

APPENDIX 1

UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA
v.
CHRISTOPHER LAMONT TARRIO

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:08cr1TSL-LRA-001

USM Number: 09416-043

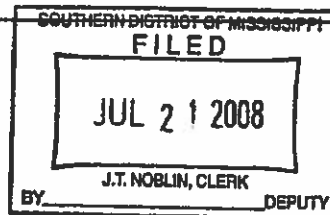
Larry Yarbrough
P.O. Box 22883, Jackson, MS 39225-2883

Defendant's Attorney:

THE DEFENDANT:☒ pleaded guilty to count(s) 1 and 2☐ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2113(a) and (b)	Armed Bank Robbery	12/20/07	1
18 U.S.C. § 924(c)(1)	Brandishing a Firearm During Crime of Violence	12/20/07	2



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.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) 3 ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

July 11, 2008

Date of Imposition of Judgment

Signature of Judge

The Honorable Tom S. Lee
Name and Title of Judge

Senior U.S. District Court Judge

Date

7/21/08

AO 245B (Rev. 06/05) Judgment in Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 2 of 6

DEFENDANT: CHRISTOPHER LAMONT TARRIO
CASE NUMBER: 3:08cr1TSL-LRA-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

188 months as to Count 1, and 84 months as to Count 2, to run consecutively. These terms shall run consecutively to the revocation sentence in Hinds County, Mississippi Circuit Court Cause Number 97-3-264.

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

The Court recommends the defendant not be incarcerated at Yazoo City FCI due to safety issues and/or past gang involvement.

The Court recommends the defendant participate in the Residential Drug and Alcohol Treatment Program while incarcerated.

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

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

- ☐ at _____ ☐ a.m. ☐ p.m. on _____ .
☐ as notified by the United States Marshal.

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

- ☐ before 2 p.m. on _____ .
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CHRISTOPHER LAMONT TARRIO
CASE NUMBER: 3:08cr1TSL-LRA-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: *5 year(s)

*5 years as to each count, 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 above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or 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 and shall submit a truthful and complete written report within the first five days of each month;
- 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 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 of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two 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; and
- 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.

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 3C — Supervised Release

Judgment—Page 4 of 6

DEFENDANT: CHRISTOPHER LAMONT TARRIO
CASE NUMBER: 3:08cr1TSL-LRA-001

SPECIAL CONDITIONS OF SUPERVISION

(A) The defendant shall submit to random urinalysis testing and complete any substance abuse treatment program deemed necessary by the supervising U.S. Probation Officer.

(B) The defendant is to provide any financial information, business or personal, to the U.S. Probation Office upon request and is prohibited from incurring new charges or opening additional lines of credit without the approval of the U.S. Probation Office

DEFENDANT: CHRISTOPHER LAMONT TARRIO
CASE NUMBER: 3:08cr1TSL-LRA-001**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	* \$200.00	\$1,000.00	\$1,043.00
	*\$100 each count		

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

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

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
BankPlus		\$1,043.00	
Attn: John Murphy			
217 Clinton Boulevard			
Clinton, MS 39056			

TOTALS	\$	<u>0.00</u>	\$	<u>1,043.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

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

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

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

DEFENDANT: CHRISTOPHER LAMONT TARRIO
CASE NUMBER: 3:08cr1TSL-LRA-001**SCHEDULE OF PAYMENTS**

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

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

The restitution is payable immediately and is payable joint and several with codefendant, Langcola Mouton. Any balance remaining upon release from imprisonment shall be paid in monthly installments of at least \$50, beginning 30 days after release from imprisonment.

The fine is payable immediately. Any balance remaining upon release from imprisonment shall be paid in monthly installments of \$50, commencing after the restitution is paid in full.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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 Court P. O. Box 23552, Jackson, MS 39225-3552.

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

☒ **Joint and Several**

Case Numbers (including defendant number) and Defendant and Co-Defendant Names, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Langcola Mouton; Docket No. 3:08cr1-002; \$1,043, BankPlus, Clinton, Mississippi.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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

APPENDIX 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:08CR1TSL-LRA
CIVIL ACTION NO. 3:16CV482TSL

CHRISTOPHER LAMONT TARRIO

ORDER

This cause is before the court upon the motion of defendant Christopher Lamont Tarrío for relief pursuant to 28 U.S.C. § 2255 and the motion of the government to dismiss. Having reviewed the parties' motions and submissions, together with the record in this case, the court concludes that defendant's motion is not well taken and should be denied and that the government's motion to dismiss should be granted.

