

APPENDIX 1

UNITED STATES DISTRICT COURT
Southern District of Mississippi
Jackson Division

UNITED STATES OF AMERICA

V.

Jonathan Floyd

JUDGMENT IN A CRIMINAL CASE

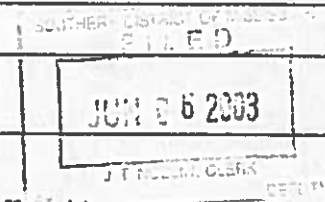
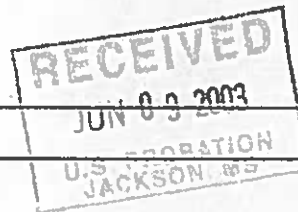
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:03cr11LN-001

Defendant's Attorney: Kathy Nester
P. O. Box 982
Ridgeland, MS 39158

THE DEFENDANT:

- ☐ pleaded guilty to Count(s) _____
- ☐ pleaded nolo contendere to Count(s) _____
which was accepted by the Court.
- ☒ was found guilty on Count(s) One, Two, and Three
after a plea of not guilty.



ACCORDINGLY, the Court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 844(h)(1)	Use of Fire to Commit a Felony	12/16/02	One
18 U.S.C. § 2113(a) & (d)	Armed Bank Robbery	12/16/02	Two
18 U.S.C. § 924(c)(1)	Brandishing a Firearm During a Crime of Violence	12/16/02	Three

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) _____ ☐ is ☐ are dismissed on the motion of the United States.

IT IS 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 the defendant's economic circumstances.

Defendant's Soc. Sec. No.: 425-41-7708Defendant's Date of Birth: 03/03/81Defendant's USM No.: 06820-043

Defendant's Residence Address:

2028 East 117th StreetBurnsville, MN 55337

May 29, 2003

Date of Imposition of Judgment

Signature of Judicial Officer

Tom S. Lee, Chief U.S. Probation Officer
Name and Title of Judicial Officer

A TRUE COPY, I HEREBY CERTIFY.

6/6/03

Date

Defendant's Mailing Address: J. T. NOBLIN, CLERK

Same as above

BY:

DEPUTY CLERK

DEFENDANT: FLOYD, Jonathan
CASE NUMBER: 3:03cr11LN-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 120 months as to Count One, 51 months as to Count Two and 84 months as to Count Three, to run consecutively to the other (255 months total). The cost of incarceration is waived.

■ The Court makes the following recommendations to the Bureau of Prisons:
The defendant shall participate in a mental health program during the period of incarceration.

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

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

☐ by _____ ☐ 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: FLOYD, Jonathan
CASE NUMBER: 3:03cr11LN-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to Count One and five (5) years as to Counts Two and Three, to run concurrently.

The defendant shall 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 illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

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.

☐ The above drug testing condition is suspended, based on the Court's determination that the defendant poses a low risk of future substance abuse.

☒ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this Court (set forth below). The defendant shall also comply with the 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;
- 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.

DEFENDANT: FLOYD, Jonathan
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SPECIAL CONDITIONS OF SUPERVISION

- (A) The defendant shall participate in an alcohol/drug aftercare program at the direction of the U.S. Probation Officer.
- (B) The defendant shall participate in a mental health aftercare program at the direction of the U.S. Probation Officer.
- (C) The defendant shall provide any requested financial information to the U.S. Probation Officer.

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300.00*	\$	\$ 7,031.69
	*\$100 as to each count		

- ☐ The determination of restitution is deferred until _____ . An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.
- ☐ The defendant shall 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 in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
Union Planters Bank 25073 Highway 51 North Crystal Springs, MS 39059		\$7,031.69	

TOTALS \$ _____ \$ 7,031.69

- ☐ If applicable, restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution 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 5, Part B 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 and/or ☒ restitution.
- ☐ the interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for 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:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C, ☒ D, or ☐ E below); or
- C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of not less than \$ _____ 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 monthly (e.g., equal, weekly, monthly, quarterly) installments of not less than \$ 125.56 over a period of 56 months (e.g., months or years), to commence 30 days (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the Court has expressly ordered otherwise in the special instruction 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.

