

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ACO-171

No. 23-1088

UNITED STATES OF AMERICA

v.

ARTHUR D. SEALE,

Appellant

(D.N.J. No. 3-92-cr-00372-001)

Present: HARDIMAN, MONTGOMERY-REEVES
and AMBRO, Circuit Judges

1. Motion by Appellee to Reconsider Order dated September 10, 2024.

Respectfully,
Clerk/tmm

ORDER

The foregoing Motion by Appellee to Reconsider Order dated September 10, 2024, is **granted**. The Court's order of September 10, 2024 is amended to read:

The foregoing Motion by Appellee to Dismiss is **granted** due to lack of jurisdiction.

By the Court,
s/THOMAS L. AMBRO
Circuit Judge

Dated: September 23, 2024

2a



A True Copy:
Patricia S. Dodszeit

Patricia S. Dodszeit, Clerk

Tmm/cc: Mark E. Coyne, Esq.
Steven G. Sanders, Esq.
Evan J. Austin, Esq.
Alison Brill, Esq.

3a

APPENDIX B

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

ACO-158

No. 23-1088

UNITED STATES OF AMERICA

v.

ARTHUR D. SEALE,

Appellant

(D.N.J. No. 3-92-cr-00372-001)

Present: HARDIMAN, MONTGOMERY-REEVES
and AMBRO, Circuit Judges

1. Motion by Appellee to Dismiss for lack of jurisdiction or, alternatively, to Summarily Affirm;
2. Response by Appellant to Government's Motion to Dismiss or Summarily Affirm;
3. Reply by Appellee in support of motion.

Respectfully,
Clerk/tmm

ORDER

The foregoing Motion by Appellee to Dismiss is **granted**.

By the Court,
s/ Thomas L. Ambro
Circuit Judge

4a

Dated: September 10, 2024
Tmm/cc: All Counsel of Record



A True Copy:
Patricia S. Dodszeuweit

Patricia S. Dodszeuweit, Clerk

5a

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

September 10, 2024

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Office of Federal Public Defender
1002 Broad Street
Newark, NJ 07102

Alison Brill
Office of Federal Public Defender
800-840 Cooper Street
Suite 350
Camden, NJ 08102

Mark E. Coyne
Steven G. Sanders
Office of United States Attorney
970 Broad Street
Room 700
Newark, NJ 07102

Steven G. Sanders
Office of United States Attorney
970 Broad Street
Room 700
Newark, NJ 07102

RE: Arthur Seale v. USA
Case Number: 23-1088

District Court Case Number: 3-92-cr-00372-001

ENTRY OF JUDGMENT

Today, **September 10, 2024** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.
Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc

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rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszeit, Clerk

By: *s/Timothy McIntyre*
Timothy McIntyre, Case Manager
267-299-4953

cc: Melissa E. Rhoads

APPENDIX C

**UNITED STATES DISTRICT COURT
District of New Jersey**

**UNITED STATES OF
AMERICA**

**CASE NUMBER 3:92-
CR-00372 -MAS-1**

v.

[Filed: 01/03/2023]

ARTHUR D. SEALE

Defendant.

**AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After
November 1, 1987)**

Date of Original Judgment: 11/30/1992

Reason for Amendment: Direct Motion to District
Court Pursuant to 28 U.S.C. § 2255

The defendant, ARTHUR D. SEALE, was
represented by ALISON BRILL, AFPD.

The defendant pleaded guilty to Counts 1s-7s of
the SUPERSEDING INDICTMENT on 09/08/1992.
An Order vacating Petitioner's Count 3s conviction
under 18 U.S.C. § 924(c) was filed on 12/30/2022 in
3:19-cv-21016 (ECF No. 21) and 3:92-cr-372-1 (ECF
No. 99). Accordingly, the court has adjudicated that
the defendant is guilty of the following offenses:

Title & Section	Nature of Offense	Date of Offense	Count Numbers
18:1951	CONSPIRACY TO EXTORT	06/19/1992	1s
18:1951 & 2	EXTORTION	06/19/1992	2s
18:876 & 2	USE OF MAIL WITH INTENT TO EXTORT	06/19/1992	4s
18:875(a) and (b) & 2	USE OF TELEPHONE WITH INTENT TO EXTORT	06/19/1992	5s
18:1952 & 2	TRAVEL WITH INTENT TO EXTORT	06/19/1992	6s – 7s

As pronounced on November 30, 1992, and amended by way of Order on December 30, 2022, the defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must pay to the United States a special assessment of \$300.00 for counts 1s, 2s, and 4s-7s, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are

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fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material change in economic circumstances.

Signed this 3rd day of January, 2023.

s/ Michael A. Shipp
Michael A. Shipp
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 90 years, without parole. This term consists of a term of: 20 years on Counts 1s, 2s, 4s, and 5s to run consecutively with one another; and 5 years on Counts 6s and 7s to run consecutively with one another and consecutive to all other Counts.

The defendant will remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____
To _____ At _____, with
a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant will be on supervised release for a term of 5 years.

While on supervised release, the defendant must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below. If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

the defendant shall report in person to the probation office in the district to which the defendant is release within 72 hours of release from the custody of the Bureau of Prisons;

the defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release; and

the defendant shall not possess a firearm or destructive device.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer with 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any

paraphernalia related to such substances, except as prescribed by a physician;

- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record of personal history of characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

For Official Use Only ---U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant Date

U.S. Probation Officer/Designated Witness Date

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FINE

The defendant shall pay a fine of \$1,500,000.00.

This fine, plus any interest pursuant to 18 U.S.C § 3612(f)(1), is due immediately and shall be paid in full within 30 days of sentencing.

This amount is the total of the fines imposed on individual counts, as follows: \$250,000.00 on each of Counts 1s, 2s, and 4s-7s, totaling \$1,500,000.00.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVM assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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APPENDIX D

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

March 22, 2024

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Steven G. Sanders
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970 Broad Street
Room 700
Newark, NJ 07102

RE: Arthur Seale v. USA
Case Number: 23-1089
District Court Case Number: 3-19-cv-21016

ENTRY OF JUDGMENT

Today, **March 22, 2024** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed.

R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

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15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.
Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

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Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszeit, Clerk

By: s/Laurie
Case Manager
267-299-4936
cc: Melissa E. Rhoads

ALD-085

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

C.A. No. 23-1089

ARTHUR SEALE, Appellant

VS.

UNITED STATES OF AMERICA

(D.N.J. Civ. No. 3-19-cv-21016)

Present: HARDIMAN, MONTGOMERY-REEVES,
and NYGAARD, Circuit Judges

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- (2) Appellee's opposition; and
- (3) Appellant's reply in the above-captioned case.

Respectfully,

Clerk

ORDER

Seales's request for a certificate of appealability is denied. We may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Jurists of reason would not debate the District Court's decision to not hold a resentencing hearing. *See United States v. Davis*, 112 F.3d 118,

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121 (3d Cir. 1997) (noting that “[the plain language of § 2255] confers upon the district court broad and flexible power in its actions following a successful § 2255 motion”).

We note that the government’s opposition to Seale’s request for a certificate of appealability in No. 23-1089 also includes a request for relief in No. 23-1088. Because only No. 23-1089 is currently before us, no action will be taken at this time regarding the government’s motion to dismiss or for summary action in 23-1088.

By the Court,

s/ Tamika R. Montgomery-Reeves
Circuit Judge

Dated: March 22, 2024

Lmr/cc: All Counsel of Record



A True Copy:

Patricia S. Dodszeit

Patricia S. Dodszeit, Clerk

Certified Order Issued in Lieu of Mandate

APPENDIX EUNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ARTHUR D. SEALE, Petitioner, v. UNITED STATES OF AMERICA, Respondent.
--

Civil Action No. 19-
21016 (MAS)**MEMORANDUM
ORDER**

[Filed: 07/21/2023]

This matter comes before the Court on Petitioner Arthur D. Seale's letter request for a certificate of appealability so that he may appeal this Court's denial of his request for a full resentencing following the vacation of his conviction under 18 U.S.C. § 924(c). (ECF No. 22.) The Government filed a response to the request (ECF No. 27), to which Petitioner replied (ECF No. 28). For the reasons expressed herein, the Court denies Petitioner's request.

By way of background, Petitioner pled guilty to a seven-count indictment in the early 1990s. The indictment included charges of conspiracy to commit Hobbs Act extortion, Hobbs Act extortion, mailing of threats, making threatening phone calls, traveling in interstate commerce to further an extortion scheme, and the knowing and willful carrying and use of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c). (*See* ECF No. 20 at 2.) Petitioner received a 95-year sentence. (*Id.*)

Following the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019), Petitioner filed a motion to vacate his conviction under § 924(c) in December 2019. (ECF No. 1.) Petitioner also sought a full resentencing in the event his motion was granted. (*Id.*)

On December 30, 2022, this Court entered an opinion and order which granted the motion solely to the extent Petitioner sought to have his § 924(c) conviction vacated, but which denied Petitioner a full resentencing as there was no valid basis for providing one under applicable law. (ECF Nos. 20-21.) As this Court explained,

Petitioner argues that, in light of the vacation of his § 924(c) conviction, he should receive an entirely new sentencing on *all* of his offenses under the sentencing package doctrine. District courts have “broad and flexible power” in determining the proper course “following a successful § 2255 motion” which results in the vacation of one count of a petitioner's conviction. *United States v. Davis*, 112 F.3d 118, 121 (3d Cir. 1997). Under the sentencing package doctrine, where a petitioner has been “found guilty on a multicount indictment” and “one or more of the component counts is vacated” a district judge is “free” to resentence the petitioner on all the remaining counts if such an action is necessary to “accurately reflect the [sentencing] judge's original intent regarding the appropriate punishment for a defendant convicted of multiple offenses and to reflect the gravity of the crime.” *Id.* at 122-23. The

thrust of the doctrine, then, is that, in the face of a vacated conviction, a court *may* resentence a petitioner on all counts where the sentence on the vacated count was interdependent with the sentence on the remaining counts and such a resentencing is necessary to reflect the sentencing judge's ultimate plan and to take account for the seriousness of the remaining offenses, whose sentences may have been discounted to account for the now vacated count of the conviction. *Id.* at 123. The ultimate purpose of the doctrine, then, is to permit a court to resentence the defendant with any guidelines enhancements which the court was prevented from applying by the now vacated conviction or to permit the court to increase the sentence on the remaining counts where necessary to effect the total sentencing package intended by the sentencing judge. *See United States v. Smith*, 467 F.3d 785, 789-90 (D.C. Cir. 2006). A full resentencing . . . is therefore inappropriate where the sentencing judge already imposed "the highest sentence available" on the remaining counts of the conviction, indicating that the vacatur of a consecutive § 924(c) conviction does not unravel the package imposed. *Id.* at 790.

This Court need not guess at Judge Brown's intentions in sentencing Petitioner. At the sentencing hearing, Judge Brown made it abundantly clear that his "intent [wa]s that [Petitioner] never be free" and that the Court intended to impose a sentence that ensured

that Petitioner would be “imprisoned for the rest of [his] life without parole.” (Sent. Tr. at 91.) Judge Brown therefore imposed the applicable statutory maximum sentence on each count of the indictment, and ran those counts consecutive to one another. (*Id.* at 91-92.) As with the Defendant in *Smith*, Petitioner received on his remaining convictions “the highest sentence available” in the form of the applicable statutory maximum sentences run consecutively, and as such the vacatur of the § 924(c) sentence alone does not “unravel” an interdependent sentencing plan. As the applicable maximums were imposed, this Court has no opportunity to impose a harsher sentence on the remaining counts in order to rebalance Petitioner’s sentence, and the increased guidelines range which would result from the inapplicability of § 924(c) could have no effect on Petitioner. The only possible outcome of a full resentencing for Petitioner would be either the sentence Petitioner already has minus the five years for the vacated count, or a windfall in the form of a lesser sentence on Petitioner’s remaining counts. Such a windfall would not “accurately reflect” Judge Brown’s sentencing intentions, nor would it allow the restoration of a package plan disturbed by a vacated count. The sentencing package doctrine is thus inapplicable – Petitioner’s statutory maximum sentences were not interdependent with the consecutive § 924(c) conviction, and there is no occasion in

this matter to rebalance Petitioner's remaining sentences to better reflect the sentencing court's intentions. This Court thus concludes that a full resentencing is inappropriate, and must be denied as such. This Court will therefore grant Petitioner's motion to the extent he seeks the vacation of his § 924(c) conviction, vacate the five-year consecutive sentence imposed on that count, and leave Petitioner's remaining sentences intact.

(ECF No. 20 at 10-12.)

Petitioner's letter request asks the Court to grant Petitioner a certificate of appealability so that he may now appeal the denial of his request for a full resentencing. (ECF No. 22.) In essence, Petitioner contends that he should be granted a certificate of appealability because he showed his entitlement to relief under *Davis*, notwithstanding the fact that he does not intend to appeal the decision vacating his conviction, and because in any event the "denial of a full resentencing hearing arguably violated" Petitioner's Due Process rights. (*Id.* at 1.) The Government opposes this request. (ECF No. 27.)

Pursuant to 28 U.S.C. § 2253(c), the petitioner in a § 2255 proceeding may not appeal from the final order in that proceeding unless he makes "a substantial showing of the denial of a constitutional right." "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude that the issues presented here are adequate to

deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The requirement for a certificate of appealability applies not only to denials of § 2255 motions on the merits, but also to cases in which an appellant seeks to appeal a corrected sentence which resulted from a granted § 2255 motion. *See, e.g., United States v. Walker*, No. 18-3580, 2019 WL 11093774, at *1 (3d Cir. Dec. 4, 2019); *United States v. Williams*, 158 F.3d 736, 740 (3d Cir. 1998).

Although Petitioner contends that he is entitled to a certificate of appealability because this Court granted him relief on his *Davis* claim, that contention is incorrect. Petitioner does not disagree with the vacation of his § 924(c) claim, nor does he seek to appeal that issue. Instead, Petitioner seeks to appeal only the denial of a full resentencing. Petitioner must therefore make a substantial showing that the court’s denial of a resentencing amounted to the denial of a constitutional right. *See, e.g., Williams v. United States*, 150 F.3d 639, 639-41 (7th Cir. 1998). Contrary to Petitioner’s contention that the denial of a full resentencing “arguably” impacted his Due Process rights, however, there is no constitutional obligation that a full resentencing occur following the vacation of a single count of a conviction.¹ *Id.*; *see*