On January 8, 2008, the grand jury returned a three-count indictment, charging Tarrío with aggravated bank robbery in violation of 18 U.S.C. §§ 2 and 2113(a) and (d) (Count 1); brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1) (Count 2); and felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) (Count 3). Following Tarrío's guilty plea to Counts 1 and 2, the court sentenced him to a 188-month term of imprisonment on the aggravated bank robbery charge based, in part, on finding that Tarrío qualified as a career offender pursuant to U.S.S.G.

§4B1.1.¹ Without the career offender enhancement, the guideline range for Count 1 would have been 70 to 87 months. The court further imposed a seven-year term of imprisonment for brandishing a firearm during a crime of violence to run consecutive to the sentence for aggravated bank robbery.²

Tarrio has filed his first motion for relief pursuant to § 2255, seeking resentencing as to the aggravated bank robbery and vacatur of the brandishing conviction under § 924(c)(1), based on the Supreme Court's decision in Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015). In Johnson, the Supreme Court found the definition of "violent felony" in the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(ii), to be unconstitutionally vague. The residual clause invalidated by Johnson defined "violent felony" to mean a crime that "involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii).

¹ In 2008, §4B1.1(a) provided:
A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

² On the government's motion, the court dismissed count 3.

Tarrio first argues that under Johnson, the similarly worded residual clause set out in §4B1.1(a) is unconstitutionally vague, such that he is entitled to be resentenced on Count 1 without the career offender enhancement. This position has been rejected by the Supreme Court. Beckles v. United States, No. 15-8544, 2017 WL 855781, at *11 (U.S. Mar. 6, 2017) ("Because the advisory Sentencing Guidelines are not subject to a due process vagueness challenge, § 4B1.2(a)'s residual clause is not void for vagueness."). He next asserts that since the language of § 924(c)(3)(B), defining a "crime of violence" for purposes of a conviction under § 924(c)(1), is similar to the now invalidated definition of a "violent felony" under the ACCA, then his conviction of count 2 must be vacated. However, the Fifth Circuit has recently held "Johnson does not invalidate § 924(c)(3)(B)." United States v. Davis, No. 16-10330, 2017 WL 436037, at *2 (5th Cir. Jan. 31, 2017). Accordingly, his motion is without merit and is due to be dismissed.

Based on the foregoing, it is ordered that the government's motion to dismiss is granted and that Tarrio's motion is dismissed with prejudice.

It is further ordered that a certificate of appealability is denied. Defendant has failed to show that "jurists of reason would find it debatable whether the petition states a valid claim

of the denial of a constitutional right." Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 13th day of March, 2017.

/s/ Tom S. Lee _____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:08CR1TSL-LRA
CIVIL ACTION NO. 3:16CV482TSL

CHRISTOPHER LAMONT TARRIO

JUDGMENT

Pursuant to the court's order entered this day, it is hereby
ORDERED AND ADJUDGED that Tarrio's motion to vacate under § 2255
is dismissed with prejudice.

SO ORDERED this 13th day of March, 2017.

/s/ Tom S. Lee _____
UNITED STATES DISTRICT JUDGE

APPENDIX 3

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-60183
USDC No. 3:16-CV-482
USDC No. 3:08-CR-1-1



A True Copy
Certified order issued Nov 06, 2017

Steph W. Cuyca
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CHRISTOPHER LAMONT TARRIO,

Defendant-Appellant

Appeal from the United States District Court for the
Southern District of Mississippi

ORDER:

Christopher Lamont Tarrio, federal prisoner # 09416-043, seeks a certificate of appealability (COA) to challenge the district court's dismissal of his 28 U.S.C. § 2255 motion. He seeks to argue that his conviction for brandishing a firearm during a crime of violence, pursuant to 18 U.S.C. § 924(c)(1), should be vacated in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015).

A COA may be issued only if the movant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the district court's dismissal of a movant's constitutional claims is on the merits, the COA movant

No. 17-60183

must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 484.

Tarrio has not made the required showing. Accordingly, his motion for a COA is DENIED.

/s/Edith H. Jones

EDITH H. JONES
UNITED STATES CIRCUIT JUDGE