

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

Case No. CV 16-4851 DSF
CR 08-701 DSF

Date 3/30/17

Title United States v. Horacio Antonio Yuman-Hernandez

Present: The
Honorable

DALE S. FISCHER, United States District Judge

Debra Plato

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (In Chambers) Order DENYING Motion to Vacate, Set Aside, or Correct Sentence

Defendant argues that his sentence enhancement under 18 U.S.C. § 924(c) is invalid after Johnson v. United States, 135 S.Ct. 2551 (2015). He contends that Hobbs Act robbery is no longer a crime of violence absent the residual clause. Even assuming the claim is not time barred, it fails on the merits. In addition to the Hobbs Act finding, the trial judge found that Defendant had knowingly carried a firearm during, and possessed a firearm in furtherance of, a drug trafficking crime. Therefore, Defendant did not suffer any prejudice even if his stated position were correct. Defendant attempts to avoid this result by arguing that there was insufficient evidence at trial to support a § 924(c) enhancement relating to a drug trafficking offense. This argument fails for at least two reasons: (1) Defendant has never before challenged the sufficiency of the § 924(c) drug trafficking finding and such a challenge now is procedurally barred and (2) any challenge would fail on the merits. Defendant was convicted of conspiracy to possess with intent to distribute and to distribute cocaine. The predicate acts of this conspiracy included possession of a firearm in furtherance of robbing a “stash house” containing cocaine that the conspiracy would later distribute. The trial judge found Defendant guilty of the conspiracy count and of the § 924(c) count related to it. The evidence supported this finding.

The motion is DENIED. A certificate of appealability is DENIED because reasonable jurists would not disagree as to whether a constitutional right has been

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violated.

IT IS SO ORDERED.