Appendix A

No. 23-5874

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 30, 2024
KELLY L. STEPHENS, Clerk

CHARLTON BEASLEY,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Before: COLE, READLER, and BLOOMEKATZ, Circuit Judges.

Charlton Beasley, a pro se federal prisoner, petitions for rehearing of this court's June 3, 2024, order denying his motion for a certificate of appealability. We have reviewed the petition and conclude that the court did not overlook or misapprehend any point of law or fact in denying Beasley's motion for a certificate of appealability. *See* Fed. R. App. P. 40(a)(2). The petition for rehearing is therefore **DENIED**.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHARLTON BEASLEY,	)	
	)	
Movant,	)	
	)	Cv. No. 2:19-cv-02212-SHL-atc
v.	)	Cr. No. 2:15-cr-20083-01-SHL
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER DENYING MOTION PURSUANT TO 28 U.S.C. § 2255, DENYING A CERTIFICATE OF APPEALABILITY, CERTIFYING THAT AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH, AND DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

Before the Court are the Motion Under 28 U.S.C. § 2244 for Leave to File a Second or Successive Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 by a Person in Federal Custody ("§ 2244 Motion" and "Second § 2255 Motion") filed by Movant, Charlton Beasley, Bureau of Prisons register number 27341-076, an inmate at the Federal Correctional Institution in Edgefield, South Carolina (ECF No. 11-2); the Response of the United States in Opposition to Defendant's Motion Under 28 U.S.C. § 2255 ("Answer") (ECF No. 15); and Petitioner's Response to the United State's [sic] Response Opposing Motion Under 28 U.S.C. § 2255 ("Reply") (ECF No. 16). For the reasons stated below, the Court **DENIES** the Second § 2255 Motion.

I. BACKGROUND AND PROCEDURAL HISTORY

A. Criminal Case No. 2:15-cr-20083-01 ("*Beasley I*")

On March 26, 2015, a federal grand jury in the Western District of Tennessee returned an eight-count indictment against Beasley and two co-defendants, Korderrius Richmond and Daniel Warren. (*Beasley I*, ECF No. 1 (sealed).) Beasley was named in Counts 1 through 7. Count 1 charged Beasley and Richmond with conspiring to kidnap "D.K.C.," an employee of Big Daddy's Pawnshop in Memphis, Tennessee, for the purpose of facilitating robbery, in violation of 18 U.S.C. § 1201(c). Count 2 charged Beasley and Richmond, aided and abetted by each other, with kidnapping "D.K.C." for the purpose of facilitating robbery and transporting "D.K.C." in interstate commerce, in violation of 18 U.S.C. §§ 1201(a)(1) and 2. Count 4 charged Beasley and Richmond, aided and abetted by each other, with robbing Big Daddy's Pawnshop, in violation of 18 U.S.C. § 1951. Counts 3 and 5 charged Beasley and Richmond, aided and abetted by each other, with using, carrying, and brandishing a firearm during and in relation to the kidnapping and robbery charged in Counts 2 and 4, respectively, in violation of 18 U.S.C. §§ 924(c) and 2. Count 6 charged Beasley and Richmond, aided and abetted by each other, with taking a motor vehicle from "D.K.C." by force, violence, and intimidation and with the intent to cause serious bodily injury, in violation of 18 U.S.C. § 2119. Count 7 charged Beasley and Richmond, aided and abetted by each other, with stealing a variety of firearms from a licensed firearms dealer, in violation of 18 U.S.C. § 922(u).

Pursuant to a written plea agreement, Beasley appeared before this judge on September 9, 2015, to plead guilty to Counts 2, 3, 4, and 7 of the indictment. (*Beasley I*, ECF Nos. 70, 72, 73.) The plea agreement contained a negotiated sentence of two hundred forty (240) months or twenty (20) years. (*Beasley I*, ECF No. 73 at PageID 100.) On December 11, 2015, the Court sentenced Beasley to the negotiated term of imprisonment, to be followed by a two-year period of supervised

release. (*Beasley I*, ECF No. 85.)[1] Judgment was entered on December 11, 2015. (*Beasley I*, ECF No. 88 (sealed).) Beasley did not take a direct appeal.

B. Beasley's First § 2255 Motion, Civil Case No. 2:16-cv-2478 ("*Beasley II*")

On June 20, 2016, Beasley filed a *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, in which he argued that he was entitled to a reduction in his sentence in light of the Supreme Court's decision in *Johnson v. United States*, 576 U.S. 591 (2015). (*Beasley II*, ECF No. 1.) In an order issued on August 1, 2018, the Court denied the § 2255 Motion and denied a certificate of appealability. (*Beasley II*, ECF No. 7.) Judgment was entered on August 1, 2018. (*Beasley II*, ECF No. 8.) Beasley did not appeal.

C. Beasley's Second § 2255 Motion, Civil Case No. 2:19-cv-2212 ("*Beasley III*")

On January 27, 2020, Beasley filed a § 2244 Motion with the Sixth Circuit Court of Appeals, in which he argued that his conviction on Count 3 for violating 18 U.S.C. § 924(c) is invalid in light of *United States v. Davis*, 139 S. Ct. 2319 (2019). (*Beasley III*, ECF No. 11-2.) On June 26, 2020, the Court of Appeals granted Beasley leave to file a second § 2255 Motion that presents a *Davis* claim and transferred the matter to this district. (*Beasley III*, ECF No. 12.) On July 2, 2020, the Court ordered the Government to respond. (*Beasley III*, ECF No. 13.) The Government filed its Answer on July 24, 2020. (*Beasley III*, ECF No. 15.) Beasley filed his Reply on August 10, 2020. (*Beasley III*, ECF No. 16.) Since that time, Beasley has filed several documents that either cite additional cases or reiterate his claim for relief. (*Beasley III*, ECF Nos. 19, 20, 21, 23.)[2]

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[1] The Court sentenced Beasley to concurrent terms of 156 months on Counts 2 and 4 and 120 months on Count 7, and to a consecutive term of 84 months on Count 3. (*Id.*)

[2] The Court will exercise its discretion to consider these filings.

II. THE LEGAL STANDARD

Pursuant to 28 U.S.C. § 2255(a),

> [a] prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

"A prisoner seeking relief under 28 U.S.C. § 2255 must allege either: (1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid." *Short v. United States*, 471 F.3d 686, 691 (6th Cir. 2006) (internal quotation marks and citation omitted). Movant has the burden of proving that he is entitled to relief by a preponderance of the evidence. *Pough v. United States*, 442 F.3d 959, 964 (6th Cir. 2006).

III. ANALYSIS

Beasley contends that his conviction on Count 3 must be vacated because the kidnapping that was charged in Count 2 is no longer a "crime of violence." Beasley pled guilty to aiding and abetting, a violation of 18 U.S.C. § 924(c), which provides, in pertinent part, that,

> any person who, during and in relation to any crime of violence or drug trafficking crime . . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm, . . . shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—
>
> . . . .
>
> (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years.

18 U.S.C. § 924(c)(1)(A)(ii). A "crime of violence" is

> an offense that is a felony and—

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

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

18 U.S.C. § 924(c)(3)(A)-(B). In *United States v. Davis*, 139 S. Ct. 2319, 2324 (2019), the Supreme Court held that the residual clause of § 924(c)(3)(B), which defines "crime of violence," is unconstitutionally vague.

A. Beasley is Actually Innocent of Count 3

In his Second § 2255 Motion, Beasley argues that he is actually innocent of his conviction on Count 3 in light of the Supreme Court's decision in *Davis*. In granting Beasley leave to file a second or successive § 2255 Motion, the Sixth Circuit stated that Beasley's "proposed claim warrants fuller exploration in the district court," and that he "has made a prima facie showing that his application satisfies § 2255(h)." (*Beasley III*, ECF No. 12 at PageID 40) (citing *In re Franklin*, 950 F.3d 909, 910-11 (6th Cir. 2020); *Knight v. United States*, 936 F.3d 495, 498 (6th Cir. 2019)), Section 2255(h) authorizes the Court of Appeals to grant leave to file a second or successive § 2255 motion that contains "a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2255(h)(2).

In its Answer, the Government does not address whether kidnapping is a crime of violence. Although there has been no authoritative ruling on the subject, the Government has frequently conceded that kidnapping under § 1201(a) is no longer a "crime of violence" in light of *Davis*. *See, e.g., Knight*, 936 F.3d at 498 ("The government concedes that Knight's kidnapping conviction under 18 U.S.C. § 1201(a) is not a crime of violence."); *Dais v. United States*, Case Nos. 1:20-cv-158, 1:09-cr-187, 2020 WL 5209854, at *2 (E.D. Tenn. Sept. 1, 2020); *Espinoza v. United States*, Criminal Case No. 10-20635, Civil Case Number 16-12255/16-13848, 2020 WL 1915642, at *6

(E.D. Mich. Apr. 20, 2020); *see also United States v. Walker*, 934 F.3d 375, 375 (4th Cir. 2019) ("As the Government concedes, the requirement that a defendant unlawfully seize, confine, inveigle, kidnap, abduct, or carry away a person can be accomplished without the use of force—through inveiglement."); *United States v. Brazier*, 933 F.3d 796, 800-01 (7th Cir. 2019) ("In short, kidnapping may be accomplished without force, by 'inveigling' or 'decoying' a person without threat of force, and by holding the person simply by locking him or her in a room, again without threat of violence."). In a later decision granting one of Beasley's co-defendants leave to file a second § 2255 motion, the Sixth Circuit stated that, "in light of *Davis*, § 1201 kidnapping is no longer a crime of violence." *In re Richmond*, No. 19-6145, slip op. at 2 (6th Cir. Apr. 15, 2020). Therefore, Beasley is actually innocent of his conviction on Count 3.

actually innocent on ount 3

B. Beasley is Not Entitled to Relief

Although Beasley is actually innocent of Count 3, he is not entitled to relief because he has not demonstrated that he is actually innocent of Count 5, the § 924(c) charge that the Government agreed to dismiss as part of the plea agreement.

"In cases where the Government has forgone more serious charges in the course of plea bargaining, petitioner's showing of actual innocence must also extend to those charges." *Bousley v. United States*, 523 U.S. 614, 624 (1998). Other courts have held that *Bousley* encompasses charges that are equally as serious as the charge to which the movant pled guilty. *Lewis v. Peterson*, 329 F.3d 934. 937 (7th Cir. 2003); *see also United States v. Caso*, 723 F.3d 215, 221-22 (D.C. Cir. 2013) (noting, in dicta, that the *Bousley* Court's analysis supports inclusion of "equally serious" charges). "*Bousley* requires such a showing to address the unfairness of allowing a petitioner to raise a procedurally defaulted challenge to a sentence he bargained for, while escaping

punishment for dismissed counts that he actually committed." *Peveler v. United States*, 269 F.3d 693, 701 (6th Cir. 2001).[3]

Here, the parties entered into a plea agreement in which Beasley pled guilty to Counts 2, 3, 4, and 7 in exchange for the Government's agreement to drop Counts 1, 5, and 6. The Government argues that Count 5, a § 924(c) count based on Hobbs Act robbery, is more serious than Count 3 because when Beasley pled guilty, Count 5 would have been a second conviction carrying a mandatory minimum sentence of twenty-five (25) years. (*Beasley III*, ECF No. 15 at PageID 71-72.) This analysis necessarily assumes that Beasley also would have been convicted of Count 3. The Government has not cited any case applying this reasoning, but it is unnecessary to do so here. Count 5, like Count 3, is a § 924(c) charge that involved brandishing a firearm, which carries a mandatory minimum sentence of seven years and a maximum sentence of life. Regardless of whether the penalty for Count 5 is more serious than that for Count 3, it is at least equally serious. Hobbs Act robbery is categorically a "crime of violence" after *Davis*, as is aiding and abetting Hobbs Act robbery. *United States v. Richardson*, 948 F.3d 733, 741-42 (6th Cir. 2020) (holding aiding and abetting Hobbs Act robbery qualifies as a crime of violence); *United States v. Gooch*, 850 F.3d 285, 292 (6th Cir. 2017) (holding Hobbs Act robbery constitutes a crime of violence). The Supreme Court's decision in *Davis* does not undermine the validity of *Gooch*. *United States v. Holmes*, 797 F. App'x 912, 917-18 (6th Cir. 2019).

Beasley has not argued that he is actually innocent of Count 5. The presentence report ("PSR") states that, after arriving at the pawn shop, Beasley forced two employees at gunpoint to

[3] In his Reply, Beasley urges the Court not to consider the dismissed counts because the Government did not cite any Sixth Circuit cases that reinstated dismissed counts. (*Beasley III*, ECF No. 16 at PageID 79.) However, *Bousley* says that consideration of those counts is appropriate. The Sixth Circuit has applied this standard in *Peveler*, *Vanwinkle v. United States*, 645 F.3d 365, 370-72 (6th Cir. 2011), and in the other cases cited at p. 4 of the Answer.

open the front door and deactivate the alarm system. Beasley then ordered the employees to load property into a box and remove it from the pawn shop. (PSR ¶ 5.) Beasley gave a statement to the police in which he admitted that he obtained a Cobra .380 caliber handgun to use in the kidnapping and robbery. (*Id.* ¶ 10.) Beasley raised no objection to these factual statements. (*Beasley I*, ECF No. 83 at PageID 117.)

