

FILED: October 24, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6697
(4:13-cr-00024-FL-1)
(4:16-cv-00034-FL)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEJUAN FRAZIER, a/k/a Woogie

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6697

Rec 10/26/17

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEJUAN FRAZIER, a/k/a Woogie,

Defendant - Appellant.

—
•Appeal from the United States District Court for the Eastern District of North Carolina, at
Greenville. Louise W. Flanagan, District Judge. (4:13-cr-00024-FL-1; 4:16-cv-00034-
FL)

Submitted: October 19, 2017

Decided: October 24, 2017

—
Before NIEMEYER, MOTZ, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

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Dejuan Frazier, Appellant Pro Se. Seth Morgan Wood, Assistant United States Attorney,
Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dejuan Frazier seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Frazier has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

No. 4:16-CV-34-FL

Respondent.

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for fleeing or eluding arrest with a motor vehicle and assault on a law enforcement officer with a firearm are no longer valid predicate convictions for the career offender enhancement after the residual clause was voided in Johnson.¹ Petitioner concludes that he is no longer a career offender, and his sentence was improperly enhanced.

On July 19, 2016, this court stayed the case pending the Supreme Court's final decision in Beckles v. United States, 15-8544. On March 14, 2017, this court lifted the stay and ordered petitioner to show cause why his § 2255 motion should not be dismissed in light of Beckles v. United States, 137 S. Ct. 886 (2017). Both petitioner and the government have responded.

COURT'S DISCUSSION

A. Standard of Review

A petitioner seeking relief pursuant to 28 U.S.C. § 2255 must show 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.” 28 U.S.C. § 2255(a). “Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall . . . grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.” Id. § 2255(b).

B. Analysis

Prior to Johnson, an offense was deemed a “violent felony” under the Armed Career Criminal Act's (“ACCA”) so-called “residual clause” if it was punishable by greater than one year's imprisonment and “involve[d] conduct that present[ed] a serious potential risk of physical injury to

¹ Petitioner's counsel was appointed pursuant to Standing Order 15-SO-02.

another.” 18 U.S.C. § 924(e)(2)(B). In Johnson, the Supreme Court struck down the residual clause of the ACCA as unconstitutionally vague. 135 S. Ct. at 2563.

In this case, petitioner relies on Johnson’s reasoning to challenge application of a similar clause found in U.S.S.G. § 4B1.2(a) at the time of his sentencing. The Supreme Court recently held, however, that “the Guidelines are not amenable to a vagueness challenge.” Beckles, 137 S. Ct. at 894. Thus, because petitioner may not rely on Johnson’s reasoning to attack his career offender designation, the instant motion must be denied.

C. Certificate of Appealability

A certificate of appealability may issue only upon a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The petitioner must demonstrate that reasonable jurists could debate whether the issues presented should have been decided differently or that they are adequate to deserve encouragement to proceed further. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). After reviewing the claims presented on collateral review in light of the applicable standard, the court finds that a certificate of appealability is not warranted.

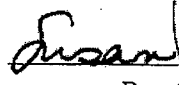
CONCLUSION

Based on the foregoing, the court DENIES petitioner’s motion to vacate (DE 47, 57). The court also DENIES a certificate of appealability. The clerk is DIRECTED to close this case.

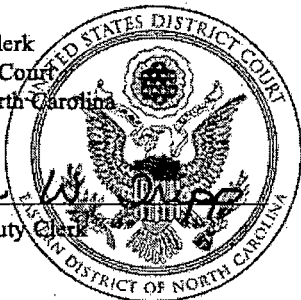
SO ORDERED, this the 23rd day of May, 2017.

I certify the foregoing to be a true and correct copy of the original.

Peter A. Moore, Jr., Clerk
United States District Court
Eastern District of North Carolina

By: 

Deputy Clerk




LOUISE W. FLANAGAN
United States District Judge

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