

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHARLES BENTON BAGWELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 1:16-cv-00264-BLW
1:05-cr-00174-BLW

MEMORANDUM DECISION AND
ORDER

INTRODUCTION

Pending before the Court is Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (Civ. Dkt. 2, Crim. Dkt. 23). For the reasons described below, the Court will deny the motion.

BACKGROUND

Petitioner Charles Benton Bagwell pleaded guilty on August 29, 2005 to six counts in two cases. *See Plea Agreement*, Crim. Dkt. 4; *Minute Entry for Arraignment*, Crim. Dkt. 9. In this case, which was transferred from the Central District of California, Petitioner pleaded guilty to two counts of armed bank robbery in violation of 18 U.S.C. §§ 2113(a) and (d); brandishing a firearm during and in relation to a crime of violence, in violation of Title 18 U.S.C. § 924(c); and discharging a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). *See id.* In Case No. 1:05-cr-00132-BLW, Petitioner pleaded guilty to bank robbery conspiracy, in violation of 18 U.S.C. § 371 and

§§ 2113(a) and (d), and armed bank robbery in violation of 18 U.S.C. §§ 2113(a) and (d). *See id.* Petitioner was convicted on all six counts, and sentenced on January 27, 2006 to a term of imprisonment of forty years, with the sentence for both cases to run concurrently. *Judgment*, Crim. Dkt. 18. Petitioner argues that in light of *Johnson v. United States*, 135 S.Ct. 2251 (2015) (“*Johnson II*”), his convictions under 18 U.S.C. § 924(c) are illegal and unconstitutional. *Petitioner’s Br.* at 4, Civ. Dkt 2, Crim. Dkt. 23.

ANALYSIS

Under 18 U.S.C. § 924(c), a defendant is subject to “a mandatory consecutive term of imprisonment for using or carrying a firearm during and in relation to a crime of violence.” *United States v. Watson*, 881 F.3d 782, 784 (9th Cir. 2018). A “crime of violence” is defined as a felony that:

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3). Section (A) is satisfied if the predicate crime of conviction has as an element the use of “‘violent’ physical force - ‘that is force capable of causing physical pain or injury.’” *Watson*, 881 F.3d at 784 ((quoting *Johnson v. United States*, 559 U.S. 133, 140 (2010) (“*Johnson I*”) and finding the standard applied therein to 18 U.S.C. § 924(e)(2)(B)(i) “applies equally to the similarly worded force clause of § 923(c)(3)(A).”).

In *Watson*, the Ninth Circuit held that the force required to prove armed bank robbery in violation of 18 U.S.C. § 2113 meets the *Johnson I* standard for “violent force” and thus qualifies as a “crime of violence” under 18 U.S.C. § 924(c)(3)(A). *Id.* Thus, Petitioner’s conviction in this case on two counts of armed bank robbery constitute predicate “crimes of violence” under the “force clause” of § 924(c)(3)(A). *See Watson*, 881 F.3d at 784, 786. Although Petitioner argues that the residual clause in § 924(c)(3)(B) is unconstitutional under the reasoning of *Johnson II*, he concedes that § 924(c)(3)(A) remains good law. Because Petitioner’s argument that his predicate convictions for armed bank robbery do not qualify as “crimes of violence” under § 924(c)(3)(A) is foreclosed by *Watson*, Petitioner’s motion fails on the merits, and the Court does not need to reach the issues raised by *Johnson II*. Accordingly,

ORDER

IT IS ORDERED:

1. Plaintiff’s Motion to Vacate, Set Aside, Or Correct Sentence Under 28 U.S.C. § 2255 (Civ. Dkt. 2, Crim. Dkt. 23) is **DENIED**. The Court shall issue a separate judgment as required by Rule 58(a).
2. This case is **DISMISSED**.



DATED: May 23, 2018

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
Chief U.S. District Court Judge