

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

**UNITED STATES**

v.

**RAFAEL ROBLES**

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**CRIMINAL NO. 02-552-04**

**MEMORANDUM OPINION**

**Rufe, J.**

**January 18, 2017**

Before the Court is the Motion of Defendant Rafael Robles to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255.<sup>1</sup> For reasons that follow, the Court finds that the sole claim raised in Defendant’s motion lacks merit, and the Court will deny the motion without an evidentiary hearing.<sup>2</sup>

Defendant’s only challenge to his sentence is based on the Supreme Court’s decision in *Johnson v. United States*,<sup>3</sup> and the Court discusses the facts and procedural history only as relevant to this claim. In 2003, Defendant pleaded guilty to conspiracy to distribute in excess of 50 grams of crack in violation of 21 U.S.C. § 846, possession of crack with intent to distribute within 1,000 feet of a school, in violation of 21 U.S.C. § 860(a), and possession of a firearm in furtherance of a drug trafficking offense in violation of 18 U.S.C. § 924(c).<sup>4</sup> After an unsuccessful attempt to withdraw his guilty plea, Defendant was given a mandatory minimum

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<sup>1</sup> Doc. No. 586.

<sup>2</sup> “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). 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.

<sup>3</sup> 135 S. Ct. 2551 (2015).

<sup>4</sup> Doc. No. 586 at 1; *see also* Doc. No. 183 (Guilty Plea Agreement).

sentence of twenty-five years of imprisonment, including a twenty-year mandatory minimum sentence on the drug counts and a five-year mandatory minimum sentence on the Section 924(c) count.<sup>5</sup> Defendant then filed an appeal, which was dismissed based on the appellate waiver provision in his plea agreement.<sup>6</sup> On June 29, 2016, Defendant filed this *pro se* motion for relief under 28 U.S.C. § 2255, arguing that the Supreme Court’s decision in *Johnson* warrants relief from his five-year sentence on the Section 924(c) count.<sup>7</sup>

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.”<sup>8</sup> “Habeas corpus relief is generally available only to 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.”<sup>9</sup>

Here, Defendant argues that his five-year mandatory minimum sentence on the Section 924(c) count should be vacated under *Johnson*, which held that the so-called “residual clause” of the Armed Career Criminal Act (“ACCA”) was void for vagueness.<sup>10</sup> Specifically, in *Johnson* the Supreme Court found the residual clause’s definition of “violent felony” unconstitutionally

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<sup>5</sup> Doc. No. 588 at 2-3 (Government’s Response in Opposition to Defendant’s Motion to Vacate Sentence Pursuant to 28 U.S.C. § 2255) (reciting factual history).

<sup>6</sup> *United States v. Robles*, 261 F. App’x 430, 432 (3d Cir. 2008) (non-precedential).

<sup>7</sup> Doc. No. 586 at 5.

<sup>8</sup> 28 U.S.C. § 2255(a).

<sup>9</sup> *United States v. DeLuca*, 889 F.2d 503, 506 (3d Cir. 1989).

<sup>10</sup> 135 S. Ct. 2551 (2015).

vague,<sup>11</sup> and Defendant appears to argue by extension that Section 924(c), which provides a five-year mandatory minimum sentence for the use or carrying of a firearm during a “crime of violence,” is invalid for the same reason.<sup>12</sup>

However, Section 924(c) also provides a five-year mandatory minimum for the use or carrying of a firearm during a “drug trafficking crime,” which is defined to include “any felony punishable under the Controlled Substances Act.”<sup>13</sup> Here, Defendant’s five-year mandatory minimum on the Section 924(c) count was based on his guilty pleas to counts of conspiracy to distribute crack cocaine and possession of crack with intent to distribute within 1,000 feet of a school—both indisputably “drug trafficking crimes” under Section 924(c). Because “*Johnson* does not call into question the statute’s unambiguous definition of ‘drug trafficking crime,’” Defendant’s argument fails.<sup>14</sup>

Thus, 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.<sup>15</sup> An appropriate Order will follow.

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<sup>11</sup> *Id.* at 2563.

<sup>12</sup> The entire text of Defendant’s argument is: “In light of the Supreme Court decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), which held that the residual clause of the Armed Career Criminal Act (ACCA) is unconstitutionally vague, and the § 924 language is identical to that of the ACCA, my conviction under § 924(c) must be vacated. *Welch v. United States*, made ‘*Johnson*’ retroactive on collateral review.” Doc. No. 586 at 5.

<sup>13</sup> 18 U.S.C. § 924(c)(1)(D)(2).

<sup>14</sup> *United States v. Parnell*, 652 F. App’x 117, 122 (3d Cir. 2016) (rejecting similar *Johnson*-based challenge to Section 924(c) sentence); *see also Thomas v. United States*, Civil Action No. 16-1009, Criminal Action Nos. 05-205 and 07-227, 2016 WL 7187838, at \*4 (W.D. Pa. Dec. 12, 2016) (denying similar *Johnson*-based challenge to Section 924(c) sentence because “*Johnson* in no way altered the operation of the drug trafficking portions of § 924(c)”).

<sup>15</sup> 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

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**CRIMINAL NO. 02-552-04**

**ORDER**

**AND NOW**, this 18th day of January 2017, upon consideration of Defendant's Motion to Vacate, Set Aside, or Correct his Sentence Pursuant to 28 U.S.C. § 2255 (Doc. No. 586) 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.