UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MICHAEL ANTONIO TORRES

       Petitioner,

v.   CASE NO. 8:16-cv-1508-T-24TGW

UNITED STATES OF AMERICA,

       Respondent.

                                         /

ORDER

Petitioner Joshua Michael Wilkes, represented by counsel, filed an Application for

Certificate of Appealability. (Doc. 23). Upon consideration of Petitioner's Motion to

Vacate pursuant to 28 U.S.C. § 2255 as well as Petitioner's underlying criminal case,

Petitioner's Application is denied because Petitioner has not made a showing of the denial

of a constitutional right under 28 U.S.C. § 2253(c)(2).

Petitioner seeks to extend the holding in Johnson v. United States,135 S. Ct. 2551

(2015), to 18 U.S.C. § 924(c) on collateral review. Johnson affords Petitioner no

collateral relief with regard to his § 924(c) conviction because Johnson did not address

the statute under which Petitioner was convicted. The Supreme Court has never held that

any part of § 924(c) is unconstitutionally vague. Nor has the Eleventh Circuit Court of

Appeals extended Johnson's vagueness determination to § 924(c). However, even if

reasonable jurists could find it debatable under <u>Slack v. McDaniel</u>, 529 U.S. 473, 478 (2000), as to whether <u>Johnson</u> extends to the residual clause under 18 U.S.C. § 924(c), Petitioner's convictions for a Hobbs Act robbery and carjacking qualify as crimes of violence under § 924(c)'s use-of force clause. <u>See</u> <u>In re Fleur</u>, 824 F.3d 1337, 1341 (11th Cir. 2016) (holding Hobbs Act robbery offense met use-of-force clause of statutory definition of crime of violence); <u>In re Smith</u> 829 F.3d 1276 (11th Cir. 2016)(concluding that carjacking in violation of § 2119 satisfies § 924(c)'s force clause).

ACCORDINGLY, for the reasons expressed, Petitioner's Application for Certificate of Appealability is denied.

DONE AND ORDERED at Tampa, Florida, on February 3, 2017.

SUSAN C. BUCKLEW
United States District Judge

Copies to: Counsel of Record