

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

v.

JUAN SANCHEZ

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CRIMINAL NO. 10-764

CIVIL NO. 14-2121

MEMORANDUM OPINION

Rufe, J.

October 11, 2016

Before the Court is Defendant Juan Sanchez’s Motion to Vacate, Set Aside, or Correct his Sentence Pursuant to 28 U.S.C. § 2255. For reasons that follow, the Court finds that the grounds pursuant to which Defendant brings his motion lack merit, and the Court will deny the Motion without an evidentiary hearing.¹

I. PROCEDURAL HISTORY

In August 2010, a search warrant executed at Defendant’s residence turned up four firearms which Defendant, a convicted felon, was prohibited from possessing.² Defendant was charged with two counts of possession of firearms by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), and convicted on one of the counts following a two-day jury trial in July 2012, during which Defendant was represented by counsel. Because Defendant had three prior convictions for possession of either cocaine or heroin with intent to distribute (“PWID”), he was subject to a mandatory minimum sentence of 15 years (or 180 months) under the Armed

¹ “In evaluating a federal habeas petition, a District Court must hold an evidentiary hearing ‘[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.’” *United States v. Kenley*, No. 10-1259, 2011 WL 3211508, at *1 (3d Cir. July 29, 2011). If the record as a whole “conclusively show[s] that the prisoner is entitled to no relief,” a court is not required to hold an evidentiary hearing. *United States v. Dawson*, 857 F.2d 923, 927 (3d Cir. 1988) (quoting *Gov’t of the Virgin Islands v. Bradshaw*, 726 F.2d 115, 117 (3d Cir. 1984)) (internal quotation marks omitted). Here, the Court finds that the record as a whole conclusively establishes that Defendant is entitled to no relief. Accordingly, the Court will deny the Motion without an evidentiary hearing.

² 18 U.S.C. § 922(g)(1).

Career Criminal Act (“ACCA”).³ Upon consideration of the Government’s pre-sentencing memorandum and after a hearing, Defendant was sentenced to 235 months in prison.⁴ Defendant appealed on the ground that the jury’s verdict was not supported by the evidence, and the Third Circuit affirmed his sentence.⁵

Defendant then filed this *pro se* Motion to vacate his sentence, arguing that his prior state-law PWID convictions did not qualify for a sentence enhancement under the ACCA, and that his trial counsel was ineffective for failing to object to his sentence on that ground.⁶ Defendant also submitted the Supreme Court’s 2015 decision in *Johnson v. United States*⁷ as supplemental authority, arguing that *Johnson* warranted relief from his sentence.⁸

II. STANDARD

Under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), a prisoner serving a sentence in federal custody may petition the court which imposed the sentence to vacate, set aside, or correct the sentence by asserting 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.”⁹ “Habeas corpus relief is generally available only to

³ 18 U.S.C. § 924(e).

⁴ Transcript of Sentencing Hearing (Doc. No. 72) at 42:12-22, *United States v. Sanchez*, 10-cr-764 (E.D. Pa. Dec. 5, 2012). Defendant was also sentenced to 4 years supervised release, a \$1,000 fine, and a \$100 special assessment. *Id.* at 43:20-47:16. Defendant’s sentence fell at the lowest end of the Federal Sentencing Guidelines, which recommended a sentence ranging from 235 to 293 months imprisonment. *See* Government’s Sentencing Memorandum, Doc. No. 60, at 6.

⁵ *See* Doc. No. 78.

⁶ Doc. No. 79.

⁷ 135 S. Ct. 2551 (2015).

⁸ Doc. No. 83.

⁹ 28 U.S.C. § 2255(a).

protect against a fundamental defect which inherently results in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands of fair procedure.”¹⁰

Where the movant’s claim for relief is based on the ineffectiveness of his counsel, the court must determine whether all non-frivolous claims, if true, conclusively fail to establish that counsel was ineffective.¹¹ The movant must demonstrate both that his attorney’s performance was deficient and that the deficiency caused him prejudice to establish that counsel was ineffective.¹² An attorney’s performance is deficient only if it falls “below an objective standard of reasonableness” and such deficiency prejudices the defense only where “there is a reasonable probability that, but for the counsel’s unprofessional errors, the result of the proceeding would have been different.”¹³

III. DISCUSSION

Defendant’s primary argument is that his prior drug offenses did not qualify for sentence enhancement under the ACCA because they were not “serious drug offenses” within the meaning of the statute. This argument is meritless.¹⁴

Under the ACCA, a person who is convicted of the possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1) and has three prior convictions for “a

¹⁰ *United States v. DeLuca*, 889 F.2d 503, 506 (3d Cir. 1989).

¹¹ *Gov’t of the Virgin Islands v. Weatherwax*, 20 F.3d 572, 574 (3d Cir. 1994) (citations and internal quotation marks omitted).

¹² *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *United States v. Shedrick*, 493 F.3d 292, 299 (3d Cir. 2007) (citation omitted).

¹³ *Shedrick*, 493 F.3d at 299 (citation and internal quotation marks omitted).

¹⁴ Defendant’s claim is also procedurally defaulted because he failed to raise it in his direct appeal. *See Hodge v. United States*, 554 F.3d 372, 379 (3d Cir. 2009) (“[A] movant has procedurally defaulted all claims that he neglected to raise on direct appeal.”) (citing *Bousey v. United States*, 523 U.S. 614, 621 (1998)). While Defendant could overcome this procedural default by showing either cause and prejudice or his actual innocence, *see id.*, he cannot do so because, as described below, his claim is legally baseless.

serious drug offense” must be sentenced to a minimum of fifteen years imprisonment.¹⁵ A serious drug offense includes “an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance . . . for which a maximum term of imprisonment of ten years or more is prescribed by law.”¹⁶ Defendant has three prior state-level convictions for PWID involving cocaine or heroin,¹⁷ each of which carries a maximum sentence of ten or more years under Pennsylvania law.¹⁸ The Court thus properly sentenced Defendant under the ACCA.

Defendant argues that because the sentences he received for his prior PWID convictions were each for terms of less than ten years, those convictions do not qualify as “serious drug offenses” under the ACCA.¹⁹ This argument misreads the statute, which by its plain terms requires only that a prior offense carry a statutory maximum term of ten or more years, not that the defendant actually *received* the statutory maximum.²⁰ Because Defendant’s argument is

¹⁵ 18 U.S.C. § 924(e)(1).

¹⁶ 18 U.S.C. § 924(e)(2)(A)(ii).

¹⁷ The convictions were as follows: CP-51-CR-0704661-2003 (Phila. Ct. Common Pleas Dec. 16, 2003) (pleading guilty to PWID heroin); CP-51-CR-1209421-1995 (Phila. Ct. Common Pleas Sept. 20, 1996) (pleading guilty to PWID heroin); and CP-51-CR-0206191-1995 (Phila. Ct. Common Pleas Dec. 11, 1995) (pleading guilty to PWID cocaine). *See generally* Presentence Investigation Report ¶¶ 46-59 (describing prior convictions).

¹⁸ 35 Pa. Stat. and Consol. Stat. Ann. § 780-113(f); *see also United States v. Tucker*, 703 F.3d 205, 210 (3d Cir. 2012) (“The statutory maximum for PWID cocaine or conspiracy to sell cocaine is ten years imprisonment.”); *Commonwealth v. Hooten*, No. 1944 WDA 2011, 2013 WL 11261649, at *8 (Pa. Super. Ct. July 29, 2013) (explaining that under Pennsylvania law “the maximum legal sentence that the trial court was authorized to impose upon [defendant’s] conviction for PWID (cocaine/110 grams) was ten years in prison, and the maximum sentence that the court could impose on [defendant’s] conviction for PWID (heroin) was fifteen years in prison”) (citations omitted) (non-precedential).

¹⁹ Petitioner’s Brief in Support of Motion to Vacate (Doc. No. 82) at 3-4. The Court notes that while Petitioner claims (Doc. No. 82 at 1) that he never received the government’s response (Doc. No. 81) to his motion, that response included a certificate of service, and appears to have been served on Petitioner.

²⁰ *See United States v. Strawder*, Criminal Action No. 2:15-cr-86, Civil Action No. 2:16-cv-348, 2016 WL 4183341, at *1 (W.D. Pa. Aug. 5, 2016) (rejecting similar argument, explaining that “the law is clear” on this point, and noting that “the United States Supreme Court and the Third Circuit Court of Appeals have repeatedly instructed district courts to look to the *statutory maximum* sentence (not the sentence a defendant actually received) in determining whether a conviction is qualifying for armed career criminal purposes”) (citations and internal quotation marks omitted).

legally baseless, the Court did not err in sentencing Defendant under the ACCA, and Defendant's counsel was not constitutionally ineffective for failing to challenge his sentence on this ground.

Defendant also argues that the Supreme Court's decision in *Johnson v. United States*, issued after Defendant's sentencing, requires reconsideration of his sentence.²¹ However, *Johnson* held only that the ACCA's so-called "residual clause"—a portion of the statute not invoked during Defendant's sentencing and thus not at issue here—was unconstitutionally vague.²² Because Defendant's sentence was based on his three prior convictions for "serious drug offenses," rather than the ACCA's residual clause, *Johnson* affords him no relief.²³

IV. CONCLUSION

For the reasons stated above, Defendant conclusively fails to establish that his sentence was improper or that his counsel was ineffective. As a result, his motion will be denied without a hearing. Because Defendant has not made a substantial showing of the denial of a constitutional right, a certificate of appealability shall not issue.²⁴

²¹ 135 S. Ct. 2551.

²² *Id.* at 2557.

²³ See *United States v. Rodriguez*, No. 16–1104, 2016 WL 3613354, at *1 n.1 (3d Cir. July 6, 2016) (per curiam) (non-precedential) (concluding that Defendant's sentence "based on three prior serious drug offenses . . . was not affected by *Johnson*").

²⁴ 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

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ORDER

AND NOW, this 11th day of October 2016, upon consideration of Defendant's Motion to Vacate, Set Aside, or Correct his Sentence Pursuant to 28 U.S.C. § 2255 (Doc. No. 79), the briefing in support thereof, and the response thereto, it is hereby **ORDERED** that for the reasons set forth in the accompanying Memorandum Opinion the motion is **DISMISSED**. No certificate of appealability shall issue, and no evidentiary hearing shall be held. The Clerk is directed to **CLOSE** this case.

IT IS SO ORDERED.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.