

No.

In The Supreme Court Of The United States

Gustavo Navaro,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

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Appendix A

United States v. Navaro,

23-4321 (9th Cir. Sept. 12, 2024) (unpublished)

Order denying certificate of appealability

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 12 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GUSTAVO NAVARO,

Defendant - Appellant.

No. 23-4321

D.C. No. 2:15-cr-00180-RFB-1

District of Nevada,
Las Vegas

ORDER

Before: CALLAHAN and M. SMITH, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 7) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

Appendix B

United States v. Navaro,

No. 2:15-CR-00180-RFB-1, 2024 WL 263830

(D. Nev. Jan. 24, 2024) (unpublished)

Order denying certificate of appealability

2024 WL 263830

Only the Westlaw citation is currently available.

United States District Court, D. Nevada.

UNITED STATES of America, Plaintiff,

v.

Gustavo NAVARO, et al., Defendants.

Case No. 2:15-cr-00180-RFB-1

|

Signed January 24, 2024

Attorneys and Law Firms

Elizabeth Olson White, Lisa Cartier-Giroux, United States Attorneys Office - District of Nevada, Las Vegas, NV, for Plaintiff.

ORDER

RICHARD F. BOULWARE, II, UNITED STATES DISTRICT JUDGE

*1 On May 22, 2023, the Court denied Defendant Gustavo Navaro and his co-defendant's Motions to Vacate [ECF Nos. 72, 74]. ECF Nos. 109, 110. Mr. Navaro argued that aiding and abetting a carjacking does not qualify as a crime of violence. The Court rejected this argument, finding that it was foreclosed by Young v. United States, 22 F.4th 1115 (9th Cir. 2022). A felony qualifies as a crime of violence only if it “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” United States v. Davis, 139 S. Ct. 2319, 204 L. Ed. 2d 757 (2019). The Ninth Circuit has held that federal carjacking is categorically a crime of violence under § 924(c). United States v. Gutierrez, 876 F.3d 1254 (9th Cir. 2017);

see also United States v. Eckford, 77 F.4th 1228 (9th Cir. 2023) (applying the reasoning in Gutierrez post-Davis to hold Hobbs Act robbery is a crime of violence under § 924(c)(1)(A)); United States v. Buck, 23 F.4th 919 (9th Cir. 2022) (similar); United States v. Burke, 943 F.3d 1236 (9th Cir. 2019) (similar). The Ninth Circuit has also affirmed that “one who aids and abets the commission of a violent offense has been convicted of the same elements as one who was convicted as a principal.” United States v. Eckford, 77 F.4th 1228, 1237 (9th Cir. 2023) (reaffirming the holding of Young that “aiding and abetting a crime of violence is also a crime of violence.”).

The Court's May 22, 2023 order was a final order adverse to Mr. Navaro. As such, Rule 11(a) of the Rules Governing Section 2255 Cases requires this Court to issue or deny a certificate of appealability (COA). See also 28 U.S.C. § 2253(c)(1)(B). Without a COA, Mr. Navaro “may not appeal that denial.” United States v. Washington, 653 F.3d 1057, 1059 (9th Cir. 2011). To issue a COA, the Court must find that Mr. Navaro “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Under this standard, the Court looks for a showing that “reasonable jurists would find [this Court's] assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Because the Court finds that settled, binding caselaw disposes of Mr. Navaro's claims, the Court finds that no reasonable jurist could find the Court's assessment debatable or wrong.

IT IS THEREFORE ORDERED that Defendant Gustavo Navaro is DENIED a Certificate of Appealability.

All Citations

Slip Copy, 2024 WL 263830

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Appendix C

United States v. Navaro,

No. 2:15-CR-00180-RFB-1, Dkt. No. 109

(D. Nev. May 22, 2023) (unpublished)

Order denying motion to vacate

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 v.

9 GUSTAVO NAVARO et al.,

10 Defendants.

Case No. 2:15-cr-0180-RFB

ORDER

11
12 Before the Court are Defendants' Motion(s) to Vacate. ECF Nos. 72 and 74. In their
13 motions, Defendants argue that their convictions should vacated because their crime of conviction,
14 aiding and abetting carjacking, does not qualify as a crime of violence in light of United States v.
15 Davis, 139 S.Ct. 2319 (2019). The Court rejects Defendants' argument and denies their motions.
16 The Court finds that the Defendants' argument is and has been foreclosed by controlling Ninth
17 Circuit precedent in Young v. United States, 22 F.4th 1115 (9th Cir. 2022).

18
19 For the reasons stated,

20 **IT IS ORDERED** that the Motions to Vacate [ECF Nos. 72 and 74] are DENIED.

21 **IT IS FURTHER ORDERED** that the Motion for Leave [ECF No. 103] is GRANTED.

22
23 **DATED:** May 22, 2023.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE