In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-12907

In re: RECO MAREESE DANIELS,

Petitioner.

Motion for Authorization to File a Second or Successive
Motion to Vacate, Set Aside,
or Correct Sentence, 28 U.S.C. § 2255(h)

Before GRANT, LUCK, and BLACK, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Reco Mareese Daniels has filed a motion seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if we certify that the second or successive motion contains a claim involving:

> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing

> evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). The movant must make a prima facie showing that the proposed claim satisfies those requirements. *Id.* § 2244(b)(3)(C); *see also In re Bowe*, 166 F.4th 1267, 1268 (11th Cir. 2026) (explaining that our determination that a movant has made a prima facie showing that the statutory criteria have been met is simply a threshold determination).

Daniels is a federal prisoner serving a 900-month sentence for, inter alia, convictions under 18 U.S.C. §§ 924(c) and 924(o) predicated on carjacking and attempted carjacking (in violation of 18 U.S.C. § 2119(1)-(2)) and interference with commerce by robbery (in violation of 18 U.S.C. § 1951(a)).

As a brief factual background, Daniels was charged in a second superseding indictment with: (1) conspiracy to possess firearms in furtherance of crimes of violence (specifically, attempted carjacking and carjacking, as charged in Counts 2 and 4), in violation of 18 U.S.C. § 924(o) (Count 1); (2) attempted motor vehicle theft, in violation of 18 U.S.C. § 2119(1)-(2) (Count 2); (3) brandishing of a firearm in furtherance of a crime of violence (specifically, attempted carjacking, as charged in Count 2), in violation of 18 U.S.C. § 924(c)(1)(A)(ii) (Count 3); (4) motor vehicle theft, in violation of 18 U.S.C. § 2119(1)-(2) (Count 4); (5) brandishing and

discharging of a firearm in furtherance of a crime of violence (specifically, carjacking, as charged in Count 4), in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii)-(iii) and 924(c)(1)(C)(i) (Count 5); (6) interference with commerce by robbery in violation of 18 U.S.C. 1951(a) (Count 6); and (7) brandishing of a firearm in furtherance of a crime of violence (specifically, interference with commerce by robbery, as charged in Count 6), in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii) and 924(c)(1)(C)(i) (Count 7). Daniels was also charged with aiding and abetting his codefendants in all seven counts, in violation of 18 U.S.C § 2.

In August 2012, Daniels, having been found guilty on Counts One through Seven of the second superseding indictment, was sentenced to a 1,044-month total term of imprisonment. Specifically, the district court sentenced Daniels to a term of: (1) 360 months as to Counts One, Two, Four, and Six, each to run concurrently to each other; (2) 84 months as to Count Three, to run consecutively; (3) 300 months as to Count Five, to run consecutively; and (4) 300 months as to Count Seven, to run consecutively.

In April 2018, Daniels filed his first § 2255 motion pro se. He argued, in relevant part, that in light of the Supreme Court's decisions in *Johnson v. United States*, 576 U.S. 591 (2015), and *Sessions v. Dimaya*, 584 U.S. 148 (2018), his 18 U.S.C. § 924(c) convictions on Counts 3, 5, and 7 were invalid because the predicate "crimes of violence" for those convictions were no longer crimes of violence. He supplemented his § 2255 motion to add, in relevant part, that his § 924(c) convictions on Counts 3, 5, and 7 were invalid under

the Supreme Court's decision in *United States v. Davis*, 588 U.S. 445 (2019).

In August 2021, the district court granted Daniels's § 2255 motion in part and vacated his sentences on Counts 1, 2, 4, and 6 because they exceeded the statutory maximum sentences. It otherwise denied his motion with prejudice in part as to his challenges to his § 924(c) convictions because, under our precedent at the time, both carjacking and Hobbs Act robbery were categorically crimes of violence under § 924(c).

That same month, the district court resentenced Daniels on Counts 1, 2, 4, and 6. It denied Daniels's motion for plenary sentencing on all counts, and therefore, he remained subject to the consecutive 57-year sentence on his 3, stacked § 924(c) convictions. The district court sentenced him to concurrent terms of 240 months on Counts 1 and 6 and 300 months on Counts 2 and 4 and to consecutive terms of 7 years on Count 3, 25 years on Count 5, and 25 years on Count 7, for a total term of 984 months.

In the district court, the parties jointly moved to vacate Count 3, the crime of violence charge predicated on an attempted carjacking, in light of the Supreme Court's decision in *United States v. Taylor*, 596 U.S. 845 (2022). The district court granted the motion.

In May 2023, the district court resentenced Daniels to a total term of 900 months' imprisonment. The sentence consisted of 40 months on each of Counts 1 and 6 and 300 months on each of Counts 2 and 4, with all terms on Counts 1, 2, 4, and 6 to run

consecutively to the extent necessary to produce a combined sentence equal to 696 months; 120 months on Count 5, to be served consecutively to all other counts; and 84 months on Count 7, to be served consecutively to all other counts.

In May 2023, Daniels, through counsel, appealed the amended judgment, arguing that (1) the district court erred in applying a two-level enhancement for obstruction of justice; and (2) his sentence was substantively unreasonable. In March 2024, we affirmed Daniels's sentence.

In January 2024, Daniels filed his second § 2255 motion pro se. He supplemented it several times. He argued, in relevant part, that his 900-month sentence was imposed in violation of, among other cases, *Davis*, *Johnson*, *Dimaya*, *Taylor*, *United States v. Dupree*, 57 F.4th 1269, 1277 (11th Cir. 2023) (en banc), *United States v. Reece*, 938 F.2d 630 (5th Cir. 2019), *United States v. Harper*, No. CV 1:04-CR-00218-SDG, 2024 WL 1053547 (N.D. Ga. Mar. 11, 2024), and *United States v. Obanion*, No. CR DKC 98-442-1, 2022 WL 18027791 (D. Md. Dec. 30, 2022). And he argued that he received ineffective assistance of counsel because his counsel was "combative" and did not incorporate into filings case law, specifically *Dupree* and *Harper*, that Daniels "informed" him of.

The district court denied Daniels's motion with prejudice. It found that Daniels's challenge to his sentence under *Davis* and related cases was procedurally barred because he did not make that challenge to his sentence in his direct appeal, and he did not show cause for his failure to do so. It further found that, regardless of the

procedural bar, his challenge under *Davis* and related cases "h[eld] no water" because his carjacking offense was "categorically a crime of violence under § 924(c)(3)(A)'s elements clause," and he was not "sentenced under § 924(c)(3)(B)'s residual clause." And his ineffective assistance of counsel claim was meritless to the extent it was based on his counsel's failure to argue that *Davis* and related cases invalidated his convictions, as they did not do so.

In his instant motion for authorization and attached pages, Daniels seeks to raise three claims in a second or successive § 2255 motion. First, he seems to argue that his convictions under §§ 924(c) and (o) are now invalid because carjacking, attempted carjacking, and interference with commerce by robbery are no longer predicate crimes of violence under § 924's use-of-force, elements, or residual clauses after the Supreme Court's decision in *Davis*. He also argues, without elaboration, that his equal protection rights were violated, and his due process rights were violated "in light of" *Dimaya*. In support of his claim, he points to *Davis* as both newly discovered evidence and as having announced a new rule of constitutional law. He also points to *Reece* as supporting his reading of *Davis*.

Second, he argues that he received ineffective assistance of counsel because his counsel "was aware of me filing my own motion," and "he did not file the cases and law I gave him." In particular, he argues, his counsel did not include *Harper* or *Dupree* in filings "upon [his] request," even though the defendant in *Harper* "ha[d] [his] exact same case charge and convictions," and *Dupree*

listed our en banc decisions that established that the § 924 predicate crimes of which he was convicted are no longer crimes of violence. He argues that both *Harper* and *Dupree* are both newly discovered evidence. And he argues that both *Harper* and *Dupree*—as well as "equal protection," "[d]ue process," *Davis*, *Reece*, *Dimaya*, and *Obanion*—announced new rules of constitutional law.

