

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

UNITED STATES OF AMERICA

v.

RONALD STONE,

Criminal No. 14-55

PAPPERT, J.

April 16, 2019

MEMORANDUM

On March 27, 2014, a grand jury returned a five-count indictment against Ronald Stone in relation to robberies committed or attempted at Cosi restaurants in Philadelphia. (ECF No. 16.) Stone pled guilty, pursuant to a written plea agreement, to two counts of robbery which interferes with interstate commerce (Hobbs Act robbery), attempted Hobbs Act robbery and brandishing a firearm during a crime of violence. (ECF No. 95.) On December 15, 2017, Stone was sentenced to 192 months of imprisonment and five years of supervised release and ordered to pay a \$400 special assessment and \$3,900 in restitution. (ECF No. 143.)

On August 20, 2018, Stone moved to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Specifically, he asks the Court to vacate his conviction and sentence for brandishing a firearm during a crime of violence on the grounds that 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague and Hobbs Act robbery is not a predicate crime of violence under § 924(c)(3)(A). *See* (Def.'s Mot. 5–8, ECF No. 144). For the reasons that follow, the Court denies the Motion.

I

A prisoner in federal custody may move to vacate his sentence under 28 U.S.C. § 2255(a) if such “sentence was imposed in violation of the Constitution or laws of the United States.” 28 U.S.C. § 2255(a). A motion under § 2255 is a collateral challenge, which is viewed less favorably than a direct appeal. *United States v. Travillion*, 759 F.3d 281, 288 (3d Cir. 2014) (“[R]elief under § 2255 is available only when ‘the claimed error of law was a fundamental defect which inherently results in a complete miscarriage of justice, and . . . present[s] exceptional circumstances where the need for the remedy afforded by the writ . . . is apparent.’” (quoting *Davis v. United States*, 417 U.S. 333, 346 (1974))).

II

Stone was convicted for brandishing a firearm during a crime of violence under 18 U.S.C. § 924(c). The statute provides:

[A]ny person who, during and in relation to any crime of violence . . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence . . . if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years

18 U.S.C. § 924(c)(1)(A)(ii). “Crime of violence” is defined in 18 U.S.C. § 924(c)(3). The definition has two parts, known as the “elements clause” and the “residual clause.” *Rosello v. Warden F.C.I. Allenwood*, 735 F. App’x 766, 767 n.2 (3d Cir. 2018). The elements clause encompasses any felony that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. § 924(c)(3)(A). The residual clause includes any felony that, “by its nature,

involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” *Id.* at § 924(c)(3)(B).

In 2015, the United States Supreme Court held that the residual clause of the definition of “violent felony” in the Armed Career Criminal Act of 1984 was impermissibly vague in violation of the Due Process Clause of the Fifth Amendment. *Johnson v. United States*, 135 S. Ct. 2551, 2563 (2015). That clause contained language similar to 18 U.S.C. § 924(c)(3)’s residual clause. *See Johnson*, 135 S. Ct. at 2555–56 (2015) (“The Act defines ‘violent felony’ as . . . ‘any crime punishable by imprisonment for a term exceeding one year . . . that . . . involves conduct that presents a serious potential risk of physical injury to another.” (quoting 18 U.S.C. § 924(e)(2)(B)) (emphasis omitted)).

In 2018, the Supreme Court held that the residual clause of the federal criminal code’s definition of “crime of violence”—any felony that, “by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense”—as incorporated into the Immigration and Nationality Act’s definition of “aggravated felony,” was unconstitutionally vague. *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) (quoting 18 U.S.C. § 16(b)). Stone contends that because the residual clauses of 18 U.S.C. § 16(b) and § 924(c)(3) are identical, his sentence was unconstitutional and the Court must vacate his conviction.

The Government, in response, argues that *Dimaya* did not render Stone’s sentence unconstitutional because he was convicted and sentenced pursuant to the elements clause of § 924(c)(3), rather than the residual clause. The Court agrees. *Dimaya* did not invalidate the elements clause of § 924(c)(3); “[t]hus, even if this Court

were to assume, *arguendo*, that . . . *Dimaya* render[ed] the residual clause of § 924(c) unconstitutionally vague, Petitioner’s § 924(c) conviction would remain entirely valid.” *Darby v. United States*, 2018 WL 3412846 at *3 (D.N.J. July 12, 2018).

Since *Johnson*, the Third Circuit Court of Appeals has held that where, as here, a defendant is convicted of both Hobbs Act robbery and brandishing a firearm during the commission of a crime of violence, Hobbs Act robbery is a predicate crime of violence under the elements clause of 18 U.S.C. § 924(c)(3). *United States v. Robinson*, 844 F.3d 137, 139 (3d Cir. 2016) (declining to consider whether the residual clause of 18 U.S.C. § 924(c)(3) is void for vagueness). *Dimaya* did not disturb the Third Circuit’s holding in *Robinson*; it “merely applied *Johnson*.” *Lindsay v. United States*, 2018 WL 3370635 at *3 (D.N.J. July 10, 2018).

III

Stone may appeal the denial of his § 2255 motion only if the Court grants a certificate of appealability. 28 U.S.C § 2253. Because he cannot “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), no certificate of appealability will issue.

An appropriate Order follows.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.

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ORDER

AND NOW, this 16th day of April, 2019, upon consideration of Defendant's *pro se* Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (ECF No. 144) and the Government's Response (ECF No. 152), it is hereby **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.