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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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THOMAS RAY GURULE,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM DECISION AND  
ORDER DENYING AND DISMISSING  
§ 2255 MOTION**

Case No. 2:21-cv-00344-DN  
(Criminal No. 2:04-cr-00209-DN-1)

District Judge David Nuffer

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Movant Thomas Ray Gurule filed a motion seeking to vacate, set aside, or correct his sentence under [28 U.S.C. § 2255](#) (“§ 2255 Motion”).<sup>1</sup> This is Mr. Gurule’s second attempt to obtain relief from his sentence under § 2255.<sup>2</sup> He argues<sup>3</sup> that his sentence is unconstitutional in light of the Supreme Court’s holding in *United States v. Davis*.<sup>4</sup> Mr. Gurule’s § 2255 Motion was initially denied and dismissed without prejudice for being untimely.<sup>5</sup> However, the Tenth Circuit Court of Appeals reversed that determination after the government changed its position regarding timeliness and conceded that remand was appropriate.<sup>6</sup>

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<sup>1</sup> Motion for Authorization to File a Second or Successive Motion to Vacate, Set Aside or Correct Sentence Under [28 U.S.C. § 2255](#) by a Prisoner in Federal Custody (“Second § 2255 Motion”), [docket no. 1](#), filed Nov. 27, 2019.

<sup>2</sup> Mr. Gurule’s first attempt at obtaining relief under § 2255 was denied and dismissed without prejudice. Motion Under [28 U.S.C. § 2255](#) to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“First § 2255 Motion”), [docket no. 1](#) in *Gurule v. United States*, 2:16-cv-00625-DN (D. Utah) (“First § 2255 Case”), filed June 10, 2016; Judgment in a Civil Case, [docket no. 11](#) in First § 2255 Case, filed July 10, 2018.

<sup>3</sup> § 2255 Motion at 8, 15-18.

<sup>4</sup> [139 S. Ct. 2319 \(2019\)](#).

<sup>5</sup> Memorandum Decision and Order Denying and Dismissing § 2255 Motion, [docket no. 14](#), filed Nov. 18, 2021; Judgment in a Civil Case, [docket no. 15](#), filed Nov. 18, 2021.

<sup>6</sup> Order and Judgment, [docket no. 22](#), filed May 11, 2023.

Following the remand, a briefing schedule on the § 2255 Motion was set.<sup>7</sup> And on October 31, 2023, Mr. Gurule filed his initial brief supplementing his § 2255 Motion.<sup>8</sup>

Mr. Gurule concedes in his brief that after reviewing the record of his conviction and sentence, he was not subject to any *Davis* error.<sup>9</sup> This is because the clear record demonstrates that the prior convictions on which Mr. Gurule's sentence relied were applied under the enumerated offenses clause of 18 U.S.C. § 3559, and not § 3559's residual clause.<sup>10</sup> Therefore, Mr. Gurule conceded that he is not entitled to relief under § 2255 and requested that his § 2255 Motion be denied.

Based on Mr. Gurule's concession that clear record demonstrates that he is not entitled to relief under § 2255, Mr. Gurule's § 2255 Motion<sup>11</sup> is DENIED and DISMISSED with prejudice.

### **ORDER**

IT IS HEREBY ORDERED that Mr. Gurule's § 2255 Motion<sup>12</sup> is DENIED and DISMISSED with prejudice. This dismissal does not preclude Mr. Gurule from seeking future relief under § 2255 upon the Supreme Court's recognition of a new right that is applicable to him or his sentence<sup>13</sup> and the Tenth Circuit Court of Appeals authorizing the filing of a successive § 2255 motion.<sup>14</sup>

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<sup>7</sup> Scheduling Order, [docket no. 25](#), filed May 26, 2023. Mr. Gurule was granted four extensions of time to file his initial brief supplementing his § 2255 Motion. Docket Text Order, docket no. 28, filed July 6, 2023; Docket Text Order, docket no. 30, filed Aug. 21, 2023; Docket Text Order, docket no. 32, filed Aug. 29, 2023; Docket Text Order, docket no. 34, filed Oct. 2, 2023.

<sup>8</sup> Supplemental Memorandum Regarding Motion to Vacate Under § 2255, [docket no. 35](#), filed Oct. 31, 2023.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.* at 1-3.

<sup>11</sup> [Docket no. 1](#), filed Nov. 27, 2019.

<sup>12</sup> [Docket no. 1](#), filed Nov. 27, 2019.

<sup>13</sup> [28 U.S.C. § 2255\(f\)\(3\)](#).

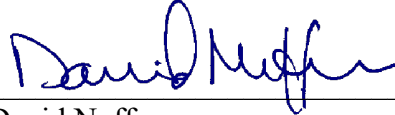
<sup>14</sup> *Id.* § 2255(h).

IT IS FURTHER ORDERED that, pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, Mr. Gurule is DENIED a certificate of appealability.

The Clerk is directed to close the case.

Signed November 2, 2023.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer  
United States District Judge