In Count 4, Beasley pled guilty to aiding and abetting the Hobbs Act robbery of Big Daddy's Pawn Shop. Count 5 charged Beasley with aiding and abetting the brandishing of a firearm during that robbery. The PSR stated, without objection, that Beasley robbed the pawn shop "at gunpoint," which necessarily means that Beasley was armed and that he brandished his firearm. Beasley is not actually innocent of Count 5.

Because Beasley has not established that he is actually innocent of Count 5, an equally serious charge dismissed as part of his plea agreement, he is not entitled to relief under 28 U.S.C. § 2255 notwithstanding his actual innocence of Count 3 in light of *Davis*. Because the claim asserted is without merit, the Court **DENIES** the Second § 2255 Motion. The Second § 2255 Motion is **DISMISSED WITH PREJUDICE**. Judgment shall be entered for the United States.

IV. APPEAL ISSUES

Twenty-eight U.S.C. § 2253(a) requires the district court to evaluate the appealability of its decision denying a § 2255 motion and to issue a certificate of appealability ("COA") "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also* Fed. R. App. P. 22(b). The COA must indicate the specific issue or issues that satisfy the required showing. 28 U.S.C. §§ 2253(c)(2) & (3). No § 2255 movant may appeal without this certificate.

A "substantial showing" is made when the movant demonstrates that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotation marks omitted).

> Where a district court has rejected a constitutional claim on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. . . . When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, 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.

District Court Denied C.O.A w/o reaching claims

Slack v. McDaniel, 529 U.S. 473, 484 (2000). "In short, a court should not grant a certificate without some substantial reason to think that the denial of relief might be incorrect." *Moody v. United States*, 958 F.3d 485, 488 (6th Cir. 2020). "To put it simply, a claim does not merit a certificate unless *every independent reason to deny the claim is reasonably debatable*." *Id.*

In this case, there can be no question that the issue raised in Movant's Second § 2255 Motion is meritless; therefore the Court **DENIES** a COA.

The Prison Litigation Reform Act of 1995, 28 U.S.C. §§ 1915(a)-(b), does not apply to appeals of orders denying § 2255 motions. *Kincade v. Sparkman*, 117 F.3d 949, 951 (6th Cir. 1997). Rather, to appeal *in forma pauperis* in a § 2255 case, and thereby avoid the appellate filing fee required by 28 U.S.C. §§ 1913 and 1917, the prisoner must obtain pauper status pursuant to Federal Rule of Appellate Procedure 24(a). *Id.* at 952. Rule 24(a) provides that a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit. Fed. R. App. P. 24(a)(1). However, if the district court certifies that an appeal would not be taken in good faith, or otherwise denies leave to appeal *in forma pauperis*, the prisoner must

file a motion to proceed *in forma pauperis* in the appellate court. *See* Fed. R. App. P. 24(a) (4)-(5).

In this case, for the same reasons the Court denies a COA, the Court determines that any appeal would not be taken in good faith. It is therefore **CERTIFIED**, pursuant to Federal Rule of Appellate Procedure 24(a), that any appeal in this matter would not be taken in good faith and leave to appeal *in forma pauperis* is **DENIED**.[4]

IT IS SO ORDERED, this 13th day of September, 2023.

s/ Sheryl H. Lipman
SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT JUDGE

[4] If Movant files a notice of appeal, he must also pay the full $505 appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals within thirty (30) days of entry of this Order. *See* Fed. R. App. P. 24(a)(5).

Appendix C

No. 19-5507

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 26, 2020
DEBORAH S. HUNT, Clerk

In re: CHARLTON BEASLEY,

Movant.

ORDER

Before: COLE, Chief Judge; GUY and BUSH, Circuit Judges.

Charlton Beasley, a pro se federal prisoner, moves the court for an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See* 28 U.S.C. §§ 2244(b), 2255(h). The government opposes the motion.

In February 2015, Beasley abducted a pawnshop employee at gunpoint and forced the employee to drive him to the pawnshop in the employee's truck. Beasley's accomplice Korderrius Richmond followed in another car. While Richmond remained outside in the getaway car, Beasley forced the employee to let him into the pawnshop, where he stole firearms and ammunition.

