IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, *Plaintiff*, vs. DESHANE GANTT, *Defendant*.	Case No. 10-10175-01-EFM

MEMORANDUM AND ORDER

In 2011, Defendant Deshane Gantt pled guilty to carrying, using, and brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). Citing in particular the testimony of the credit union employees who described Defendant's conduct during the robbery,[1] the Court imposed a sentence of 240 months imprisonment.[2] The Tenth Circuit affirmed Defendant's conviction and sentence in 2012.[3]

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[1] Dkt. 47, at 21.

[2] Dkt. 38.

[3] *United States v. Gantt*, 679 F.3d 1240 (10th Cir. 2012).

Defendant moved to vacate his sentence pursuant to 28 U.S.C. § 2255 in 2013. The court denied this motion on November 22, 2013.[4] The Tenth Circuit dismissed Defendant's appeal of this decision for lack of prosecution on April 8, 2014.

The case was transferred to the undersigned in 2015. In 2017, Defendant filed a motion to set aside the earlier denial of his § 2255 motion.[5] The Court held that Defendant's motion, although nominally filed as a motion pursuant to Fed.R.Civ.Pr. 60(b), was really a successive § 2255 motion filed without the required approval of the Tenth Circuit.[6] The Court declined to transfer the matter to the Tenth Circuit for such approval, denied reconsideration, and denied Defendant's request for a certificate of appealability (COA).[7] On February 5, 2019, the Tenth Circuit also denied Defendant's request for a COA and dismissed the action, agreeing that his motion asserting ineffective assistance was indeed "an unauthorized second or successive § 2255 motion, as the district court determined."[8]

In his most recent motion, Defendant asks that the Court "reconsider my sentence." He argues that at the time of the sentencing, the sentencing judge failed to "take into consideration … the need to avoid unwarranted sentence disparities among

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[4] Dkt. 63.

[5] Dkt. 76.

[6] *See* 28 U.S.C. § 2244(b)(3) and 2255(h).

[7] Dkt. 98, 117, 122.

[8] Dkt. 128, at 9-10.

defendants with similar records who have been found guilty of similar conduct," resulting, he argues, in a sentence "makes no sense."[9]

The Court adopts and incorporates here its prior summary of the rules relating to successive collateral relief.[10] Defendant does present any procedural challenge in the resolution of his earlier § 2255 motion, as in a true Rule 60(b) motion, but attacks the validity of his sentence itself as "gross and unjust."[11] Thus, the problem is not merely that Defendant is presenting disparity-based arguments against his sentence which were expressly rejected in Defendant's direct appeal.[12] Rather, by directly attacking the validity of his sentence, Defendant presents a challenge which, in the absence of certification for a successive § 2255 motion, the Court lacks jurisdiction to address.

The Court declines to transfer the present action for such certification, and will not issue a COA.[13] Given the Tenth Circuit's express determination that Defendant's sentence is not unreasonable, he has not presented a potentially meritorious claim, nor

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[9] *Id*. Defendant also notes the First Step Act of 2018, which eliminated the stacking of § 924(c) offenses. But the Defendant was not sentenced based on stacked § 924(c) charges. He was convicted of a single offense, and sentenced based on conduct which the sentencing judge viewed as particularly heinous.

[10] Dkt. 98, at 4-5 (citing *Spitznas v. Boone*, 464 F.3d 1213, 1215 (10th Cir. 2006))

[11] Dkt. 132, at 1.

[12] In the 2012 direct appeal, the Tenth Circuit recognized that the district court had fashioned its own, non-guidelines sentence, and rejected Defendant's claim that the sentence was disproportionate to that received by other defendants for similar conduct. That claim "fail[ed] because the court clearly considered that the sentence was far from a guidelines sentence," and was explicitly imposed as a variance from the guidelines. 679 F.3d at 1248. The court also found that the 240 month sentence was not substantively unreasonable. *Id*. at 1250-51.

[13] The Court has previously articulated the relevant standards. *See, respectively*, Dkt. 98, at 6, and Dkt. 122, at 2.

has he demonstrated a potential constitutional deprivation about which reasonable jurists might debate.

IT IS THEREFORE ORDERED that the Defendant's Request to Reconsider Sentence (Dkt. 132) is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this 5th day of January, 2022.

ERIC F. MELGREN
CHIEF UNITED STATES DISTRICT JUDGE