

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 2 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 17-35445

Plaintiff-Appellee,

D.C. Nos. 9:16-cv-00083-DWM

9:11-cr-00045-DWM-1

v.

SHAWN PATRICK MALARKEY,

MEMORANDUM\*

Defendant-Appellant.

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Submitted October 22, 2019\*\*  
Portland, Oregon

Before: FARRIS, BEA, and CHRISTEN, Circuit Judges.

Shawn Patrick Malarkey appeals the district court's order denying his motion to vacate his sentence imposed in connection with Count Two of the indictment: use of a firearm during a crime of violence under 18 U.S.C. § 924(c)(1)(A), where the predicate "crime of violence" is armed robbery

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

involving controlled substances under 18 U.S.C. § 2118(c)(1). We affirm.

For the reasons set forth in our concurrently filed opinion in *United States v. Burke*, No. 17-35446, we hold that armed robbery involving controlled substances qualifies as a crime of violence under § 924(c)(3)(A).

**AFFIRMED.**