A federal grand jury returned an indictment charging Beasley with conspiracy to commit kidnapping, in violation of 18 U.S.C. § 1201(c) (count 1); kidnapping, in violation of 18 U.S.C. § 1201(a)(1) (count 2); brandishing a firearm during and in relation to a crime of violence (kidnapping), in violation of 18 U.S.C. § 924(c) (count 3); Hobbs Act robbery, in violation of 18 U.S.C. § 1951 (count 4); brandishing a firearm during and in relation to a crime of violence (Hobbs Act robbery), in violation of 18 U.S.C. § 924(c) (count 5); carjacking, in violation of 18 U.S.C. § 2119 (count 6); and theft of firearms from a firearms dealer, in violation of 18 U.S.C. § 922(u) (count 7). Beasley pleaded guilty to counts 2, 3, 4, and 7 pursuant to a Rule 11(c)(1)(C) plea agreement. *See* Fed. R. Crim. P. 11. In return, the government agreed to dismiss the remaining counts, and the parties stipulated that Beasley should receive a total sentence of 240 months of imprisonment.

The district court accepted the plea agreement. To achieve the stipulated sentence, the district court sentenced Beasley to 84 months of imprisonment on count 3, 156 months of imprisonment on counts 2 and 4, and 120 months of imprisonment on count 7, with the sentences on counts 2, 4, and 7 to be served concurrently with each other but consecutively to count 3. Beasley did not appeal.

In June 2016, Beasley filed a motion to vacate in the district court, seeking relief from his § 924(c) conviction pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015). The district court denied the motion, and Beasley did not appeal. *See Beasley v. United States*, No. 2:16-cv-02478 (W.D. Tenn. Aug. 1, 2018) (order).

Beasley also sought relief from his convictions by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in which he claimed that the district court lacked jurisdiction over his criminal proceedings. The district court denied Beasley's petition, and again he did not appeal. *See Beasley v. Owens*, No. 2:18-cv-2520 (W.D. Tenn. Mar. 5, 2019) (order).

In April 2019, Beasley filed another motion to vacate, claiming once again that the district court lacked jurisdiction to impose a criminal judgment. He also claimed that allowing a criminal prosecution to proceed with the United States as the plaintiff violated his Sixth Amendment right to confront his accuser. The district court transferred Beasley's motion to this court for permission to consider it. *See In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam). Beasley then filed a corrected application for authorization, claiming that his firearms conviction in count 3 is invalid because kidnapping is not a "crime of violence" under § 924(c).

Beasley's proposed claim is based on *United States v. Davis*, 139 S. Ct. 2319 (2019), and *Knight v. United States*, 936 F.3d 495 (6th Cir. 2019). *Davis* held that the residual-clause definition of "crime of violence" in § 924(c)(3)(B) is unconstitutionally vague. *See* 139 S. Ct. at 2336. In *Knight*, the government conceded that the petitioner was entitled to relief from his § 924(c) conviction because kidnapping under § 1201(a) is not a § 924(c) "crime of violence" in view of *Davis*. *See* 936 F.3d at 498.

The government opposes Beasley's application. Although tacitly admitting that *Davis* invalidated Beasley's § 924(c) conviction, the government argues that he procedurally defaulted any challenge to this conviction by not appealing. And the government is concerned that Beasley

will receive a windfall if this conviction is vacated because it would not have dismissed "the other three charges in plea negotiations had it known that the § 924(c) count based on the predicate offense of kidnapping was invalid."

To receive permission to file a second or successive motion to vacate, Beasley must make a prima facie showing that his proposed claim is based on newly discovered evidence, *see* 28 U.S.C. § 2255(h)(1), or a new rule of constitutional law that was previously unavailable and that the Supreme Court has made retroactive to cases on collateral review, *see* 28 U.S.C. § 2255(h)(2); *In re Sargent*, 837 F.3d 675, 676 (6th Cir. 2016).

Beasley's proposed claim is based on *Davis*. *Davis* applies retroactively to cases on collateral review, *see In re Franklin*, 950 F.3d 909, 911 (6th Cir. 2020) (per curiam), and *Knight* shows that his proposed claim "warrant[s] a fuller exploration in the district court," *In re Lott*, 366 F.3d 431, 433 (6th Cir. 2004) (quoting *Bennett v. United States*, 119 F.3d 468, 469 (7th Cir. 1997)). Beasley therefore has made a prima facie showing that his application satisfies § 2255(h).

