventh Circuit has held that aiding and abetting Hobbs Act robbery is a crime of violence as well under § 924(c)(3)'s elements clause. In re Colon, 826 F.3d 1301, 1305 (11th Cir. 2016). In In re Colon, the court explained: "Because an aider and abettor is responsible for the acts of the principal as a matter of law, an aider and abettor of a Hobbs Act robbery necessarily commits all the elements of a principal Hobbs Act robbery." Id. (citation omitted). Likewise, "an aider and abettor of [an attempted] Hobbs Act robbery necessarily commits all the elements of [an attempted] Hobbs Act robbery." Id.

Accordingly, neither of Spaulding's § 924(c) convictions relies on the now-invalid{2020 U.S. Dist. LEXIS 13} risk-of-force clause. As Spaulding recognizes in his Supporting Memorandum, Eleventh Circuit precedent holds that both Hobbs Act robbery and aiding and abetting Hobbs Act robbery are "crimes of violence" under § 924(c)(3)(A)'s elements clause. Supporting Memorandum at 7. Because Davis and Johnson do not invalidate Spaulding's § 924(c) convictions, his Amended § 2255 Motion is due to be denied.

IV. Certificate of Appealability Pursuant to 28 U.S.C. § 2253(c)(1)

If **Spaulding** seeks issuance of a certificate of appealability, the undersigned opines that a certificate of appealability is not warranted. This Court should issue a certificate of appealability only if the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this substantial showing, **Spaulding** "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282, 124 S. Ct. 2562, 159 L. Ed. 2d 384 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further,'" Miller-El v. Cockrell, 537 U.S. 322, 335-36, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983)).

Where a district court has rejected a petitioner's constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional{2020 U.S. Dist. LEXIS 14} claims debatable or wrong. See Slack, 529 U.S. at 484. However, when the district court has rejected a claim on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Id. Upon consideration of the record as a whole, this Court will deny a certificate of appealability.

As such, and in accordance with the Rules Governing Section 2255 Cases in the United States District Courts, it is hereby

ORDERED:

1. Petitioner **John Martin** Spaulding's Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Civ. Doc. 35) is **DENIED**.
2. The Clerk shall enter judgment in favor of the United States and against **Spaulding**, and close the file.
3. If **Spaulding** appeals the denial of the Amended § 2255 Motion, the Court denies a certificate of appealability. Because this Court has determined that a certificate of appealability is not warranted, the Clerk shall terminate from the pending motions report any motion to proceed on appeal as a pauper that may be filed in this case. Such termination shall serve as a denial{2020 U.S. Dist. LEXIS 15} of the motion.

DONE AND ORDERED at Jacksonville, Florida this 9th day of September, 2020.

/s/ Marcia Morales Howard

MARCIA MORALES HOWARD

United States District Judge

Footnotes

1

Citations to the record in the civil § 2255 case, No. 3:16-cv-841-J-34JRK, are denoted "Civ. Doc. ____." Citations to the record in the underlying criminal case, No. 3:12-cr-159-J-34JRK, are denoted "Crim. Doc. ____."

2

Rule 8(a) of the Rules Governing Section 2255 Proceedings expressly requires the Court to review the record, including any transcripts and submitted materials, to determine whether an evidentiary hearing is warranted before resolving a § 2255 motion.

3

Although the Court does not rely on unpublished opinions as precedent, they may be cited throughout this Order as persuasive authority on a particular point. Rule 32.1 of the Federal Rules of Appellate Procedure expressly permits the Court to cite to unpublished opinions that have been issued on or after January 1, 2007. Fed. R. App. P. 32.1(a).

4

For the purposes of this Order, the Court assumes that Spaulding's Amended § 2255 Motion is timely under 28 U.S.C. § 2255(f), and that his challenge to the § 924(c) convictions is not procedurally defaulted.

APPENDIX - D

**JOHN MARTIN SPAULDING, Petitioner-Appellant, versus UNITED STATES OF AMERICA,
Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2021 U.S. App. LEXIS 2861
No. 20-13691-F
February 2, 2021, Decided**

Editorial Information: Prior History

{2021 U.S. App. LEXIS 1} Appeals from the United States District Court for the Middle District of Florida. Spaulding v. United States, 2020 U.S. Dist. LEXIS 164342, 2020 WL 5407707 (M.D. Fla., Sept. 9, 2020)

Counsel JOHN MARTIN SPAULDING, Petitioner - Appellant, Pro se, ATLANTA, GA.

For UNITED STATES OF AMERICA, Respondent - Appellee:
Holly Lynn Gershow, U.S. Attorney Service - Middle District of Florida, U.S. Attorney's Office, TAMPA, FL.

Judges: Kevin C. Newsom, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Kevin C. Newsom

Opinion

ORDER:

John Spaulding is a federal prisoner serving a 456-month sentence for robbery offenses and carrying a firearm in furtherance of those offenses, in violation of 18 U.S.C. § 924(c). He moves for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP"), in order to appeal from the denial of his 28 U.S.C. § 2255 motion to vacate, which argued that his § 924(c) convictions were invalid. To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Section 924(c) provides for a mandatory consecutive sentence for any defendant who uses a firearm during a crime of violence. 18 U.S.C. § 924(c)(1). A "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) by its nature, involves a substantial risk that {2021 U.S. App. LEXIS 2} physical force against the person or property of another may be used in the course of committing the offense. *Id.* § 924(c)(3). This Court commonly refers to § 924(c)(3)(A) as the "elements clause," and § 924(c)(3)(B) as the "residual clause." *Brown v. United States*, 942 F.3d 1069, 1071 (11th Cir. 2019). In *United States v. Davis*, the Supreme Court struck down § 924(c)'s

APPENDIX - E



UNITED STATES GOVERNMENT

Memorandum

FEDERAL BUREAU OF PRISONS
United States Penitentiary
Atlanta
Atlanta, Georgia 30315

Correctional Services

June 4, 2021

MEMORANDUM FOR INMATE POPULATION

R. Brownfield

FROM: R. Brownfield, Deputy Captain

SUBJECT: Modified (lockdown) Operations

This is a notice to inform you that effective immediately, and until further notice, all inmates will remain secured in their cells. Specifically, due to the increase in prohibited activity from the inmate population, and noted security concerns. Specifically, the prevalence of narcotics and cellular devices being used by the inmate population. A modified (lockdown) Operational plan of action has been initiated. All inmates will be afforded an opportunity to conduct hygiene, phone, and email every three (3) calendar days. Additionally, steps have been taken to conduct a laundry exchange for the housing units. During this modified operation, any continued disregard from the inmate population to follow the rules and regulations will be promptly reported, addressed, and disciplinary sanctions imposed if required. In order to maintain a safe, secure, and rehabilitative environment for all inmates, your continued compliance with all directives is both expected and appreciated.

FROM: L Ford, Ambien
TO: 57503018
SUBJECT: Hi
DATE: 07/18/2022 09:36:10 PM

X

EXCLUSIVE: Atlanta federal pen nearly vacant amid corruption investigation

An investigation into alleged longstanding corruption at the U.S. Penitentiary in Atlanta has led federal officials to reassign virtually all of the prison's management team and transfer all but about 100 offenders to correctional facilities out of state, The Atlanta Journal-Constitution has learned. (AJC file)

Caption

Credit: File photo

CRIME & PUBLIC SAFETY

By Christian Boone, The Atlanta Journal-Constitution

Aug 20, 2021

The Atlanta Journal-Constitution is providing this content as part of our public service mission. Please support real, local journalism by subscribing today.

An investigation into alleged corruption at the U.S. Penitentiary in Atlanta has led federal officials to ban several prison staffers and nearly empty out the prison, transferring about 1,100 offenders to correctional facilities in other states, The Atlanta Journal-Constitution has learned.

As of Friday, 134 inmates remained inside the Atlanta prison, according to its official website. Back in March, it had more than 1,800 inmates. Employees have been told that ultimately all prisoners from the penitentiary and inmates at the adjacent minimum security camp will be transferred.

