United States District Court
Central District of California
Western Division

STEVIE LEON WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CV 16-04093 TJH
CR 99-00299 MMM

Order

JS-6

The Court has considered Petitioner Stevie Leon Williams's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 or, in the alternative, request for a certificate of appealability as to his claim pursuant to 28 U.S.C. § 2253(c)(2), together with the moving and opposing papers.

Petitioner challenges his sentence under 18 U.S.C. § 924(c), which is predicated on armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d).

Section 924(c) defines "crime of violence" under § 924(c)(3)(A) [the "Force Clause"] and § 924(c)(3)(B) [the "Residual Clause"]. This Court held that the Residual Clause is unconstitutionally vague, and that certain convictions — convictions that, under the categorical approach, *see Taylor v. United States*, 495 U.S. 575 (1990), fall

outside the Force Clause because the statutory elements of the conviction include conduct falling outside the Force Clause's definition of a "crime of violence" — must be vacated. *See Juan Becerra-Perez v. United States*, No. 2:16-cv-07046-TJH (C.D. Cal. Feb. 15, 2017). The Force Clause defines a "crime of violence" as a felony that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another[.]" § 924(c)(3)(A).

Sections 2113 (a) and (d) are crimes of violence under the Force Clause defined in § 924(c)(3)(A). *United States v. Wright*, 215 F.3d 1020, 1028 (9th Cir. 2000). Since *Wright*, the Ninth Circuit has reaffirmed that armed bank robbery qualifies as a crime of violence under the Force Clause. *United States v. Pritchard*, No. 15-50278, 2017 WL 2219005, at *1 (9th Cir. May 18, 2017). Subsection (a) provides for a felony conviction for bank robberies and incidental crimes committed "by force and violence, or by *intimidation*." 18 U.S.C. § 2113(a) (emphasis added). The Ninth Circuit has defined intimidation under § 2113 to mean "wilfully to take, or attempt to take, in such a way that would put an ordinary, reasonable person in fear of bodily harm," which comports with the requirement of a "threatened use of physical force" contained in the Force Clause. *United States v. Selfa*, 918 F.2d 749, 751 (9th Cir. 1990).

Similarly, subsection (d) includes "putting in jeopardy the life of any person by the use of a dangerous weapon or device." 18 U.S.C. § 2113(d). As such, even the most innocent conduct penalized under this section would qualify as a crime of violence. *See United States v. Watson*, No. 14-00751 01 DKW, 2016 WL 866298, at *7 (D. Haw. Mar. 2, 2016). Therefore, both subsections (a) and (d) fall within the definition of a crime of violence under 18 U.S.C. § 924(c)(3)(A). *Watson*, 2016 WL 866298, at *7. This conclusion is, further, supported by decisions in this Circuit reaching the same result. *See, e.g., McFarland v. United States*, No. CV 16-7166, 2017 WL 810267, at *4 (C.D. Cal. Mar. 1, 2017); *United States v. Salinas*, No. 1:08 CR 0338 LJO SKO, 2017 WL 2671059, at *7 (E.D. Cal. June 21, 2017).

A district court may issue a certificate of appealability "only if the applicant has

made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Such a showing requires the petitioner to "demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (alterations in original, emphasis omitted). Petitioner has not made a substantial showing of the denial of a constitutional right under any of the above bases.

Accordingly,

It is Ordered that the motion to vacate Petitioner's sentence under 18 U.S.C. § 924(c) be, and hereby is, **Denied**.

It is Further Ordered that Petitioner's request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2) be, and hereby is, **Denied**.

Date: July 27, 2017

Terry J. Hatter, Jr.
Senior United States District Judge