We do not consider the government's procedural defenses in deciding whether to grant a prisoner permission to file a second or successive motion to vacate. *See In re Embry*, 831 F.3d 377, 382 (6th Cir. 2016); *In re McDonald*, 514 F.3d 539, 542-43 (6th Cir. 2008). Thus, the government's allegation that Beasley defaulted his proposed claim is inconsequential at this point.

And the government's concern that Beasley will receive a windfall if his § 924(c) conviction is vacated is premature because we only consider whether his application satisfies § 2255(h). *See McDonald*, 514 F.3d at 542-43.

Accordingly, we **GRANT** Beasley's motion for authorization and **TRANSER** this case to the district court for further proceedings.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 23-5874

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 3, 2024
KELLY L. STEPHENS, Clerk

CHARLTON BEASLEY,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Before: BOGGS, Circuit Judge.

Charlton Beasley, a pro se federal prisoner, appeals the district court's judgment denying his motion to vacate, set aside, or correct his sentence, filed pursuant to 28 U.S.C. § 2255. Beasley moves this court for a certificate of appealability (COA) and for leave to proceed in forma pauperis. The court denies both motions.

In 2015, a grand jury indicted Beasley for conspiracy to commit kidnapping, in violation of 18 U.S.C. § 1201(c) (Count 1); kidnapping, in violation of 18 U.S.C. § 1201(a)(1) (Count 2); brandishing a firearm during and in relation to a crime of violence (kidnapping), in violation of 18 U.S.C. § 924(c) (Count 3); Hobbs Act robbery, in violation of 18 U.S.C. § 1951 (Count 4); brandishing a firearm during and in relation to a crime of violence (Hobbs Act robbery), in violation of 18 U.S.C. § 924(c) (Count 5); carjacking, in violation of 18 U.S.C. § 2119 (Count 6); and theft of firearms from a firearms dealer, in violation of 18 U.S.C. § 922(u) (Count 7). Beasley pleaded guilty to Counts 2, 3, 4, and 7 in exchange for dismissal of Counts 1, 5, and 6. The parties stipulated that Beasley should be sentenced to 240 months in prison. The district court accepted the plea agreement and sentenced Beasley to concurrent prison terms of 156 months on Count 2, 156 months on Count 4, and 120 months on Count 7, to be served consecutively to an 84-month prison term on Count 3. Beasley did not appeal.

In 2016, Beasley filed his first motion to vacate, which the district court denied. Beasley again did not appeal.

In 2019, Beasley filed another motion to vacate, which the district court transferred to this court for consideration as a motion for authorization to file a second or successive motion to vacate. In his corrected motion for authorization, Beasley claimed that his Count 3 firearm-brandishing conviction is invalid because kidnapping is not a "crime of violence" under § 924(c) in light of *United States v. Davis*, 588 U.S. 445, 470 (2019), which held that the residual-clause definition of "crime of violence" in § 924(c)(3)(B) is unconstitutionally vague. This court granted the motion and transferred the case back to the district court. *In re Beasley*, No. 19-5507 (6th Cir. June 26, 2020).

The district court then denied Beasley's motion to vacate and declined to issue a COA, reasoning that, although Beasley is actually innocent of Count 3—because kidnapping is no longer a crime of violence after *Davis*—he is not entitled to relief because he failed to argue or show that he is actually innocent of Count 5, an "equally serious" charge dismissed as part of his plea agreement. *See Bousley v. United States*, 523 U.S. 614, 625 (1998) ("In cases where the Government has foregone more serious charges in the course of plea bargaining, a petitioner's showing of actual innocence must also extend to those charges."). In doing so, the district court did not address the government's argument that Beasley's *Davis* claim is procedurally defaulted and instead applied *Bousley* as a basis for denying relief on the merits. Thereafter, the district court denied Beasley's motions to alter or amend the judgment and to supplement his pleadings. This appeal followed.

A COA may be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). That standard is met when the movant demonstrates "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S.

at 327. "[A] claim does not merit a certificate unless *every independent reason to deny the claim is reasonably debatable*." *Moody v. United States*, 958 F.3d 485, 488 (6th Cir. 2020).

As noted above, the district court reviewed Beasley's *Davis* claim on the merits and denied relief based on *Bousley*. But *Bousley* and all cases interpreting it operate to bar application of the actual-innocence gateway to review of a *procedurally defaulted* claim—not to bar relief on the substantive *merits* of a claim. *See Bousley*, 523 U.S. at 621-23; *see, e.g., Vanwinkle v. United States*, 645 F.3d 365, 371-72 (6th Cir. 2011). So reasonable jurists could debate whether the district court should have applied *Bousley* to bar substantive relief rather than as part of a procedural-default analysis.

But this court may conduct the procedural-default analysis, as Beasley was given an adequate opportunity to respond to the government's procedural-default argument below. *See Howard v. Bouchard*, 405 F.3d 459, 476 (6th Cir. 2005). After doing so, we conclude that reasonable jurists could not debate that Beasley's *Davis* claim is indeed procedurally defaulted, and the default cannot be excused. A § 2255 claim is procedurally defaulted if the petitioner did not raise the claim on direct appeal but could have done so. *See Vanwinkle*, 645 F.3d at 369; *Regalado v. United States*, 334 F.3d 520, 528 (6th Cir. 2003). To obtain review of a procedurally defaulted claim, the petitioner must demonstrate either cause for the default and actual prejudice or that he is actually innocent. *Vanwinkle*, 645 F.3d at 369.

Here, Beasley's *Davis* claim is plainly procedurally defaulted because he did not raise the claim's underlying argument—that § 924(c)'s residual clause is void for vagueness and therefore his Count 3 conviction, which is premised on kidnapping being a "crime of violence" under § 924(c), is invalid—on direct appeal. Indeed, he did not file a direct appeal.

A petitioner may establish cause to excuse a procedural default if his claim is so novel that its legal basis was not reasonably available during the original proceedings. *Mitchell v. United States*, 43 F.4th 608, 615 (6th Cir. 2022). A claim is novel where, at the time of the default, the case law necessary to conceive and argue the claim did not yet exist, that is, the movant must have had no reasonable basis upon which to formulate the question now being presented. *Gatewood v.*

United States, 979 F.3d 391, 395 (6th Cir. 2020). Here, Beasley could have reasonably formulated his claim and brought it on direct appeal given that, less than three months before he pleaded guilty, the Supreme Court held that the residual clause in the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(ii), which is similar to the residual clause in § 924(c)(3)(B), is unconstitutionally vague. *See Johnson v. United States*, 576 U.S. 591, 606 (2015); *see also Granda v. United States*, 990 F.3d 1272, 1286-88 (11th Cir. 2021).

A petitioner may also show cause to excuse a procedural default where raising the claim on direct appeal would have been futile. *Mitchell*, 43 F.4th at 615. A claim cannot be rendered futile, however, based on lower-court precedent, even where the circuits are aligned against a particular legal argument. *Gatewood*, 979 F.3d at 396. Rather, a claim is futile only where the Supreme Court has "decisively foreclosed" the argument. *Id.*; *see also Mitchell*, 43 F.3d at 615 (stating that raising a claim on direct appeal is futile only if "then-controlling Supreme Court precedent squarely bar[s] [the] claim"). Here, no reasonable jurist could conclude that Beasley's claim was futile at the time that he could have taken a direct appeal because, at that time, there was no Supreme Court precedent that conclusively barred the argument that § 924(c)(3)(B) is unconstitutionally vague. Thus, reasonable jurists would agree that Beasley failed to establish cause to excuse his procedural default.

As noted above, a petitioner may also overcome a procedural default by showing that he is actually innocent. But this court recently held in *United States v. Witham* that *Bousley* requires plea bargainers to show actual innocence of dismissed counts that are "equally serious" to—not only "more serious" than—the offense of conviction to obtain review of a defaulted claim. 97 F.4th 1027, 1034 (6th Cir. 2024). Here, Beasley did not argue—much less show—that he is actually innocent of the § 924(c) offense charged in Count 5, brandishing a firearm during a Hobbs Act robbery; nor has he suggested that the Count 5 offense is not of equal or greater seriousness than the Count 3 offense. *See id.* Reasonable jurists would therefore agree that Beasley has not made a substantial showing of actual innocence so as to overcome the procedural default of his *Davis* claim. *See Hampton v. United States*, 46 F. App'x 827, 829 (6th Cir. 2002) (affirming denial

of a motion to vacate because the petitioner "failed to meet his burden of establishing his actual innocence to the dismissed charges," as *Bousley* requires); *United States v. Welker*, 474 F. App'x 536, 536 (9th Cir. 2012) (affirming denial of a § 2255 motion to vacate because the petitioner "failed to demonstrate that he is actually innocent of multiple counts of . . . more serious charges . . . that the government agreed to forego during the course of plea negotiations").