☐ Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

- ☐ 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) community restitution, (6) fine interest (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. 3:03CR11TSL-JCS
CIVIL ACTION NO. 3:16CV466TSL

JONATHAN FLOYD

ORDER

This cause is before the court on the motion of defendant Jonathan Floyd for relief pursuant to 28 U.S.C. § 2255.¹ The government has responded in opposition to the motion. The court, having reviewed the parties' memoranda of authorities, together with additional pertinent authorities and the record in this case, concludes that defendant's motion is not well taken and should be denied.

On January 8, 2003, the grand jury returned a three-count indictment against Floyd, charging him with use of a firearm to commit a felony in violation of 18 U.S.C. § 844(h)(1) (Count 1); aggravated bank robbery in violation of 18 U.S.C. § 2113(a) and (d) (Count 2); and brandishing a firearm during a crime of

¹ Floyd originally filed his motion pro se. On August 9, 2016, the Federal Public Defender entered an appearance on Floyd's behalf pursuant to the court's June 30, 2016 amended standing order appointing counsel for indigent defendants in connection with the Supreme Court's decision in Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015).

violence in violation of 18 U.S.C. § 924(c)(1) (Count 3). On May 29, 2003, the court entered judgment against Floyd upon a jury's finding of guilt on all counts. The court imposed sentences of 120 months, 51 months and 84 months, respectively, as to Counts 1 through 3, to run consecutively. Floyd appealed, and on August 31, 2004, the Fifth Circuit entered its judgment affirming his conviction and sentence.

Floyd has filed his first motion for relief pursuant to § 2255, seeking to vacate his conviction under 18 U.S.C. 924(c)(1) (Count 3) 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).² 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). Floyd argues 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"

² The government has argued that Floyd's petition is barred as it was not timely filed. The court need not address this issue since the motion is due to be dismissed on the merits.

under the ACCA, then his conviction 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 petition is without merit and is due to be dismissed.

Based on the foregoing, it is ordered that Floyd's petition 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 21st day of February, 2017.

/s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CIVIL ACTION NO. 3:16CV466TSL
CRIMINAL NO. 3:03CR11TSL-JSC

JONATHAN FLOYD

JUDGMENT

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

SO ORDERED this 21st day of February, 2017.

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

APPENDIX 3

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-60118



A True Copy
Certified order issued Feb 23, 2018

Julie W. Cuyler
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JONATHAN FLOYD,

Defendant-Appellant

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

O R D E R:

Jonathan Floyd, federal prisoner # 06820-043, has moved for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2255 motion in which he attacked his convictions and sentences for federal bank robbery and brandishing of a firearm during and in relation to a crime of violence. Floyd asserts that the residual clause of 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague in light of the decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), and that federal bank robbery is not otherwise a predicate crime of violence for purposes of § 924(c).

Floyd is entitled to a COA if he makes a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When the district court's dismissal of a movant's constitutional claims is on the merits, the COA movant must show that

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“reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

This court has rejected the claim that § 924(c)(3)(B) is unconstitutional based on *Johnson*. See *United States v. Jones*, 854 F.3d 737, 740 (5th Cir.), *cert. denied*, 138 S. Ct. 242 (2017); *United States v. Chapman*, 851 F.3d 363, 374–75 (5th Cir. 2017). In any event, this court has determined that Floyd’s statute of conviction, 18 U.S.C. § 2113(a), is categorically a crime of violence for the purposes of U.S.S.G. § 4B1.2(a)(1). See *United States v. Brewer*, 848 F.3d 711, 714–16 (5th Cir. 2017). Because § 4B1.2(a)(1) defines “crime of violence” “in exactly the same manner as § 924(c)(3)(A),” *Jones*, 854 F.3d at 740, *Brewer* necessarily dictates that federal bank robbery is also categorically a “crime of violence” for the purposes of § 924(c)(3)(A). See *United States v. Ward*, 698 F. App’x 178, 178 (5th Cir. 2017); *United States v. Cosner*, 690 F. App’x 292, 293 (5th Cir. 2017). Accordingly, Floyd has not shown that his claims are debatable. His motion for a COA is DENIED.

/s/ James L. Dennis

JAMES L. DENNIS
UNITED STATES CIRCUIT JUDGE