The prison went into an institutional lockdown on June 22 after receiving a "serious threat" and an institution emergency was declared, a staff memo obtained by the AJC states. Two days later, an official with the Federal Bureau of Prisons told the staff in a follow-up memo the lockdown was being extended after investigators discovered a "prevalence of narcotics and cellular devices being used by the inmate population."

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ADVERTISER CONTENT

5 Ways to Make a Difference for Employees' Mental Health

That same day a prison teacher found 24 cell phones, 30 chargers, ear buds, Under Armour long underwear, wrapped bundles of a "leafy substance," weed grinders, assorted chains and necklaces and one bottle of air freshener. And that was just in the Education Department.

A little more than two weeks later, BOP sent out memos notifying staff that four senior officers, along with one wage supervisor, had been barred from the federal pen and should not be allowed entry "under any circumstance."

ADVERTISING

They were barred "in the interest of the efficiency of the service," the memos stated.

To employees at the prison, though, the opaque wording concealed nothing. One complained that the Bureau of Prisons had "gone nuclear" in rooting out problem employees, while others said an overhaul was long overdue.

"We've been shouting from the rooftops for years and they didn't do a damn thing," said one longtime employee, who fears losing his job if his identity were revealed. "It's been a long time coming."

Inmates were transferred out the last week of July.

The Bureau of Prisons did not respond to a request for comment.

The southeast Atlanta complex is a medium-security prison for men. The complex also has a detention center for pre-trial detainees and inmates being held for transfer, as well as an adjacent camp for minimum security inmates.

Evidence has piled up in recent years about lax security at the complex, with lapses blamed at times on inadequate staffing. Tales of raucous parties and free-flowing contraband, though, pointed to staff complicity.

Caption

This memo dated June 24, 2021, details modified lockdown procedures at the U.S. Penitentiary in Atlanta and cites widespread use of drugs and cellphones by the inmates.

For years, some inmates at the minimum-security prison camp would come and go through a hole in the fence. A shuttle service was allegedly set up by inmates to transport other camp prisoners to local restaurants. But there were no arrests until 2017, when the FBI and police stationed officers on the other side of fence line to greet inmates on their way out.

Prisoners used cellphones for everything from self-incriminating Facebook Live sessions to allegedly operating a drug-trafficking organization from a prison cell.

Just last week, the U.S. Office of the Inspector General released a scathing report on security lapses at an unnamed federal prison. The longtime employee who spoke with the AJC said the conditions outlined in the report mirror those at the Atlanta pen.

"A review of the facility's video monitoring system revealed that staff were able to enter the facility during the night shift and walk around the metal detector without being screened," the inspector general's report states. "After discussing the matter with BOP personnel at the facility, we are concerned that this presents systemic concerns."

The longtime employee said some guards would come in with backpacks and duffel bags that were never searched. The source told the AJC a carton of cigarettes could be worth \$1,000.

Parcels of methamphetamine would turn up in hiding places all over the prison. Those hiding places exist all over the prison and have taken a toll on its infrastructure, the longtime employee said.

It'll be up to the prisoners who stayed behind to tackle the physical rehabilitation of a facility that in January turns 120 years old.

"The plan is to receive approximately 250 Low Security inmates to serve as a work cadre for the entire USP to include outside areas," BOP stated in an answer sheet provided to employees.

While offenders are ultimately expected back that same answer sheet said "at this time" officials were unaware of any plans to shutter the prison for good or to assign staff to other Bureau of Prison facilities many employees may not be returning.

"They went nuclear instead of being surgical," one lieutenant wrote on Facebook. He kept his job, he said, because he's so close to retirement. Most of his colleagues in the lieutenant class were transferred elsewhere.

"They have ruined lives and put an incredible stress on families," said the lieutenant. The AJC is not naming him because he could not be reached for comment.

The longtime prison employee told the AJC "there's lots of good people who are being forced to leave." But too many were not on the up and up, he said.

"I'd say 20 to 30% of the officers were dirty," he said. "And that's just totally unacceptable. You're always going to have a few. Most prisons have one, two or maybe three bad apples. Not a quarter of the staff."