The court therefore **DENIES** the motion for a COA and **DENIES** as moot the motion for leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

FILED
Jun 3, 2024
KELLY L. STEPHENS, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-5874

CHARLTON BEASLEY,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Before: BOGGS, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Charlton Beasley for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

COPY

Charlton Beasley Appellant,	)	
V.	)	Appeal No. 23-5874
United States of America Appellee.	)	

MOTION TO STAY
Pursuant TO Rule 41(b)

Purpose Of Motion:

28 U.S.C. §2101(f) (when final judgement of any court is subject to review by Supreme Court on writ of certiorari, enforcement of judgement may be stayed for "reasonable time to enable the party aggrieved to obtain a writ of certiorari"; "stay may be granted by a judge of the court rendering the judgement... or by a justice of the Supreme Court"), fed. R. App. P. 41(b)

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On 09/30/24, the Sixth Circuit Court of Appeals denied Beasley's Petition for Rehearing. Beasley asserts that this denial was premature because the court did not review all of Beasley's filings, nor grant relief.

On 08/15/24, Beasley had a paralegal, that his wife hired, to file a Petition for Rehearing. Beasley then filed his own Supplement Motion

which was received by this court on 09/09/24, but the court rejected this motion and sent it back to Beasley stating that he cannot simply substitute one petition with another. As a pro se litigant, the court should have liberally construed Beasley's motion to ascertain his intended course of action. Beasley then sent another motion to Amend Petition for Panel Rehearing and/or Rehearing En Banc on 09/26/24. Four days later on 09/30/24, the court denied Beasley's petition stating that the court concluded that it did not overlook or misapprehend any point of law or fact in denying Beasley's request for a C.O.A.

Beasley states here that this denial is in major error because the court continuously has not answered his claims and that the court only keeps denying him with vague justifications in order to not grant him relief.

By the court rejecting Beasley's motion to supplement, the court is denying Beasley his due process rights as a litigant to make any necessary filings, eg. supplements or Amendments, during the process towards seeking relief. By Beasley being denied simply filing a motion he is being grossly and repeatedly abused and denied justice due to his arguments being prevented from being filed.

In his Motion To Amend Petition for Panel Rehearing and/or Rehearing En banc, Beasley raised 8 issues. These issues were; 1) A Clisby error, 2) Buck v. Davis claim, 3) Beasley explained how his supposed procedural default is a false claim due to him already overcoming a procedural default in 2020, 4) Davis' Supreme Court decision, 5) dismissed Count 5 was never reinstated, 6) Beasley explained how he is actually innocent of Count 5's dismissed charge and that reinstatement is barred due to the statute of limitations period lapsing, 7) Beasley explained that to hold him liable for a charge that the government itself admitted he is innocent of, is in violation of the 13th Amendment, 8) Beasley said that if the court refuses to grant him relief then he would like to withdraw his plea, especially since he can no longer be held to the terms of the plea agreement due to the changed laws governing his charges.

None of these issues were responded to, which is the exact basis of Beasley's Clisby claim made in the petition that was denied. Beasley filed his Amended Petition before the Court made it's decision to deny him, so it was in fact timely. Clisby v. Jones,

960 F. 2d 925, 936 (11th Cir. 1992) (en banc), directs courts to resolve All claims for relief in a petition prior to granting or denying relief. See Also Rhode v. United States, 583 F. 3d 1289, 1291 (11th Cir. 2009) (Applying Clisby to Federal prisoner's §2255 motion).

Conclusion

Beasley's core issues have yet to be heard due to the Sixth Circuit's frivolous denials based on everything except the merits of the issues raised. In order for the court to fulfill it's role to properly Adjudicate cases And controversies, All facts must be brought to the light to be examined so that a sound decision can be made. The decisions made thus far is in clear error. Stay of Judgement needed while awaiting Certiorari.

Respectfully submitted on this 15th day of October, 2024.

Charlton E Beasley
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FCI Edgefield
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Edgefield, SC 29824

Certificate of Service

A copy of this motion was sent to the following parties via USPS mailing service on October 15, 2024.

Sixth Cir. Court of Appeals
100 E. 5th St.
Cincinnati, OH 45202

Assisstant District Attorney
Tony Arvin
167 N. Main St.
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Memphis, TN 38103

Signed under penalty of perjury on this 15th day of October, 2024.

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