Third, he argues that a "6 point enhancement" of his sentence created "sentencing disparitie[s] in violation of *Davis*," "Double Jeopardy," and the Sixth and Eighth Amendments. He further claims that his sentences on Counts 1, 2, 3, 4, and 6 were changed from concurrent to consecutive sentences, in violation of the Fifth Amendment. He argues that *Davis* and *Reece* are newly discovered evidence. And he argues that *Davis* announced a new rule of constitutional law.

A movant seeking leave to file a second or successive habeas petition based on newly discovered evidence must show that the newly discovered evidence establishes that he was actually innocent of the offense. *In re Boshears*, 110 F.3d 1538, 1541 (11th Cir. 1997); *see also In re Sams*, 830 F.3d 1234, 1241 (11th Cir. 2016) (applying *In re Boshears* to a federal prisoner seeking relief under § 2255 and holding that the relied-upon Supreme Court cases did not qualify as "newly discovered evidence," as they did not establish the applicant's factual innocence of the offense of conviction).

We have interpreted the term "previously unavailable" in the successive application context "with reference to the availability of the claim at the time the first federal habeas application was

filed." *In re Hill*, 113 F.3d 181, 182 (11th Cir. 1997); *see In re Wright*, 942 F.3d 1063, 1065 (11th Cir. 2019) (holding that an applicant's cited cases failed to support his claim where the cases were either decided by the Supreme Court before he filed his original § 2255 motion or were decided by courts other than the Supreme Court). In an appeal of the dismissal of an authorized second § 2255 motion, we stated that the fact that the movant had presented a claim under *Johnson v. United States*, 576 U.S. 591 (2015) in his first § 2255 motion "necessarily means it was available to him then, which rules out it being 'previously unavailable,' a requirement under § 2255(h)(2)." *Randolph v. United States*, 904 F.3d 962, 964 (11th Cir. 2018).

In *Dimaya*, the Supreme Court struck down as unconstitutionally vague the residual clause in an immigration statute, 18 U.S.C. § 16(b). 584 U.S. at 160. In *Davis*, the Supreme Court extended its holding in *Dimaya* to § 924(c) and held that § 924(c)(3)(B)'s residual clause, like the residual clause in 18 U.S.C. § 16(b), is unconstitutionally vague. 588 U.S. at 450-53.

Here, Daniels's proposed claims do not satisfy the statutory criteria. First, none of Daniels's proposed claims satisfy 28 U.S.C. § 2255(h)(1) because they rely on *Davis*, *Dupree*, *Reece*, and *Harper* as newly discovered evidence, but judicial opinions are not "evidence" within the meaning of § 2255(h)(1) because they have no bearing on Daniels's individual factual innocence.

Second, none of Daniels's proposed claims satisfy 28 U.S.C. § 2255(h)(2). All of the cases and legal principles that Daniels's

proposed claims rely upon—*Davis*, *Dimaya*, *Dupree*, *Reece*, *Harper*, *Obanion*, equal protection, and due process—are either not Supreme Court cases, they were not previously unavailable to him, or both. More specifically, while *Davis* and *Dimaya* are both Supreme Court cases, they were not previously unavailable to Daniels; he cited both in the two § 2255 motions that he filed in the district court. And *Dupree*, *Reece*, *Harper*, *Obanion*, and the equal protection and due process clauses are not Supreme Court cases. Therefore, none of Daniels's proposed claims satisfy 28 U.S.C. § 2255(h)(2).

Accordingly, because Daniels has failed to make a prima facie showing of the existence of either of the grounds set forth in 28 U.S.C. § 2255, his motion for authorization to file a second or successive § 2255 motion is hereby DENIED.

Additional material from this filing is available in the Clerk's Office.