Complaints to top officials, from the warden on down, largely went unanswered, he said.

"It made it nearly impossible for me to do my job," he said.

Notable scandals at USP Atlanta

This past April, an inmate in the medium-security prison was accused of running a drug-trafficking organization from his cell. Investigators said the man was overseeing distribution of methamphetamine, in coordination with Mexico drug cartels. The case is pending.

In 2019, a prisoner used a cellphone to record a 49-minute long Facebook Live session, where he bragged that he had murdered a man and got away with it.

In 2018, a former correctional officer was sentenced to prison for accepting \$3,500 in bribes to smuggle tobacco to prisoners.

For years, inmates at the minimum security prison camp would temporarily leave through a hole in the fence to fetch booze, drugs, cigarettes, cell phones and food. In 2017, some were finally caught, and a new warden was named. Yet nearly a year later, inmates were still leaving the prison camp to get contraband for parties.

In 2014, a guard was charged with smuggling heroin and other drugs into the lower-security camp.

In 2011, a prison physician, Lewis Jackson, molested three inmates seeking medical treatment at the USP. One of the inmates made an undercover recording, and Jackson later admitted he sexually assaulted the men.

How we got the story

Did you know there are almost no prisoners left in the U.S. prison in Atlanta? That was the sensational tip The Atlanta Journal-Constitution recently received, and it turned out to be true. To verify it, the AJC connected with sources inside the building who provided key documents. More information came from social media posts and others familiar with the situation at the facility

FROM: L Ford, Ambien
TO: 57503018
SUBJECT: Hi
DATE: 07/26/2022 10:36:08 PM

WSB-TV Channel 2 Atlanta Logo

Atlanta's federal penitentiary poses threat to entire southeast, report says
July 26, 2022 at 11:40 p.m. UTC

By Justin Gray

ATLANTA A U.S. Senate Committee investigation has uncovered that security and safety lapses at the Atlanta Federal Penitentiary are so bad, a government assessment called it a security risk for people across the southeast.

Whistleblowers who previously worked behind the walls at that federal prison in Atlanta testified under oath on Capitol Hill to the Senate Permanent Committee on Investigations. The committee is chaired by Georgia Sen. Jon Ossoff.

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"It is now a penitentiary in name only," the facility's former chief psychologist, Erika Ramirez, testified.

TRENDING STORIES:

Financial planners to the next Mega Millions winner: Keep quiet about it
Metro man warns others to take precautions as he awaits monkeypox diagnosis
Cobb pediatrician accused of punching EMT, swinging oxygen tank in front of child
Former jail administrator Terri Whitehead testified that Bureau of Prisons employees even had a nickname for the disfunction. They called it "the Atlanta Way."

"The Atlanta way is far from the norm and certainly not the U.S. Bureau of Prisons way," Whitehead said.

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The committee's investigation uncovered thousands of pages of internal records documenting mismanagement and wrongdoing at the facility in Southeast Atlanta dating back nine years.

Among the safety concerns identified, 800 contraband cell phones were confiscated in a 2021 sweep. In 2020, more than half of the surveillance cameras did not work. 142 of 253 cameras were down, and even the ones in operation were three hours off in recording time.

The investigation also uncovered that staff "intentionally damaged" the prison's drug detection machine. It did not work for a year.

"This was a major ongoing failure that presented a risk not to just inmates and staff but the city of Atlanta, state of Georgia and the whole country," Ossoff told Channel 2 Investigative reporter Justin Gray.

For years, Channel 2 Action News has reported on security lapses at the Atlanta Federal Penitentiary. In 2018, we learned that some inmates were coming and going through holes in the fences and smuggling in contraband liquor, cigarettes and cellphones. And in 2019, we reported on an inmate even using a contraband cell phone to broadcast a Facebook livestream from his prison cell.

Terri Whitehead testified that guards often left the prison doors open because of the facility's rat problem.

"Staff intentionally left doors open so the many stray cats that hung around the prison could catch the rats. It is never a good idea to leave prison doors open," Whitehead said.

