UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

JOHN BENELL THOMAS,	)	
	)	
Petitioner,	)	
	)	
v.	)	No.: 3:16-CV-405-TAV
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	

MEMORANDUM OPINION

Federal inmate John Benell Thomas has filed a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. Respondent has filed a response in opposition to the motion. Having considered the pleadings and the record, along with the relevant law, the Court finds that it is unnecessary to hold an evidentiary hearing,[1] and Thomas' § 2255 motion will be denied.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

In October of 2007, Thomas pleaded guilty and was convicted of possessing a firearm as a felon in violation of 18 U.S.C. § 922(g), possessing with intent to distribute marijuana in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(D), and possessing a firearm

[1] An evidentiary hearing is required on a § 2255 motion unless the motion, files, and record conclusively show that the prisoner is not entitled to relief. See 28 U.S.C. § 2255(b). It is the prisoner's ultimate burden, however, to sustain his claims by a preponderance of the evidence. See Pough v. United States, 442 F.3d 959, 964 (6th Cir. 2006). Accordingly, where "the record conclusively shows that the petitioner is entitled to no relief," a hearing is not required. Arredondo v. United States, 178 F.3d 778, 782 (6th Cir. 1999) (citation omitted).

in furtherance of a drug trafficking offense in violation of 18 U.S.C. § 924(c) [Doc. 20 in No. 3:07-CR-73]. Based on his prior Tennessee convictions for aggravated assault and drug-trafficking offenses, Thomas was classified as both a career offender and an armed career criminal, with a corresponding Sentencing Guidelines range of 262 to 327 months' imprisonment [Doc. 41 ¶¶ 38-40, 44, 46, 51, and 75 in No. 3:07-CR-73]. Before sentencing, the United States filed a motion for a downward departure [Doc. 27 in No. 3:07-CR-73]. The Court ultimately sentenced Thomas to an aggregate term of 156 months' imprisonment [Doc. 31 in No. 3:07-CR-73]. Thomas did not appeal.

On or about June 21, 2016, Thomas filed this pro se § 2255 motion for a lesser sentence in light of the holding of Johnson v. United States, which invalidated the residual clause of the Armed Career Criminal Act ("ACCA"). Johnson v. United States, 135 S. Ct. 2551, 2563 (2015) [Doc. 1]. The Court ordered the Government to respond, and after filing two motions for extensions of time, the Government filed its response on March 22, 2018 [Doc. 4]. This matter is ripe for review.[2]

II. LEGAL STANDARD

After a defendant has been convicted and exhausted his appeal rights, a court may presume that "he stands fairly and finally convicted." United States v. Frady, 456 U.S.

[2] The public website of the Federal Bureau of Prisons indicates that Thomas was released on December 7, 2018. See https://www.bop.gov/inmateloc/ (search by "Find By Name") (last visited May 1, 2019). However, because this Court imposed a five-year period of supervised release, the Court assumes without deciding that Thomas remains "in custody" for purposes of the instant § 2255 motion [Doc. 30]. See, e.g., United States v. Pregent, 190 F.3d 279, 283 (4th Cir. 1999) (holding prisoner on supervised release is "in custody").

152, 164 (1982). A court may grant relief under 28 U.S.C. § 2255, but the statute "does not encompass all claimed errors in conviction and sentencing." United States v. Addonizio, 442 U.S. 178, 185 (1979). Rather, collateral attack limits a movant's allegations to those of constitutional or jurisdictional magnitude, or those containing factual or legal errors "so fundamental as to render the entire proceeding invalid." Short v. United States, 471 F.3d 686, 691 (6th Cir. 2006) (citation omitted); see also 28 U.S.C. § 2255(a).

III. DISCUSSION

A. Section 924 conviction

The residual clause of the ACCA struck down as unconstitutionally vague in Johnson defined a "violent felony" as "any crime punishable by imprisonment for a term exceeding one year" that "otherwise involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii); Johnson, 135 S. Ct. at 2563. Thomas claims that the reasoning of Johnson also invalidated the residual clause in § 924(c)(3)(B)'s definition of a crime of violence, which requires vacatur of his § 924(c) conviction [Doc. 1 p. 4].

Under 18 U.S.C. § 924(c), it is unlawful to use or carry a firearm during and in relation to a "crime of violence or drug trafficking crime," or to possess a firearm "in furtherance of any such crime." 18 U.S.C. § 924(c)(1)(A). A "crime of violence" under § 924(c) is "an offense that is a felony and" either (1) "has as an element the use, attempted use, or threatened use of physical force against the person or property of another" (the "use-of-force clause"); or (2) "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" (the "residual clause"). 18 U.S.C. § 924(c)(3).

The Sixth Circuit has expressly held that Johnson's reasoning does not invalidate the differently-worded residual clause of § 924(c)(3)(B). United States v. Taylor, 814 F.3d 340, 376-79 (6th Cir. 2016). Regardless, even if Johnson's holding did extend to § 924(c)(3)(B)'s residual clause, Thomas was convicted of possessing a firearm in furtherance of a drug-trafficking offense, not a crime of violence [Doc. 31 in No. 3:07-CR-73]. Johnson "has no bearing" on the classification of drug -trafficking offenses. United States v. Darling, 619 F. App'x 877, 880 n.5 (11th Cir. 2015). Accordingly, Thomas' § 924(c) conviction and sentence remain lawful.

B. Career-offender classification

Thomas next claims that his career-offender enhancement was necessarily based upon Guideline § 4B1.2's residual clause, which he asserts was invalidated by Johnson [Doc. 1 p. 5]. However, the Supreme Court has explicitly held that, because the Guidelines are not subject to vagueness challenges, § 4B1.2's residual clause is not void for vagueness. Beckles v. United States, 137 S. Ct. 886, 894-95 (2017). Additionally, Thomas' career-offender classification was based upon two prior convictions for selling cocaine, both of which qualified not as crimes of violence, but as controlled-substance offenses [Doc. 41 ¶¶ 38, 46, and 51 in No. 3:07-CR-73]. Accordingly, Johnson's reasoning does not invalidate Thomas' career-offender classification.

IV. CERTIFICATE OF APPEALABILITY

When considering a § 2255 motion, this Court must "issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11 of the Rules Governing Section 2255 Proceedings for the United States District Courts. Thomas must obtain a COA before he may appeal the denial of his § 2255 motion. 28 U.S.C. § 2253(c)(1)(B). A COA will issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For cases rejected on their merits, a movant "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" to warrant a COA. Slack v. McDaniel, 529 U.S. 473, 484 (2000). To obtain a COA on a claim that has been rejected on procedural grounds, a movant must demonstrate "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. Based on the Slack criteria, the Court finds that a COA should not issue in this cause.

V. CONCLUSION

For the reasons stated herein, Thomas has failed to establish any basis upon which § 2255 relief could be granted, and his motion [Doc. 1] will be **DENIED**. A COA from the denial of his § 2255 motion will be **DENIED**. The Court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be frivolous. Fed. R. App. 24. Therefore, Petitioner will be **DENIED** leave to proceed in forma pauperis on appeal. Fed.

R. App. P. 24. The Government's motions for extensions of time to respond to the § 2255 motion [Docs. 2 & 3] will be **DISMISSED** as moot.

An appropriate Order will enter.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE