

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

AARON DESHON SPEARS,

Petitioner,

v.

Case No: 2:07-cv-648-FtM-29SPC

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

This matter comes before the Court on petitioner's Motion to Amend and/or Reconsider (Doc. #188) filed on July 6, 2015. Petitioner seeks reconsideration of the Court's prior determinations that his second robbery conviction was a violent felony, citing Johnson v. United States, 135 S. Ct. 2551 (2015). Assuming this Court has jurisdiction under Fed. R. Civ. P. 60(b)(6) and/or 60(d), and assuming Johnson is retroactive, the motion is denied. Johnson found that the residual clause of the Armed Career Criminal Act violates the due process clause because it is unconstitutionally vague. All of petitioner's qualifying predicate convictions were based on the "elements" clause in 18 U.S.C. § 924(e), and none were based upon the residual clause. Therefore Johnson does not impact petitioner's case. United

States v. Harris, No. 14-2269, ___ F.3d ___, 2015 WL 4430481, *1 n.1 (8th Cir. July 21, 2015).

Accordingly, it is hereby

ORDERED:

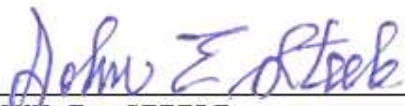
Petitioner's Motion to Amend and/or Reconsider (Doc. #188) is **DENIED.**

IT IS FURTHER ORDERED:

A CERTIFICATE OF APPEALABILITY (COA) AND LEAVE TO APPEAL IN FORMA PAUPERIS ARE DENIED. A certificate of appeal is required for an appeal of any denial of a Rule 60(b) motion for relief from a judgment in a 28 U.S.C. § 2255 proceeding. Williams v. Chatman, 510 F.3d 1290, 1294 (11th Cir. 2007). "A [COA] may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, Petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282 (2004), or that "the issues presented were adequate to deserve encouragement to proceed further," Miller-El v. Cockrell, 537 U.S. 322, 336 (2003)(citations omitted). Petitioner has not made the requisite showing in these circumstances.

Finally, because Petitioner is not entitled to a certificate of appealability, he is not entitled to appeal *in forma pauperis*.

DONE and ORDERED at Fort Myers, Florida, this 27th day of July, 2015.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Aaron DeShon Spears
Counsel of Record