

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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February 05, 2020

Clerk - Middle District of Florida
U.S. District Court
801 N FLORIDA AVE
TAMPA, FL 33602-3849

Appeal Number: 19-14534-G
Case Style: Stevenson Papin v. USA
District Court Docket No: 8:19-cv-02481-SCB-SPF
Secondary Case Number: 8:12-cr-00037-SCB-SPF-1

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

All pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lee Aaron, G/csg.
Phone #: 404-335-6172

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-14534-G

STEVENSON PAPIN,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Stevenson Papin, a federal prisoner, moves for a certificate of appealability (“COA”) to challenge the denial of his motion to vacate sentence, pursuant to 28 U.S.C. § 2255, and for leave to proceed in forma pauperis (“IFP”) on appeal. Mr. Papin is serving a 180-month total sentence for conspiracy to possess with intent to distribute 280 grams or more of cocaine base and oxycodone, in violation of 21 U.S.C. §§ 846, 841(b)(1)(A)(ii) & (b)(1)(C), and possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1). Mr.

Papin filed a pro se motion to vacate his sentence, pursuant to 28 U.S.C. § 2255, in light of the Supreme Court's recent decision in United States v. Davis, 588 U.S. ___, 139 S. Ct. 2319 (2019). The District Court recognized Mr. Papin's motion was timely filed under 28 U.S.C. § 2255(f)(3), because it was filed within a year of the Supreme Court's decision in Davis, which recognized a new rule of constitutional law made retroactively applicable to cases on collateral review. The District Court, however, concluded that Mr. Papin was not eligible for relief under Davis because his conviction for possession of a firearm in furtherance of a drug-trafficking crime under § 924(c)(1)(A) did not fall within the scope of the new rule announced in Davis. Davis held that the definition of a crime of violence under § 924(c)(3)(B)'s residual clause was unconstitutionally vague, but Davis did not affect § 924(c)'s prohibition on carrying a firearm during a drug-trafficking crime. Because Mr. Papin was not eligible for Davis relief, the District Court also denied him a COA and leave to proceed IFP on appeal.

DISCUSSION:

In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the District Court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473,

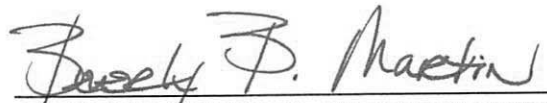
483-84, 120 S. Ct. 1595, 1603-04, 146 L.Ed.2d 542 (2000) (quotation marks omitted).

Section 924(c) provides for a mandatory consecutive sentence for any defendant who uses a firearm during a crime of violence or a drug-trafficking crime. See 18 U.S.C. § 924(c)(1)(A). A drug-trafficking crime is defined as “any felony punishable under the Controlled Substances Act (21 U.S.C. § 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 941 et seq.), or chapter 705 of title 46.” Id. § 924(c)(22). A “crime of violence” is defined as an offense that is a felony and:

- (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.

Id. § 924(c)(3)(A), (B). Subsection (A) is commonly referred to as the elements clause, while subsection (B) is commonly called the residual clause. In re Sams, 830 F.3d 1234, 1236-37 (11th Cir. 2015). On June 24, 2019, the Supreme Court in Davis held that the definition of “crime of violence” contained in § 924(c)(3)(B)’s residual clause is unconstitutionally vague. Davis, 139 S. Ct. at 2324–25, 2336. Notably, the holding in Davis extended only to § 924(c)(3)(B)’s residual clause and its definition of a “crime of violence.” See 139 S. Ct. at 2336.

Here, reasonable jurists would not debate the denial of Mr. Papin's § 2255 motion. The invalidation of the residual clause in § 924(c)(3)(B) does not affect Mr. Papin's conviction, as he was specifically convicted under § 924(c)(1) for possession of a firearm during a drug-trafficking offense, not during a crime of violence. Accordingly, his conviction remains valid post-Davis, as his predicate offense of conspiracy to possess with intent to distribute 280 grams or more of cocaine base and oxycodone remains a drug-trafficking offense under § 924(c)(2), without resort to the unconstitutional residual clause in § 924(c)(3)(B). For these reasons, Mr. Papin has not made the requisite showing, and his motion for a COA is DENIED. His motion for leave to proceed IFP is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE