

Appendix G

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

IN RE: SEBASTIAN ECCLESTON,	)	CASE NO. 16-2126 & 16-2130
	)	
Movant	)	STATUS REPORT
	)	

Movant Sebastian Eccleston, through counsel, submits the following as a status report.

1. This case is a motion for authorization to file a second or successive post-conviction motion pursuant to 28 U.S.C. § 2255(h). Mr. Eccleston seeks leave to challenge his convictions for violating 18 U.S.C. § 924(c), which he claims were imposed under that statute’s unconstitutionally vague residual clause.

2. Mr. Eccleston initiated this proceeding in May of 2016. The following month, this Court *sua sponte* abated the case pending further order of the Court.

3. In July 2018, Mr. Eccleston moved to lift the abatement, arguing that that 28 U.S.C. § 2244(b)(3)(D) requires motions for authorization to be decided within 30 days and urging that Mr. Eccleston is being prejudiced by the delay. That motion remains pending, and there has been no docketed activity in this case for nearly a year.

4. On June 24, 2019, the Supreme Court decided *United States v. Davis*, No. 18-431, and held that § 924(c)’s residual clause is (as Mr. Eccleston has argued) unconstitutionally vague.

5. In light of *Davis*, and for the reasons set forth at pp. 2–4 of Mr. Eccleston’s motion to lift abatement, this Court should lift the abatement and grant Mr. Eccleston

authorization to file a second or successive § 2255 motion. Mr. Eccleston respectfully submits that due process requires a prompt resolution of this case.

Respectfully submitted,

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CERTIFICATIONS

I hereby certify that the following is true and correct to the best of my knowledge and belief, formed after a reasonable inquiry:

(1) This motion is proportionally spaced and contains 229 words and therefore complies with the applicable type-volume limitations.

(2) Any required privacy redactions have been made.

(3) If required to file additional hard copies, the ECF submission is, with the exception of any redactions, an exact copy of those hard copies.

(4) The ECF submission was scanned for viruses with the most recent version of a commercial virus scanning program Symantec AntiVirus Corporate Edition, which is continuously updated, and, according to the program is free of viruses.

(5) On July 1, 2019, I electronically filed the foregoing using the CM/ECF system, which will send notification of this filing to opposing counsel, viz.: Jack Burkhead, jack.e.burkhead@usdoj.gov.

(6) I sent a copy of the foregoing, via U.S. Mail, to Sebastian Eccleston

/s/ Josh Lee

JOSH LEE
Assistant Federal Public Defender