¹ Petitioner resists this conclusion by citing to the Eleventh Circuit’s decision in *United States v. Paige*, No. 21-13920, 2022 WL 17455186, at *2 (11th Cir. Dec. 6, 2022). Although the Eleventh Circuit found a certificate warranted in that case because the panel felt it “debatable” whether a constitutional right was involved in the denial of a resentencing, the panel ultimately concluded that the denial of a resentencing was entirely proper where no rebalancing was needed to adjust a

also Davis, 112 F.3d at 122-23. Indeed, as this Court explained in detail to Petitioner in denying him a resentencing, this Court has considerable discretion in determining whether a resentencing is required. Furthermore, the Court is under no obligation to provide a prisoner in Petitioner's circumstances the windfall of a resentencing where no such resentencing is necessary to rebalance the remaining counts and the intentions of the original sentencing judge were abundantly clear. (*See* ECF No. 20 at 10-12.) Petitioner has thus failed to make a substantial showing of the denial of a constitutional right, and the Court finds good cause to deny his request for a certificate of appealability.

IT IS THEREFORE on this 21st day of July, 2023, **ORDERED** that:

1. The Clerk of the Court shall re-open this matter for the purposes of this Order only;
2. Petitioner's request for a certificate of appealability (ECF No. 22) is **DENIED**; and
3. The Clerk of the Court shall serve a copy of this Order upon the parties electronically and shall **CLOSE** the file.

s/ Michael A. Shipp

MICHAEL A. SHIPP

UNITED STATES DISTRICT JUDGE

sentence under the sentencing package doctrine. Thus, the granting of a certificate in that case aside, *Paige's* ultimate conclusion is entirely in line with this Court decision denying a certificate of appealability.

APPENDIX F**NOT FOR PUBLICATION****UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ARTHUR D. SEALE,

Petitioner,

v.

UNITED STATES OF
AMERICA,

Respondent.

Civil Action No. 19-
21016 (MAS)**OPINION**

[Filed: 12/30/2022]

SHIPP, District Judge

This matter comes before the Court on Petitioner Arthur D. Seale's motion to vacate sentence brought pursuant to 28 U.S.C. § 2255. (ECF No. 1, 12.) Following an order to answer, the Government filed a response to the motion (ECF No. 13), to which Petitioner replied (ECF No. 16). For the following reasons, the Court grants the motion solely to the extent Petitioner seeks the vacation of his § 924(c) conviction and sentence. In addition, the Court denies Petitioner's request for a full resentencing.

I. BACKGROUND

On direct appeal, the Third Circuit summarized the background of Petitioner's conviction as follows:

In late 1991, [Petitioner], a former security officer for Exxon Corporation[,] conceived a plan to kidnap an Exxon executive. His goal was to obtain a large sum of money to assist

with his and his wife's financial problems. He selected Sydney J. Reso ["Reso"], president of an Exxon subsidiary, as the target of an elaborate scheme in which [Petitioner's wife] agreed to participate.

For the next three months, [Petitioner and his wife] prepared to carry out their crime. They conducted surveillance at Reso's home to ascertain the time he usually left for work and the method of transportation he usually used. They constructed a coffin-like box in which to place Reso once they had abducted him. [Petitioner] began conducting research on how to avoid paying taxes on the ransom he expected to receive and on environmental causes he might use as a ploy to explain the kidnapping in ransom notes.

On the morning of April 29, 1992, [Petitioner and his wife] abducted Reso as he left for work. During a struggle at the foot of his driveway as [Petitioner and his wife] sought to place him in their van, Reso was shot. He died four days later. For the next six weeks, however, [Petitioner and his wife], holding themselves out as an environmental group named the "Fernando Pereira Brigade, Warriors of the Rainbow," pursued their efforts to obtain \$18.5 million in ransom by leading Federal Bureau of Investigation officials, the Reso family, other Exxon employees and the general public to believe that Reso was still alive but would be "eliminated" if their instructions were not followed.

On June 19, 1992, before any ransom money was paid, [Petitioner and his wife] were arrested and charged with federal and state kidnapping and extortion charges. [Petitioner's wife] soon began to cooperate with authorities. She led them to Reso's grave and described the scheme to them. Pursuant to a plea agreement, she pleaded guilty to one count of extortion and one count of conspiracy to extort, each in violation of 18 U.S.C. § 1951. [Petitioner] did not enter into a plea agreement with the government; instead, he pleaded guilty to a seven-count indictment two days before his trial was to start. [Those seven counts included charges of conspiracy to commit Hobbs Act extortion in violation of 18 U.S.C. § 1951, Hobbs Act extortion and committing and threatening violence to Reso in furtherance of that extortion in violation of 18 U.S.C. § 19151, the knowing and willful carrying and use of a firearm in relation to the Hobbs Act counts in violation of 18 U.S.C. § 924(c), the mailing of a threat to kill or injure Reso in violation of 18 U.S.C. § 876, making a threatening phone call in violation of 18 U.S.C. § 875(a) and (b), and two counts of traveling in interstate commerce to facilitate the extortion scheme in violation of 18 U.S.C. § 1952.]

