IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DEMAREIO HARRIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE NO. 2:16-CV-415-WKW
	)	[WO]
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER

Is aiding and abetting a Hobbs Act robbery a "crime of violence" under 18 U.S.C. § 924(c)(3)(A)? The Magistrate Judge's Recommendation concludes that it is a crime of violence. (Doc. # 19.) The Recommendation is due to be adopted.

Petitioner Demareio Harris pleaded guilty to brandishing a firearm during a "crime of violence," a violation of 18 U.S.C. § 924(c)(1)(A)(ii). (Doc. # 4-5, at 2.) The term "crime of violence" is statutorily defined to mean a felony that

> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) 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.

18 U.S.C. § 924(c)(3). Clause (A) is called the "use-of-force clause," while clause (B) is known as the "residual clause." The predicate "crime of violence" for Harris's

conviction was aiding and abetting a Hobbs Act robbery in violation of 18 U.S.C. § 1951. (Doc. # 4-1, at 4; Doc. # 4-2, at 5; Doc. # 4-5, at 2.)

While incarcerated, Harris moved to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. (Doc. # 1.) He argues that a Hobbs Act robbery is not a "crime of violence" because it does not satisfy the § 924(c)(3)(A) use-of-force clause and because the § 924(c)(3)(B) residual clause is unconstitutionally vague. (Docs. # 1, 15, 23.)

The Magistrate Judge recommended that the court deny Harris's motion. (Doc. # 19.) Harris objected[1] to that Recommendation. (Doc. # 23, at 2.)[2] He also requested a stay pending the Eleventh Circuit's decision in a case about whether the residual clause is invalid. (Doc. # 23, at 1.)

As an initial matter, the court finds that Harris's objections are inadequate. An objection to a Magistrate Judge's Recommendation must "pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see* Fed. R. Civ. P. 72(b)(2) (requiring "specific" objections).

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[1] A September 5, 2018, docket entry incorrectly states that Harris failed to object.

[2] Harris is an incarcerated *pro se* litigant. His objections were due on August 22, 2018. (Doc. # 19, at 6.) "Under the prison mailbox rule, a *pro se* prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing. Absent evidence to the contrary, [courts] assume that the prisoner's filing was delivered to prison authorities the day he signed it." *Daker v. Comm'r, Ga. Dep't of Corr.*, 820 F.3d 1278, 1286 (11th Cir. 2016) (cleaned up). Harris dated his letter "August 22, 2018." (Doc. # 23, at 3.) There is no evidence that he delivered his objections on a later date. So his objection is timely.

"Frivolous, conclusive, or general objections need not be considered by the district court." *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988). Yet Harris simply "objects to the Magistrate's Report and Recommendation in its entirety." (Doc. # 23, at 2.) He does not identify specific errors in the Recommendation. Nor does he cite any authority. Instead, he merely repeats his argument in a few short sentences. (Doc. # 23, at 2–3.) So the court need not consider his objection.

Still, the court has conducted an independent and *de novo* review of the entire Recommendation. *See* 28 U.S.C. § 636(b). The Recommendation is due to be adopted.

The Eleventh Circuit held in *In re Saint Fleur* that a Hobbs Act robbery is a "crime of violence" under the use-of-force clause. 824 F.3d 1337, 1340–41 (11th Cir. 2016). The Eleventh Circuit also held in *In re Colon* that aiding and abetting a Hobbs Act robbery is a "crime of violence" under the use-of-force clause. 826 F.3d 1301, 1305 (11th Cir. 2016). Those decisions compel the conclusion that the predicate offense for Harris's conviction was indeed a crime of violence.

Because the predicate offense for Harris's conviction is a crime of violence under the use-of-force clause, there is no need to consider whether the residual clause is unconstitutionally vague. *See United States v. St. Hubert*, 883 F.3d 1319, 1328 (11th Cir. 2018); *In re Smith*, 829 F.3d 1276, 1280 (11th Cir. 2016). Nor is there any need to stay the case until the Eleventh Circuit decides that issue.

Thus, after *de novo* review of the record and the Recommendation, it is ORDERED that:

1. The motion for a stay (Doc. # 23) is DENIED;

2. The objection to the Recommendation (Doc. # 23) is OVERRULED;

3. The Recommendation of the Magistrate Judge (Doc. # 19) is ADOPTED;

4. The motion under 28 U.S.C. § 2255 (Doc. # 1) is DENIED;

5. The supplemental motion (Doc. # 15) is DENIED; and

6. This case is DISMISSED WITH PREJUDICE.

A separate Final Judgment will be entered.

DONE this 24th day of September, 2018.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE