Whisnant v. USA

2019 | Cited 0 times | E.D. Missouri | August 15, 2019

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION ALEXANDER T. WHISNANT,) Petitioner,) v.) No. 1:18CV00199 SNLJ UNITED STATES OF AMERICA,) Respondent,)

AMENDED MEMORANDUM AND ORDER This case is before the Court on plaintiff's "Amended Motion to Vacate, Set Aside, or to Reopen. . .Judgment" pursuant to 28 U.S.C. sec 2255, #10, which has been fully briefed. In the underlying case, plaintiff was convicted of brandishing a firearm in furtherance of a crime of violence under 18 U.S.C. sec 924(c), which was based on a conviction for Hobbs Act Robbery. Plaintiff claims that the conviction for Hobbs Act Robbery no longer qualifies as a crime of violence as required under sec. 924(c). He relies on United States v. Davis, 139 S.Ct. 2319 (2019), in which the Supreme Court held that sec. 924(c)(3)(B) is unconstitutionally vague. However, plaintiff's conviction for Hobbs Act Robbery falls under the force clause of sec. 924(c)(3)(A). See United States v. Jones, 919 F.3d 1064, 1072 (8th Cir. 2019), citing Diaz v. United States, 863 F.3d 781, 783 (8th Cir. 2017). And as the 8th Circuit recently held, the force clause of sec. 924(c)(3)(A) remains constitutional. See Taylor v. United States, 2019 WL 3213547 (8th Cir. July 17, 2019) (rejecting claim that carjacking is not a crime of violence for purposes of sec. 924(c)(3)(A)). Accordingly, the motion is denied and this case is dismissed. So ordered this 15th day of August, 2019.

STEPHEN N. LIMBAUGH, JR. UNITED STATES DISTRICT JUDGE