Both [defendants] received stiff sentences. [Petitioner] was sentenced to 95 years in prison and a five-year term of supervised release[, including statutory maximum sentences on the six counts relating to

extortion and a five year consecutive sentence on the § 924(c) violation.] . . . [Petitioner] also pleaded guilty to and received sentences for state charges arising from [his] criminal activity.

United States v. Seale, 20 F.3d 1279, 1281-82 (3d Cir. 1994). Petitioner appealed, and the Third Circuit affirmed his conviction and sentence but remanded the matter for a redetermination of the applicable fees and fines. *Id.* at 1290.

Petitioner later sought to challenge his convictions through a number of unsuccessful motions to vacate sentence. (*See* Docket Nos. 04-3830, 07-4356, 18-9075.) Petitioner thereafter sought, and received, leave from the Court of Appeals to pursue a successive motion to vacate sentence challenging his conviction under § 924(c) following the Supreme Court's decision vacating the residual clause of § 924(c) in *United States v. Davis*, __ U.S. __, 139 S. Ct. 2319 (2019). (*See* ECF No. 1.)

II. LEGAL STANDARD

A prisoner in federal custody may file a motion pursuant to 28 U.S.C. § 2255 challenging the validity of his or her sentence. Section 2255 provides, in relevant part, as follows:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such a sentence, or that the sentence

was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255. Unless the moving party claims a jurisdictional defect or a constitutional violation, to be entitled to relief the moving party must show that an error of law or fact constitutes “a fundamental defect which inherently results in a complete miscarriage of justice, [or] an omission inconsistent with the rudimentary demands of fair procedure.” *United States v. Horsley*, 599 F.2d 1265, 1268 (3d Cir. 1979) (quoting *Hill v. United States*, 368 U.S. 424, 429 (1962)), *cert. denied*, 444 U.S. 865 (1979); *see also Morelli v. United States*, 285 F. Supp. 2d 454, 458-59 (D.N.J. 2003).

III. DISCUSSION

A. No Evidentiary Hearing Is Necessary In This Matter

A district court need not hold an evidentiary hearing on a motion to vacate where “the motion and files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b); *United States v. Booth*, 432 F.3d 542, 545 (3d Cir. 2005); *United States v. Day*, 969 F.2d 39, 41-42 (3d Cir. 1992). “Where the record, supplemented by the trial judge’s personal knowledge, conclusively negates the factual predicates asserted by the petitioner or indicate[s] that petitioner is not entitled to relief as a matter of law, no hearing is required.” *Judge v. United States*, 119 F. Supp. 3d 270, 280 (D.N.J. 2015); *see also Gov’t of V.I. v. Nicholas*, 759

F.2d 1073, 1075 (3d Cir. 1985); *see also United States v. Tuyen Quang Pham*, 587 F. App'x 6, 8 (3d Cir. 2014); *Booth*, 432 F.3d at 546. Because this Court can resolve Petitioner's *Davis* claim on the record presented for the reasons expressed below, no evidentiary hearing is necessary in this matter.

B. Petitioner's *Davis* claim

In his motion, Petitioner argues that his § 924(c) conviction must be vacated because his convictions for Hobbs Act extortion and conspiracy to commit Hobbs Act extortion no longer function as viable predicates for such a conviction in light of the Supreme Court's ruling in *Davis*. Section 924(c) criminalizes the use, carrying or possession of a firearm in furtherance of a drug trafficking crime or crime of violence. The statute provides for higher mandatory minimum sentences in those cases in which the firearm in question is either brandished or discharged. 18 U.S.C. § 924(c)(1)(A)(ii)-(iii). As explained by the Supreme Court in *Davis*, under the statute, a crime will qualify as a crime of violence only when it satisfies one of two alternative clauses—the statute's elements clause, § 924(c)(3)(A), or the statute's residual clause, § 924(c)(3)(B). *Davis*, 139 S. Ct. at 2324. In *Davis*, the Supreme Court invalidated the residual clause of § 924(c) as unconstitutionally vague, but left in place the statute's remaining elements clause. *Id.* at 2325-33. Thus, after *Davis*, a crime will only qualify as an underlying crime of violence for a § 924(c) charge where it meets the elements clause of § 924(c). *Id.* Under the elements clause, a crime constitutes a valid "crime of violence" where the "offense is a felony" and it "has as an element the use, attempted use, or threatened use of

physical force against the person or property of another.” *Id.* at 2324. Thus, as all of the acts which would support Petitioner’s § 924(c) conviction are clearly felonies, if any of the charged offenses categorically has as an element the use, attempted use, or threatened use of force, it will remain a valid predicate offense for Petitioner’s § 924(c) convictions.

Here, the Government concedes that neither Hobbs Act extortion itself nor conspiracy to commit such an extortion qualifies as a crime of violence under the elements clause. As the Government points out, however, Petitioner was not merely charged with extortion and conspiracy to commit extortion. He was also charged with and pled guilty to the crime of committing and threatening violence against his victim in furtherance of his extortion plot. The Hobbs Act criminalizes three distinct offenses, as well as the attempt or conspiracy to engage in those offenses—robbery, extortion, and the “commit[ting] or threaten[ing of] physical violence to any person or property in furtherance of a plan or purpose” to rob or extort. *See* 18 U.S.C. § 1951(a); *Scheidler v. Nat’l Org. for Women, Inc.*, 547 U.S. 9, 22-23 (2006); *United States v. Nikolla*, 950 F.3d 51, 54 (2d Cir. 2020). As the Second Circuit recently noted, the “elements of [the use or threatening of force in furtherance of a crime of violence] mirror almost exactly the definition of a ‘crime of violence’ in the elements clause of § 924(c).” *Nikolla*, 950 F.3d at 54. In *Nikolla*, as in this case, the petitioner argued that the Hobbs Act violence in furtherance of extortion offense did not fit under the elements clause, however, because a defendant could threaten or use force upon himself or his own property in furtherance of an extortion plot,

acts which would be outside of the elements clause of § 924(c). *Id.* The Second Circuit rejected this argument as an unrealistic hypothetical as the petitioner did “not cite to any case that applied the Hobbs Act in this way, and [the Court of Appeals was] aware of none.” *Id.*; *see also Moncrieffe v. Holder*, 569 U.S. 184, 190-91 (2013) (categorical analysis is “not an invitation to apply ‘legal imagination’ to the . . . offense; there must be a realistic probability” the statute would be applied in the argued manner); *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193-94 (2007) (a petitioner must show a “realistic probability, not a theoretical possibility” that statute would be applied in the manner for which he is arguing, which generally requires that a petitioner present instances in which the statute was applied in such a manner).

Petitioner argues that he need not show such a realistic probability under the Third Circuit’s ruling in *Salmoran v. Attorney General*, 909 F.3d 73, 81-82 (3d Cir. 2018). In *Salmoran*, the Third Circuit explained that the realistic probability rule should not be applied where the text of the criminal statute in question *clearly* encompasses a broader range of activity than that entertained by the generic federal definition to which it must categorically match. *Id.* Here, there is a difference between the two statutes: the elements clause requires the threat or use of violence against the person or property of another, while the Hobbs Act crime in question requires only the threat or use of violence against “any person or property” in furtherance of a robbery or extortion plot. As Petitioner points out, the Hobbs Act could be plausibly read to criminalize the use or threat of

violence against oneself or one's own property, which lays outside of the boundaries of the conduct recognized by the elements clause of § 924(c). This Court is thus constrained by the Third Circuit's ruling in *Salmoran* to eschew the realistic probability approach used by the Second Circuit, and must find that the Hobbs Act offense of use of violence in furtherance of an extortion plot is not categorically a crime of violence under the elements clause sufficient to support Petitioner's conviction under § 924(c).

Recognizing this possibility, the Government contends that even if the Hobbs Act offense to which Petitioner pled guilty does not support his § 924(c) conviction, his conviction may yet stand because Petitioner admitted during his guilty plea to conduct including the taking of the victim's credit card, an act which the Government asserts constitutes Hobbs Act robbery, which *is* categorically a crime of violence under the elements clause. *See, e.g., United States v. Walker*, 990 F.3d 316, 325-26, 325 n.11 (3d Cir. 2021) (holding that completed Hobbs Act robbery is a crime of violence and noting virtually unanimous agreement of courts of appeals on the issue), *vacated and remanded on other grounds*, 2022 WL 2295075 (2022); *see also United States v. Atcheson*, 94 F. 3d 1237, 1243-44 (9th Cir. 1996) (theft of bank cards issued by out of state bank by force or threat of force constitutes Hobbs Act robbery). "It is well settled that, '[i]n a prosecution under [§ 924(c)], the Government must prove [or the defendant admit] that the defendant committed a qualifying predicate offense . . . but it is not necessary that the defendant be separately charged with or convicted of such an offense.'" *United States v. Collazo*, 856 F. App'x 380,

383-84 (3d Cir. 2021) (quoting *United States v. Lake*, 150 F. 3d 269, 274-75 (3d Cir. 1998)). “In the context of a § 924(c) guilty plea, [courts] look[] to the factual proffer, plea hearing, and other evidence in the record to determine if a qualifying predicate offense was committed.” *Id.* at 384.

The Government contends that in his plea proffer, Petitioner admitted to committing Hobbs Act robbery, a crime for which he was not charged. The Court is not persuaded by the Government’s argument. “[T]he elements of Hobbs Act robbery are (1) the unlawful taking or obtaining (2) of personal property (3) from the person of another (4) against his or her will (5) by means of actual or ... threatened force, or ... by means of violence, or ... by means of fear of injury.” *United States v. Taylor*, __U.S.__, 142 S. Ct. 2015, 2034 (2022) (Alito, J., dissenting); see also 18 U.S.C. § 1915(b)(1); *United States v. Hill*, 890 F.3d 51, 56-57 (2d Cir. 2018).

During his plea proffer, Petitioner admitted that he and his wife seized the victim at gun point and placed him in a van, the victim was shot in the exchange, and they took him to a storage unit. (Plea Tr. at 20-21.) Petitioner further admitted that as part of the extortion plot, he and his wife drafted ransom notes, to one of which they attached the victim’s credit card. (*Id.* at 22-25.) Based on Petitioner’s plea proffer, the Court finds it implausible that Petitioner stole the victim’s credit card before he accidentally shot the victim while trying to kidnap the victim. Moreover, even if the Court found that the facts *suggested* a plausible theory that Petitioner or his wife took the credit card from Reso while he was still alive, Petitioner did not elaborate on the details of

how, or when, the credit card was taken, or by whom. Petitioner did not expressly admit that the card was taken from the person of his victim; that the card was taken by actual or threatened force, violence, or by means of fear or injury; or that he was the one who retrieved the card. If the Court adopted the Government's argument, it would be required to *infer* from Petitioner's plea colloquy that the card was taken by means of threats or force imposed on the victim. Petitioner, however, did not expressly admit all of the elements of Hobbs Act robbery on the record during his plea colloquy. As the indictment in turn makes no mention of such a robbery, and there was no trial at which all of the elements of Hobbs Act robbery were established, this Court cannot find that Petitioner admitted to Hobbs Act robbery for that to serve as the predicate offense for his § 924(c) conviction. As Petitioner therefore lacks an adequate crime of violence to support his conviction, his § 924(c) conviction must be vacated absent some procedural bar to such a result.

The Government argues that such a bar does exist—specifically, the Government argues that Petitioner's *Davis* claim is procedurally defaulted as it could have been raised on direct appeal or in prior § 2255 motions to the extent that the void for vagueness doctrine existed long before his conviction, even if such a claim challenging § 924(c) was unlikely to succeed thirty years ago. Generally, claims which could have been, but were not raised, either on direct appeal or in a first § 2255 motion, will be considered procedurally defaulted in a subsequent proceeding. *See, e.g., Massaro v. United States*, 538 U.S. 500, 504 (2003); *United States v. Frady*, 456 U.S. 152, 167-68

(1982); *see also United States v. DeRewal*, 10 F.3d 100, 105 n.4 (3d Cir. 1993); *Parkin v. United States*, 565 F. App'x 149, 151-52 (3d Cir. 2014). Clearly, Petitioner *could* have raised a vagueness challenge in earlier proceedings, and the Government thus may be correct that the claim in question is technically defaulted.

Even so, however, a habeas petitioner can overcome a procedural default by showing cause for his default and actual prejudice. *Massaro*, 538 U.S. at 504; *Frady*, 456 U.S. at 167-68; *Parkin*, 565 F. App'x at 151. Cause in this context is established where “some objective factor external to the defense” impeded the petitioner’s ability to earlier raise the claim. *See Coleman v. Thompson*, 501 U.S. 722, 753 (1991). Actual prejudice will in turn be established where the alleged error “worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.” *Frady*, 456 U.S. at 170. Since *Davis*, “many courts have noted [that] a petitioner [can] adequately establish[] cause in this circumstance because *Davis* . . . was decided well after a petitioner’s judgment of conviction became final” and a *Davis* claim was not reasonably available at the time. *See, e.g., Hinnant v. United States*, No. 19-19028, 2020 WL 6255415, at *3 (D.N.J. Oct. 23, 2020). In an unpublished case, the Third Circuit has likewise questioned the wisdom of applying procedural bars to *Davis* claims, categorizing *Davis* as a new rule of constitutional law for § 2255 purposes—that the residual clause of § 924(c) is unconstitutionally vague. *See Collazo*, 856 F. App'x 382-83. It thus appears that the Third Circuit would likewise determine that a claim raised

in a timely fashion after the Court's ruling in *Davis* either would not be barred because it is based on a new rule which was not previously available, or at least that the lack of *Davis* as a practical matter would be cause to excuse procedural default. *Id.* This Court agrees that *Davis* was not practically or reasonably available to Petitioner, and that this is sufficient to establish cause to excuse his default. Likewise, that the alleged error worked to his disadvantage is clear—he sustained a § 924(c) conviction without a valid predicate offense not based on an unconstitutionally vague clause. Petitioner has thus shown cause and actual prejudice, and his apparent procedural default thus does not bar relief.

Finally, the Court must turn to the question of relief. Petitioner argues that, in light of the vacation of his § 924(c) conviction, he should receive an entirely new sentencing on *all* of his offenses under the sentencing package doctrine. District courts have “broad and flexible power” in determining the proper course “following a successful § 2255 motion” which results in the vacation of one count of a petitioner's conviction. *United States v. Davis*, 112 F.3d 118, 121 (3d Cir. 1997). Under the sentencing package doctrine, where a petitioner has been “found guilty on a multicount indictment” and “one or more of the component counts is vacated” a district judge is “free” to resentence the petitioner on all the remaining counts if such an action is necessary to “accurately reflect the [sentencing] judge's original intent regarding the appropriate punishment for a defendant convicted of multiple offenses and to reflect the gravity of the crime.” *Id.* at 122-23. The thrust of the doctrine, then, is that, in the face of a

vacated conviction, a court *may* resentence a petitioner on all counts where the sentence on the vacated count was interdependent with the sentence on the remaining counts and such a resentencing is necessary to reflect the sentencing judge's ultimate plan and to take account for the seriousness of the remaining offenses, whose sentences may have been discounted to account for the now vacated count of the conviction. *Id.* at 123. The ultimate purpose of the doctrine, then, is to permit a court to resentence the defendant with any guidelines enhancements which the court was prevented from applying by the now vacated conviction or to permit the court to increase the sentence on the remaining counts where necessary to effect the total sentencing package intended by the sentencing judge. *See United States v. Smith*, 467 F.3d 785, 789-90 (D.C. Cir. 2006). A full resentencing under the doctrine is therefore inappropriate where the sentencing judge already imposed "the highest sentence available" on the remaining counts of the conviction, indicating that the vacatur of a consecutive § 924(c) conviction does not unravel the package imposed. *Id.* at 790.

This Court need not guess at Judge Brown's intentions in sentencing Petitioner. At the sentencing hearing, Judge Brown made it abundantly clear that his "intent [wa]s that [Petitioner] never be free" and that the Court intended to impose a sentence that ensured that Petitioner would be "imprisoned for the rest of [his] life without parole." (Sent. Tr. at 91.) Judge Brown therefore imposed the applicable statutory maximum sentence on each count of the indictment and ran those counts consecutive to one another. (*Id.* at 91-92.) As with the defendant in

Smith, Petitioner received on his remaining convictions “the highest sentence available” in the form of the applicable statutory maximum sentences run consecutively, and as such the vacatur of the § 924(c) sentence alone does not “unravel” an interdependent sentencing plan. As the applicable maximums were imposed, this Court has no opportunity to impose a harsher sentence on the remaining counts in order to rebalance Petitioner’s sentence, and the increased guidelines range which would result from the inapplicability of § 924(c) could have no effect on Petitioner. The only possible outcome of a full resentencing for Petitioner would be either the sentence Petitioner already has minus the five years for the vacated count, or a windfall in the form of a lesser sentence on Petitioner’s remaining counts. Such a windfall would not “accurately reflect” Judge Brown’s sentencing intentions, nor would it allow the restoration of a package plan disturbed by a vacated count. The sentencing package doctrine is thus inapplicable—Petitioner’s statutory maximum sentences were not interdependent with the consecutive § 924(c) conviction, and there is no occasion in this matter to rebalance Petitioner’s remaining sentences to better reflect the sentencing court’s intentions. This Court thus concludes that a full resentencing is inappropriate and Petitioner’s request must be denied as such. This Court will therefore grant Petitioner’s motion to the extent he seeks the vacation of his § 924(c) conviction, vacate the five-year consecutive sentence imposed on that count, and leave Petitioner’s remaining sentences intact.

IV. CONCLUSION

For the reasons set forth above, Petitioner's motion to vacate sentence (ECF No. 1) is GRANTED only to the extent he seeks the vacation of his § 924(c) conviction and sentence. Petitioner's request for a full resentencing is DENIED. An appropriate order follows.

s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

2. Petitioner's § 924(c) conviction and its accompanying five-year sentence are **VACATED**¹,
3. Petitioner's request for a full resentencing is **DENIED**; Petitioner's sentences on the remaining counts of his conviction shall remain intact and undisturbed,
4. An amended judgement shall be entered in Petitioner's criminal case (Docket No. 92-372-01), and
5. The Clerk of the Court shall serve a copy of this Order and the accompanying Opinion upon the parties electronically and shall **CLOSE** the file.

s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

¹ The Court notes the accompanying fine of \$250,000.00 as to Count 3s is hereby **VACATED**. Petitioner shall pay a \$250,000.00 fine on each Counts 1s, 2s, and 4s-7s for a total of \$1,500,000.00, with credit for any previous payments.

APPENDIX H

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF
AMERICA

v.

ARTHUR SEALE,
Defendant.

Crim. No. 92-372 (MAS)

ARTHUR SEALE

Petitioner,

v.

UNITED STATES OF
AMERICA

Civ. No. 19-21016 (MAS)

NOTICE OF APPEAL

Defendant Arthur Seale hereby gives notice that he is appealing the order amending his judgment, entered on January 3, 2023 in Criminal Number 92-372. He is also appealing the order granting in part and denying in part his petition under 28 U.S.C. § 2255, entered on December 30, 2022 in Civil Number 19-21016. This appeal is being taken to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

s/ Alison Brill

ALISON BRILL

Assistant Federal Public Defender,
District of New Jersey

Dated: January 12, 2023