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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Robert Lee Mays,  
10 Petitioner,

11 v.

12 USA,

13 Respondent.  
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No. CV-16-00501-PHX-FJM  
CR-08-01218-1-PHX-FJM

**ORDER**

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16 The court has before it Mays' Amended Motion to Vacate under 28 U.S.C. §2255  
17 (Doc. 5), the government's Response (Doc. 7), Mays' Reply (Doc. 9), the Report and  
18 Recommendation (Doc. 10), and Mays' Objection to the Report and Recommendation  
19 (Doc. 11).  
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21 Mays contends that each of his robbery convictions cannot count under 18 U.S.C.  
22 §924(e) because robbery is not a "violent felony" within the meaning of that section.  
23 Relying on *Johnson v. United States*, 130 S.Ct. 1265 (2010), he contends that the use or  
24 threatened use of physical force required under Arizona law is insufficient to constitute  
25 the use or threatened use of "violent force--that is capable of causing physical pain or  
26 injury to another person." *Id.* at 1271.  
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1 Relying on *State v. Bishop*, 144 Ariz. 521, 698 P.2d 1240 (1985), the magistrate  
2 judge concluded that force "of such a nature as to show that it was intended to overpower  
3 the party robbed," *Id.* at 524, under Arizona law, is sufficient to cause physical pain or  
4 injury to another person within the meaning of *Johnson*. Report and Recommendation at  
5 10 (Doc. 10). Therefore, the magistrate judge concluded that at least four of Mays' prior  
6 convictions for robbery offenses satisfied 18 U.S.C. §924(e).  
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9 Mays disagrees, but fails to demonstrate how threatening to use force sufficient to  
10 overpower the party robbed could possibly be insufficient to cause physical pain or injury  
11 to another. We therefore overrule the Objections, and accept the magistrate judge's  
12 recommended disposition (Doc. 10).  
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14 Accordingly, it is ORDERED DENYING Mays' Amended Motion to Vacate  
15 (Doc. 5).

16 It is further ORDERED DENYING a certificate of appealability under Rule 11,  
17 Rules Governing §2255 Proceedings, for the reason that Mays has not made a substantial  
18 showing of the denial of a constitutional right under 28 U.S.C. §2253(c).

19 Dated this 19th day of April, 2017.  
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24 **Frederick J. Martone**  
25 **Senior United States District Judge**  
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