

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

ROBERT L. BARCLIFF,

Movant,

v.

Civil No. 2:16-cv-05676
Criminal No. 2:14-cr-00003-1

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending is the movant's Emergency Motion to Correct Sentence Under 28 U.S.C. § 2255, filed on June 23, 2016, and the movant's Supplemental Motion to Correct Sentence Under 28 U.S.C. § 2255, filed August 1, 2016, each filed by his counsel, then-Federal Public Defender Christian M. Capece.

This action was previously referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to the court of his Proposed Findings and Recommendation ("PF&R") for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). On July 31, 2019, the magistrate judge entered his PF&R (ECF # 48), and Amended PF&R (ECF # 49), recommending that the motion be denied, and that the civil action be dismissed from the court's docket. The movant filed objections on August 8, 2019, to which the United States did not reply.

Upon an objection, the court reviews a PF&R de novo. Specifically, "[t]he Federal Magistrates Act requires a district court to 'make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection is made.'" Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis in original) (quoting 28 U.S.C. 636(b)(1)).

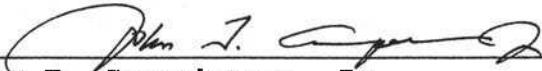
The movant raises a sole objection, objecting to the magistrate judge's finding that Hobbs Act robbery is a "crime of violence" for purposes of 18 U.S.C. § 924(c). However, the movant states that he "recognizes that this Court is currently bound by the Fourth Circuit's decision in United States v. Mathis, [932] F.3d [242], 2019 WL 3437626 (4th Cir. 2019), to find that Hobbs Act robbery is a crime of violence under the force clause. . . . [but] makes this objection to preserve the issue for further review." Obj. at 1-2. The court agrees with the magistrate judge, and indeed the movant, that Mathis is controlling and that Hobbs Act Robbery constitutes a crime of violence thereunder. The movant's sole objection is overruled.

The court, accordingly, ORDERS as follows:

1. That the movant's objection to the PF&R be, and it hereby is, overruled;
2. That the magistrate judge's Proposed Findings and Recommendation be, and hereby are, adopted and incorporated in full;
3. That movant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 be, and hereby is, denied; and
4. This case be, and hereby is, dismissed from the docket of the court.

The Clerk is directed to transmit copies of this memorandum opinion and order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

Enter: August 29, 2019



John T. Copenhaver, Jr.
Senior United States District Judge