IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **QUARTEZ NORWOOD,** **Defendant.**	**Case No. 13-40115-01-JAR**

MEMORANDUM AND ORDER

This matter comes before the Court on Petitioner Quartez Norwood's *pro se* Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 196). Petitioner also requests the Court appoint counsel to represent him in this matter (Doc. 197). The government has responded.[1] Having carefully reviewed the record and the arguments presented, the Court denies Petitioner's motions without further evidentiary hearing.

I. Factual and Procedural History

On November 26, 2013, Norwood pleaded guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) to two counts of Hobbs Act violations under 18 U.S.C. § 1951(a) and one count of use, carry, and brandishing a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A), stemming from the armed robberies of an EZ Payday Advance facility and a Family Dollar store located in Topeka, Kansas.[2] On May 27, 2014, Norwood was

[1]Doc. 198.

[2]Doc. 43.

sentenced to 180 months' imprisonment pursuant to the binding plea agreement, which is substantially lower than the advisory Guidelines range.[3]

The Court subsequently denied Norwood's Motion for Appointment of Counsel seeking assistance with pursuing relief under the First Step Act.[4] Norwood now renews his request for appointment of counsel and moves the Court to vacate his sentence under 28 U.S.C. § 2255 in light of the Supreme Court's recent decision in *United States v. Davis*.[5]

II. Standard

Section 2255 entitles a federal prisoner to relief if the court finds that "the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or [is] otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack."[6] The court must hold an evidentiary hearing on a § 2255 motion "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief."[7] A § 2255 petitioner must allege facts that, if proven, would warrant relief from his conviction or sentence.[8] An evidentiary hearing is not necessary where the factual allegations are contradicted by the record, inherently incredible, or when they are conclusions rather than statements of fact.[9]

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[3]Docs. 105, 106.

[4]Doc. 195.

[5]139 S. Ct. 2319 (2019).

[6]28 U.S.C. § 2255(b).

[7]*United States v. Galloway*, 56 F.3d 1239, 1240 n.1 (10th Cir. 1995) (quoting 28 U.S.C. § 2255(b)).

[8]*In re Lindsey*, 582 F.3d 1173, 1175 (10th Cir. 2009).

[9]*See Hatch v. Oklahoma*, 58 F.3d 1447, 1471 (10th Cir. 1995), *cert. denied*, 517 U.S. 1235 (1996) ("[t]he allegations must be specific and particularized, not general or conclusory"); *United States v. Fisher*, 38 F.3d 1143, 1147 (10th Cir. 1994) (rejecting ineffective assistance of counsel claims that are merely conclusory in nature and without supporting factual averments).

III. Discussion

In *United States v. Davis*, the Supreme Court held that the residual clause of 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague under due process and separation of powers principles.[10] In *Davis*, the residual clause was implicated because Davis had also been charged with conspiracy to commit Hobbs Act robbery, an offense that fell within the residual clause of § 924(c)(3)(B).[11] The Tenth Circuit recently held that *Davis* is a new constitutional rule that is retroactively applicable on collateral review.[12]

By contrast, Norwood's underlying Hobbs Act robbery convictions implicated the elements clause of § 924(c)(3)(A). Norwood's predicate offense was Hobbs Act robbery in violation of 18 U.S.C. § 1951(a) as described in Count Five.[13] The Tenth Circuit has held that "Hobbs Act robbery is categorically a crime of violence under the elements clause of § 924(c)(3)(A) because that clause requires the use of violent force, and the force element in Hobbs Act robbery 'can only be satisfied by violent force.'"[14] Therefore, the predicate offense used to support Norwood's conviction for brandishing a firearm in furtherance of a crime of violence was an offense under the elements clause in § 924(c)(3)(A), not the residual clause under § 924(c)(3)(B). Consequently, *Davis* has no impact upon Norwood's claim and his motion to vacate sentence must be denied.

IV. Certificate of Appealability

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the court must issue or

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[10]139 S. Ct. at 2336.

[11]*Id.* at 2324.

[12]*United States v. Bowen*, 936 F.3d 1091, 1097–98 (10th Cir. 2019).

[13]Doc. 1 at 5–6.

[14]*United States v. Dubarry*, 741 F. App'x 568, 570 (10th Cir. 2018) (quoting *United States v. Melgar-Cabrera*, 892 F.3d 1053, 1064–65 (10th Cir. 2018)).

deny a certificate of appealability when it enters a final order adverse to the applicant.[15] A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right.[16] To satisfy this standard, the movant must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."[17] For the reasons stated above, the Court finds that Norwood has not satisfied this standard and, therefore, denies a certificate of appealability as to its ruling on his § 2255 motion.

IT IS THEREFORE ORDERED BY THE COURT that Petitioner Cortez Norwood's motion to vacate his conviction pursuant to § 2255 (Doc. 196) is **denied** without an evidentiary hearing; Norwood's Motion to Appoint Counsel (Doc. 197) is **denied as moot**. Norwood is also denied a certificate of appealability.

IT IS SO ORDERED.

Dated: October 18, 2019

S/ Julie A. Robinson
JULIE A. ROBINSON
CHIEF UNITED STATES DISTRICT JUDGE

[15]The denial of a § 2255 motion is not appealable unless a circuit justice or a district judge issues a certificate of appealability. Fed. R. App. P. 22(b)(1); 28 U.S.C. § 2253(c)(1).

[16]28 U.S.C. § 2253(c)(2).

[17]*Saiz v. Ortiz*, 392 F.3d 1166, 1171 n.3 (10th Cir. 2004) (quoting *Tennard v. Dretke*, 542 U.S. 274, 282 (2004)).