Ossoff had originally issued a subpoena for Bureau of Prisons Director Michael Carvajal to testify. He ended up testifying voluntarily and pledged that the Bureau of Prisons is now working to fix the problems in Atlanta. He made a site visit to Atlanta in April.

"What I observed there is they are addressing these issues. We have constant challenges every day. When we become aware of them, we address them," Carvajal said.

But Ossoff repeatedly pressed Carvajal under questioning about what he knew about the Atlanta problems, and when he knew it. "Frankly, I found the director's testimony that he was ignorant of any of this until last year not just to be credible," Ossoff told Channel 2 Action News.

The Bureau of Prisons has terminated some senior leaders in Atlanta and moved dozens more out of the facility. They are also undergoing extensive renovations to the prison. As those changes are being made, it is currently only 42% full.

"I want to stress that what happened in Atlanta was unacceptable. We recognize the gravity of the misconduct in that facility," Carvajal said.

Senators expressed skepticism.

The ranking minority member of the committee, Sen. Ron Johnson, told Carvajal, "It's almost willful ignorance."

"The indication I got is that the Bureau of Prisons is not competent as currently run to address these issues or even be aware of them apparently," Ossoff told Gray.

A new director of the Bureau of Prisons will take over in the coming weeks.

AUG 11

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISON

Institution: <u>U.S.P. 100</u>	1. Name: <u>Spaulding, John</u>
2. Register No: <u>57503-018</u>	3. Unit: <u>F</u>
4. Date & Time of Inventory: <u>2-24-22 8:40 AM</u>	
5. Purpose of Inventory (Check one that applies): Date and Time of Action: <u>2-24-22 8:40 AM</u>	
a. <input checked="" type="checkbox"/> Admission b. <input type="checkbox"/> Hospital c. <input type="checkbox"/> Writ d. <input type="checkbox"/> Transfer e. <input type="checkbox"/> Detention f. <input type="checkbox"/> Release g. <input type="checkbox"/> Incoming Package h. <input type="checkbox"/> Other (specify) _____	
6. Disposition (Disp.) D-Donated M-Mail S-Storage K-Keep in Possession C-Contraband (Attach BP-S102)	

