United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-3058 **September Term, 2018**

1:03-cr-00533-BAH-1

Filed On: May 1, 2019

United States of America,

Appellee

v.

Carlos Curtis,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Tatel, Millett, and Pillard, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing, and the motion for leave to file a second or successive petition pursuant to 28 U.S.C. § 2255, it is

ORDERED that the motion for leave to file a second or successive petition be denied. Appellant has not demonstrated that "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable" entitles him to relief. 28 U.S.C. § 2255(h). The United States Sentencing Guidelines provision under which appellant's sentence was enhanced is not subject to a "void for vagueness" challenge, notwithstanding the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015) (holding that the definition of "violent felony" in the residual clause of the federal Armed Career Criminal Act was unconstitutionally vague). See Beckles v. United States, 137 S. Ct. 886, 895 (2017). Appellant also asserts that the Supreme Court's decision in Sessions v. Dimaya, 138 S. Ct. 1204 (2018) (applying Johnson to a provision of the Immigration and Nationality Act), entitles him to relief, but he has not shown that Dimaya announced a new rule of constitutional law that has been made retroactive to cases on collateral review. Finally, appellant's assertion that a conviction under the Hobbs Act, 18 U.S.C. § 1951, is not a

crime of violence is irrelevant to the present matter. Appellant was convicted under 18 U.S.C. § 1591, not 18 U.S.C. § 1951. It is

FURTHER ORDERED AND ADJUDGED that the district court's July 31, 2018 order be affirmed. The district court concluded that it was without authority to modify appellant's sentence pursuant to 18 U.S.C. § 3582(c), because none of the limited circumstances enumerated in that statute applied. In his brief, appellant has not raised any arguments challenging that conclusion, and he has therefore forfeited any such challenge. See, e.g., Fox v. Gov't of Dist. of Columbia, 794 F.3d 25, 29 (D.C. Cir. 2015) (arguments not raised in opening brief are waived).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam