

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

HARROLL HAMPTON,

Petitioner,

v.

CASE NO. 6:15-cv-1340-Orl-31TBS
(6:14-cr-55-Orl-31TBS)

UNITED STATES OF AMERICA,

Respondent.

ORDER

This cause is before the Court on a motion to vacate, set aside, or correct an illegal sentence pursuant to 28 U.S.C. § 2255 filed by Harroll Hampton (Doc. 1). The Government filed a response to the § 2255 motion in compliance with this Court's instructions and with the Rules Governing Section 2255 Proceedings for the United States District Courts (Doc. 5). Petitioner filed a reply (Doc. 6).

Petitioner alleges one ground for relief. For the following reasons, the Court concludes that Petitioner is not entitled to relief.

I. PROCEDURAL HISTORY

Petitioner was indicted on one count each of possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C) (count one), possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A) (count two), and possession of a firearm by a convicted felon in violation of 18 U.S.C. §

922(g) (count three) (Criminal Case 6:14-cr-55-Orl-31TBS, Doc. 1).¹ Petitioner entered a guilty plea to counts one and two of the indictment (Criminal Case Doc. 29). Magistrate Judge Smith issued a Report and Recommendation, recommending that the guilty plea be accepted (Criminal Case Doc. 33). The Court accepted the guilty plea and adjudicated Petitioner guilty of counts one and two (Criminal Case Doc. 37).² At the sentencing hearing, the Government moved for a downward departure sentence based on Petitioner's substantial assistance (Criminal Case Doc. 42). On October 27, 2014, the Court granted the motion and sentenced Petitioner as a career offender to an 84-month term of imprisonment for count one³ and to a consecutive 60-month term of imprisonment for count two, to be followed by a four-year term of supervised release (Criminal Case Doc. 44). Judgment was entered on October 28, 2014 (Criminal Case Doc. 46). Petitioner did not appeal.

II. LEGAL STANDARD

Section 2255 provides federal prisoners with an avenue for relief under limited circumstances:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the

¹ Criminal Case No. 6:14-cr-55-Orl-31TBS will be referred to as "Criminal Case."

² Count three of the indictment was dismissed in accordance with the plea agreement (Criminal Case Doc. 46).

³ The sentence for count one was a downward variance from Petitioner's guidelines score of 240 months and the Office of Probation's recommendation of 120 months in prison (Doc. 57 at 17).

sentence was in excess of the maximum authorized by law, or is otherwise subject to attack, may move the court which imposed the sentence to vacate, set aside, or correct the sentence

28 U.S.C. § 2255. If a court finds a claim under Section 2255 to be valid, the court “shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.” *Id.* To obtain this relief on collateral review, however, a petitioner must clear a significantly higher hurdle than would exist on direct appeal. *See United States v. Frady*, 456 U.S. 152, 166 (1982) (rejecting the plain error standard as not sufficiently deferential to a final judgment).

III. ANALYSIS

Petitioner alleges that the Court had no authority to sentence him as a career offender in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015) (holding the residual clause of the Armed Career Criminal Act (“ACCA”) is unconstitutionally vague) (Doc. 1 at 4). Petitioner contends that his prior conviction for aggravated battery on a law enforcement officer no longer qualifies as a predicate offense pursuant to *Johnson* (Doc. 1-1 at 5-8). Petitioner also asserts that his two prior drug convictions do not qualify as predicate offenses pursuant to *McFadden v. United States*, 135 S. Ct. 2298 (2015) (holding section 841(a)(1) “requires the Government to establish that the defendant knew he was dealing with a controlled substance.”) (Doc. 1-1 at 2-5).

Petitioner is not entitled to relief on his claim. As an initial matter, it is unclear whether *Johnson* applies to criminal defendants sentenced as career offenders. *See Beckles v. United States*, No. 15-8544, 2016 WL 1029080 (June 27, 2016) (granting a petition for writ of

certiorari on the question of whether *Johnson* applies retroactively to collateral cases challenging federal sentences enhanced under the residual clause in U.S.S.G. § 4B1.2(a)(2)).

However, even if *Johnson* does apply to the instant case, he cannot demonstrate that he was improperly sentenced as a career offender. Section 4B1.1 of the United States Sentencing Guidelines provides that a criminal defendant qualifies as a career offender if he has at least two prior felony convictions of either a crime of violence or a controlled substance offense. Petitioner's career offender sentence was premised on three prior convictions: one conviction for aggravated battery on a law enforcement officer and two convictions for possession of cocaine with intent to sell (Doc. Nos. 5-3, 5-4, and 5-5).

The Eleventh Circuit has held that convictions under § 893.13(1), Florida Statutes, qualify as serious drug offenses under the ACCA. *See United States v. Smith*, 775 F.4d 1262, 1267-68 (11th Cir. 2014); *United States v. Holmes*, 647 F. App'x 1014 (11th Cir. 2016). Moreover, Petitioner is not entitled to relief pursuant to *McFadden* because the Eleventh Circuit has held that *McFadden* "does not control" in career offender cases because it did not address the mens rea requirement for serious drug offenses under the career offender guidelines. *See Jones v. United States*, No. 15-13193, 2016 WL 3055833, at * 3 (11th Cir. May 31, 2016). Therefore, even assuming Petitioner's aggravated battery on a law enforcement officer no longer qualifies as a predicate offense, Petitioner was properly sentenced as a career offender because he has two prior convictions for serious drug offenses. Accordingly, Petitioner's claim is denied.

Any of Petitioner's allegations not specifically addressed herein have been found to be without merit.

IV. CERTIFICATE OF APPEALABILITY

This Court should grant an application for certificate of appealability only if the Petitioner "makes a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). To make such a showing "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *Lamarca v. Sec'y Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). When a district court dismisses a federal habeas petition on procedural grounds without reaching the underlying constitutional claim, a certificate of appealability should issue only when a Petitioner shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*; *Lamarca*, 568 F.3d at 934. However, a prisoner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

The Court concludes that Petitioner has not made the requisite showing in these circumstances. Petitioner is not entitled to a certificate of appealability.

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. Petitioner's motion to vacate, set aside, or correct an illegal sentence pursuant to section 28 U.S.C. § 2255 (Doc. 1) is **DENIED**.

2. The Clerk of the Court shall enter judgment accordingly and is directed to

close this case.

3. The Clerk of Court is directed to file a copy of this Order in criminal case number 6:14-cr-55-Orl-31TBS and terminate the pending motion to vacate (Criminal Case Doc. 54).

4. Petitioner is **DENIED** a certificate of appealability.

DONE AND ORDERED at Orlando, Florida, this 11th day of November, 2016.




GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies to:
OrlP-3 11/1
Counsel of Record
Harroll Hampton