7. Type of Property:			b. Hygiene, etc.			d. Food		
#	Article	Disp.	#	Article	Disp.	#	Article	Disp.
<input type="checkbox"/>	Address Book		<input type="checkbox"/>	Plastic spoon, cup		<input type="checkbox"/>	Bean	
<input type="checkbox"/>	Batteries		<input type="checkbox"/>	Playing Cards		<input type="checkbox"/>	Cake	
<input type="checkbox"/>	Belt		<input type="checkbox"/>	Purse		<input type="checkbox"/>	Candy	
<input type="checkbox"/>	Billfold		<input type="checkbox"/>	Radio (w/earplug)		<input type="checkbox"/>	Chips	
<input type="checkbox"/>	Books, Reading		<input type="checkbox"/>	Religious Medal		<input type="checkbox"/>	Coffeemate	
<input type="checkbox"/>	hard <input type="checkbox"/> soft <input type="checkbox"/>		<input type="checkbox"/>	Shirt/Blouse		<input type="checkbox"/>	Cold drink mix, soda	
<input type="checkbox"/>	Books, Religious		<input type="checkbox"/>	Shoes		<input type="checkbox"/>	Cough Drops	
<input type="checkbox"/>	hard <input type="checkbox"/> soft <input type="checkbox"/>		<input type="checkbox"/>	Shoes, shower		<input type="checkbox"/>	Fish Packs	
<input type="checkbox"/>	Boot		<input type="checkbox"/>	Shoes, Slippers		<input type="checkbox"/>	Fruit	
<input type="checkbox"/>	Brassiere		<input type="checkbox"/>	Shorts		<input type="checkbox"/>	Honey, Hi-protein	
<input type="checkbox"/>	Cap, Hat		<input type="checkbox"/>	Skirt		<input type="checkbox"/>	Instant Coffee/Instant Chocolate	
<input type="checkbox"/>	Coat		<input type="checkbox"/>	Slip		<input type="checkbox"/>	Mayonnaise	
<input type="checkbox"/>	Comb		<input type="checkbox"/>	Socks		<input type="checkbox"/>	Oatmeal	
<input type="checkbox"/>	Combination Lock		<input type="checkbox"/>	Socks, Athletic		<input type="checkbox"/>	Pepperoni	
<input type="checkbox"/>	Dress		<input type="checkbox"/>	Stamps		<input type="checkbox"/>	Noodles	
<input type="checkbox"/>	Eyeglass Case		<input type="checkbox"/>	Stockings		<input type="checkbox"/>	Rice	
<input type="checkbox"/>	Eyeglasses		<input type="checkbox"/>	Sunglasses		<input type="checkbox"/>	Sausage	
<input type="checkbox"/>	Gloves		<input type="checkbox"/>	Sweat pants		<input type="checkbox"/>	Spices	
<input type="checkbox"/>	Hairbrush/Pick		<input type="checkbox"/>	T-Shirt		<input type="checkbox"/>	Tea	
<input type="checkbox"/>	Handkerchief		<input type="checkbox"/>	Sweat Shirt		<input type="checkbox"/>	Vitamins	
<input checked="" type="checkbox"/>	Headphones		<input type="checkbox"/>	Thermal Bottoms				
<input type="checkbox"/>	Laundry Jacket		<input type="checkbox"/>	Thermal Top				
<input type="checkbox"/>	Laundry Detergent		<input type="checkbox"/>	Underwear				
<input type="checkbox"/>	Legal Materials		<input type="checkbox"/>	Watch/Watchband				
<input type="checkbox"/>	Letters							
<input type="checkbox"/>	Magazines							
<input type="checkbox"/>	Mirror							
<input type="checkbox"/>	Nail Clippers							
<input type="checkbox"/>	Pen/Ballpoint							
<input type="checkbox"/>	Pencils							
<input type="checkbox"/>	Personal Papers							
<input type="checkbox"/>	Photo Album							
<input checked="" type="checkbox"/>	Photo							
<input type="checkbox"/>	Plastic Bowl Plastic Spoon, cup							

8. Items Alleged by Inmate to Have Value Over \$100.00

Description of Property

Value Alleged by Inmate

No individual item over \$100.00

9. Article(s) listed as "Mail" (M) Are to be forwarded to (Name and Address of Consignee):

10. Claim Release: a. The receiving officer, as soon after receipt of the property as possible, will review the inventory with the inmate to verify its accuracy. Property that is stored, kept in possession of the inmate, mailed out of the institution, or donated is to be marked in the appropriate section of this inventory form. The receiving officer certifies receipt, review and disposition of the property by signing below. The inmate by signing below certifies the accuracy of the inventory, except as noted on the form, relinquishing of all claim to articles listed as donated, receipt of all allowable items, and receipt of a copy of the inventory. When the inmate claims a discrepancy in the inventory, the receiving officer shall attempt to resolve the discrepancy. If the inmate states that there is missing or damaged property, this information should be noted under COMMENTS.

COMMENTS:

Printed Name/Signature of Receiving Officer:

Date:

Time:

I have today reviewed the property returned to me.

Signature of Inmate

Register #

Date

Time

b. Upon release of the inmate from the unit, detention, etc., the releasing officer is to give the inmate that property stored as a result of the inmate's housing. The inmate certifies release of the property, except as noted on this form, and receipt of a copy of the inventory by signing below. When the inmate claims a discrepancy in the inventory, the releasing officer shall attempt to resolve the discrepancy. If the inmate states that there is missing or damaged property, this information should be noted under COMMENTS.

COMMENTS:

Printed Name/Signature of Receiving Officer:

Date:

Time:

I have today reviewed the property returned to me.

Signature of Inmate

Register #

Date

Time

FEDERAL BUREAU OF PRISON

[illegible]

8. Items Alleged by Inmate to Have Value Over \$100.00

Description of Property

Value Alleged by Inmate

T. NAME STATION MISSING ADDRESS

No individual item over \$100.00 ✓

9. Article(s) listed as "Mail" (M) Are to be forwarded to (Name and Address of Consignee):

10. Claim Release: a. The receiving officer, as soon after receipt of the property as possible, will review the inventory with the inmate to verify it's accuracy. Property that is stored, kept in possession of the inmate, mailed out of the institution, or donated is to be marked in the appropriate section of this inventory form. The receiving officer certifies receipt, review and disposition of the property by signing below. The inmate by signing below certifies the accuracy of the inventory, except as noted on the form, relinquishing of all claim to articles listed as donated, receipt of all allowable items, and receipt of a copy of the inventory. When the inmate claims a discrepancy in the inventory, the receiving officer shall attempt to resolve the discrepancy. If the inmate states that there is missing or damaged property, this information should be noted under COMMENTS.

COMMENTS:

Printed Name/Signature of Receiving Officer:

Date: 6-10-22 Time: 9:40am

I have today reviewed the property returned to me.

Signature of Inmate

3750308 6-18-22 702

Register # Date Time

b. Upon release of the inmate from the unit, detention, etc., the releasing officer is to give the inmate that property stored as a result of the inmate's housing. The inmate certifies release of the property, except as noted on this form, and receipt of a copy of the inventory by signing below. When the inmate claims a discrepancy in the inventory, the releasing officer shall attempt to resolve the discrepancy. If the inmate states that there is missing or damaged property, this information should be noted under COMMENTS.

COMMENTS:

Printed Name/Signature of Receiving Officer:

Date: _____ Time: _____

I have today reviewed the property returned to me.

Signature of Inmate

Register #	Date	Time
------------	------	------

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-13691-F

JOHN MARTIN SPAULDING,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeals from the United States District Court
for the Middle District of Florida

ORDER:

John Spaulding is a federal prisoner serving a 456-month sentence for robbery offenses and carrying a firearm in furtherance of those offenses, in violation of 18 U.S.C. § 924(c). He moves for a certificate of appealability (“COA”) and leave to proceed *in forma pauperis* (“IFP”), in order to appeal from the denial of his 28 U.S.C. § 2255 motion to vacate, which argued that his § 924(c) convictions were invalid. To obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

Section 924(c) provides for a mandatory consecutive sentence for any defendant who uses a firearm during a crime of violence. 18 U.S.C. § 924(c)(1). A “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) 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. *Id.* § 924(c)(3). This Court commonly refers to § 924(c)(3)(A) as the “elements clause,” and § 924(c)(3)(B) as the “residual clause.” *Brown v. United States*, 942 F.3d 1069, 1071 (11th Cir. 2019). In *United States v. Davis*, the Supreme Court struck down § 924(c)’s residual clause as unconstitutionally vague. 139 S. Ct. 2319, 2323-24, 2336 (2019).

Here, no reasonable jurist would debate whether the district court erred by denying Spaulding’s § 2255 motion. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). His § 924(c) convictions were predicated on charges for Hobbs Act robbery, attempted Hobbs Act robbery, and aiding and abetting attempted Hobbs Act robbery, the first two of which this Court has held qualify as crimes of violence under § 924(c)’s elements clause. *See United States v. St. Hubert*, 909 F.3d 335, 351 (11th Cir. 2018), *abrogated on other grounds by Davis*; *In re Saint Fleur*, 824 F.3d 1337, 1340-41 (11th Cir. 2016). This Court also has held that aiding and abetting Hobbs Act robbery qualifies as a crime of violence under § 924(c)’s elements clause. *See In re Colon*, 826 F.3d 1301, 1305 (11th Cir. 2016). It naturally follows that, if aiding and abetting Hobbs Act robbery and attempted Hobbs Act robbery qualify as crimes of violence under § 924(c)’s elements clause, so too does aiding and abetting attempted Hobbs Act robbery.

In light of the foregoing, Spaulding’s § 924(c) convictions still are valid, regardless of the fact that *Davis* invalidated § 924(c)’s residual clause. *See Davis*, 139 S. Ct. at 2323-24, 2336. Accordingly, Spaulding’s motion for a COA is DENIED. *See* 28 U.S.C. § 2253(c)(2). His motion for IFP is DENIED AS MOOT.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE