In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11572

PIKERSON MENTOR,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-20470-DLG

ORDER:

Pikerson Mentor is a federal prisoner serving a life plus 42-year total imprisonment sentence for several convictions arising from the robbery and killing of a U.S. postal worker, which included convictions for carrying, using, and possessing a firearm during, in relation to, and in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A) and 2, and carrying, using, and possessing a firearm during, in relation to, and in furtherance of a crime of violence resulting in death, in violation of § 924(c)(1)(A), (j)(l), and 2. He seeks a certificate of appealability ("COA") to appeal the district court's dismissal of his counseled, amended, authorized successive 28 U.S.C. § 2255 motion, challenging the validity of his convictions under § 924(c) and (j), in light of *United States v. Davis*, 139 S. Ct. 2319 (2019).

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). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (quotations omitted). Moreover, "no COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law." *Hamilton v. Sec'y, Fla. Dep't of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015).

A criminal defendant who fails to object at trial, or to raise an issue on direct appeal, is procedurally barred from raising the

claim in a § 2255 motion, absent a showing of cause and prejudice, or a fundamental miscarriage of justice. *United States v. Frady*, 456 U.S. 152, 167-68 (1982). "[T]he Supreme Court held 'that where a constitutional claim is so novel that its legal basis is not reasonably available to counsel, a defendant has cause for his failure to raise a claim . . .'" *Howard v. United States*, 374 F.3d 1068, 1072 (11th Cir. 2004) (quoting *Reed v. Ross*, 468 U.S. 1, 16 (1984)).

Here, reasonable jurists would not debate the district court's denial of Mentor's claim as procedurally defaulted. *See Slack*, 529 U.S. at 484. Because Mentor did not raise this claim on direct appeal, the claim is procedurally defaulted unless he can establish cause and prejudice or actual innocence. *See Frady*, 456 U.S. at 167-68. The district court did not err in concluding that Mentor failed to establish cause and prejudice because this Court's binding precedent has held that a *Davis* challenge does not constitute a novel constitutional rule that excuses procedural default, and Mentor conceded in his petition that binding precedent foreclosed his argument that there was acceptable cause for the default. *See Granda v. United States,* 990 F.3d 1272, 1287-88 (11th Cir. 2021). Since Mentor cannot establish cause, the cause and prejudice exception does not apply.

Further, Mentor cannot establish actual innocence, as his motion only challenges his legal innocence and raised no arguments or evidence concerning his factual innocence. Accordingly, his motion for a COA is DENIED.

/s/ Robin S. Rosenbaum

UNITED STATES CIRCUIT JUDGE