

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

UNITED STATES OF AMERICA

v.

JAMES T. WILLIAMS,

Defendant.

CRIMINAL ACTION
NO. 95-407-1

OPINION

Slomsky, J.

January 30, 2020

On June 19, 2016, James T. Williams filed a successive Motion to Correct Sentence under 28 U.S.C. § 2255 seeking relief from his 18 U.S.C. § 924(c) convictions based on a claim that the predicate offense does not qualify as a “crime of violence.” (Doc. No. 448.) Mr. Williams also applied to the Third Circuit for authorization to file and litigate his motion. On August 27, 2019, the Third Circuit Court of Appeals granted Mr. Williams’ Application for Leave to File a Second or Successive Habeas Corpus Petition (Doc. No. 453), and that petition was transferred to this Court (Doc. No. 454). On November 7, 2019, Mr. Williams, through his counsel, notified the Court of binding Third Circuit precedent that would preclude Mr. Williams’ 28 U.S.C. § 2255 motion from being meritorious. (Doc. No. 458.) On December 4, 2019, the Court denied Mr. Williams’ 28 U.S.C. § 2255 motion (Doc Nos. 448, 454). (Doc. No. 459.)

On January 22, 2020, Mr. Williams appealed the Court’s December 4, 2019 Order (Doc. No. 459) to the Third Circuit Court of Appeals. (Doc. No. 460.) The Third Circuit issued an Order on January 28, 2020, remanding the matter to this Court to make a ruling under Rule 22(b) of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253 as to whether a certificate of

appealability should issue. Because a certificate of appealability should not issue in this case, the Court will state the reasons for this decision, as required under Rule 22(b).

Rule 22(b) states that an “applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” “If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.” United States v. Collins, No. 01-CR-00780, 2008 WL 343117, at *1 (E.D. Pa. Feb. 6, 2008). Under 28 U.S.C. § 2253(c), a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

Here, Mr. Williams’ § 2255 motion claimed that his conviction and sentence under 18 U.S.C. § 924(c) must be vacated because he was not convicted of an underlying “crime of violence.” § 924(c) prohibits brandishing a firearm during and in relation to any crime of violence. In this case, the predicate offense for each § 924(c) count was armed bank robbery in violation of 18 U.S.C. § 2113(d). As explained by Mr. Williams through his counsel in his Notice of Authority (Doc. No. 458), the Third Circuit has held that armed bank robbery under 18 U.S.C. § 2113(d) has an element of force and is a crime of violence. See United States v. Johnson, 899 F.3d 191, 202-04 (3d Cir. 2018). Therefore, armed bank robbery is a crime of violence for the purposes of § 924(c), notwithstanding that the United States Supreme Court deemed § 924(c)’s residual clause unconstitutionally vague in United States v. Davis, 139 S. Ct. 2319 (2019). Mr. Williams also challenged his Sentencing Guidelines enhancements in his § 2255 motion, but that challenge is untimely. See United States v. Green, 898 F.3d 315 (3d Cir. 2018). Thus, Mr. Williams has not made a substantial showing of the denial of a constitutional right. The Court will not issue a certificate of appealability. An appropriate Order follows.

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ORDER

AND NOW, this 30th day of January 2020, in accordance with the Third Circuit Court of Appeals' Order dated January 28, 2020 remanding this matter to the District Court for the sole purpose of either issuing a certificate of appealability or stating why a certificate of appealability should not issue (Doc. No. 464), and in accordance with the Court's Opinion issued this day, it is **ORDERED** that a certificate of appealability will not be issued because Petitioner has failed to make a substantial showing of the denial of a constitutional right.

BY THE COURT:

/s/ Joel H. Slomsky
JOEL H. SLOMSKY, J.