

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12040
Non-Argument Calendar

D.C. Docket Nos. 1:16-cv-22538-KMM,
1:13-cr-20524-KMM-2

LEON ESCOURSE-WESTBROOK,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(March 30, 2020)

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before WILSON, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

Leon Escourse-Westbrook is a federal prisoner serving a total 114-month sentence, consisting of 30 months for conspiracy to commit Hobbs Act robbery in violation of 18 U.S.C. § 1951(a) (Count One), and a consecutive 84 months for brandishing a firearm in furtherance of a crime of violence—solely predicated on his Hobbs Act conspiracy conviction—in violation of 18 U.S.C. § 924(c)(1)(A)(ii) (Count Three). He appeals the district court’s denial of his 28 U.S.C. § 2255 motion to vacate, arguing that his § 924(c) conviction is no longer constitutional in light of *United States v. Davis*, 588 U.S. ___, 139 S. Ct. 2319 (2019), and *Brown v. United States*, 942 F.3d 1069 (11th Cir. 2019). Although the government opposed his § 2255 motion before the district court, it now agrees with Escourse-Westbrook and calls on us to vacate and remand for a full resentencing.

In reviewing a district court’s denial of a § 2255 motion, we review the court’s legal conclusions de novo and its findings of fact for clear error. *Brown*, 942 F.3d at 1072. A felony is a “crime of violence” under § 924(c) if it:

- (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.

18 U.S.C. § 924(c)(3). We commonly refer to § 924(c)(3)(A) as the “elements clause” and to § 924(c)(3)(B) as the “residual clause.” *Brown*, 942 F.3d at 1071.

In *Davis*, the Supreme Court struck down § 924(c)'s residual clause as unconstitutionally vague. 139 S. Ct. at 2323–24, 2336. We held that *Davis* announced a new rule of constitutional law that applies retroactively to cases on collateral review. *In re Hammoud*, 931 F.3d 1032, 1038–39 (11th Cir. 2019) (per curiam). We subsequently held, in *Brown*, that conspiracy to commit Hobbs Act robbery is not categorically a crime of violence under § 924(c)'s elements clause because the statutory elements of Hobbs Act conspiracy do not necessitate the existence of a threat or an attempt to use force. 942 F.3d at 1075–76.

In light of *Davis* and *Brown*—and as the government concedes—Escourse-Westbrook's conviction for conspiracy to commit Hobbs Act robbery was not a crime of violence under either the elements clause or residual clause of § 924(c). Because there were no other predicate offenses for his § 924(c) conviction, it cannot stand. We therefore reverse the district court's denial of Escourse-Westbrook's § 2255 motion and remand to the district court for proceedings consistent with this opinion.

REVERSED AND REMANDED.