

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**February 8, 2023**

**FOR THE TENTH CIRCUIT**

**Christopher M. Wolpert**  
**Clerk of Court**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES FRANKLIN BROOKS,

Defendant - Appellant.

No. 20-5115  
(D.C. Nos. 4:20-CV-00239-TCK-JFJ &  
4:08-CR-00061-TCK-1)  
(N.D. Okla.)

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**ORDER AND JUDGMENT\***

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Before **BACHARACH, BALDOCK, and CARSON**, Circuit Judges.

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James Brooks appeals the district court's dismissal of a second motion under 28 U.S.C. § 2255 seeking to vacate his convictions for use of a deadly weapon during a crime of violence in violation of 18 U.S.C. § 924(c). We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

In 2008, a jury convicted Mr. Brooks of two counts of Hobbs Act robbery, 18 U.S.C. § 1951(a); two counts of using a pistol during a crime of violence,

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\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

18 U.S.C. § 924(c); and one count of possessing a pistol and ammunition after a previous felony conviction, 18 U.S.C. § 922(g). This court affirmed Mr. Brooks’s conviction on direct appeal. *See United States v. Brooks*, 569 F.3d 1284, 1286 (10th Cir. 2009). Mr. Brooks sought relief under § 2255, which the district court denied.

In 2019, the Supreme Court decided *United States v. Davis*, 139 S. Ct. 2319 (2019). In *Davis*, the Court held the residual clause of § 924(c)(3) was unconstitutionally vague.<sup>1</sup> 139 S. Ct. at 2323–24. We authorized a second § 2255 motion for Mr. Brooks to challenge his § 924(c) convictions under *Davis*. After Mr. Brooks filed his motion, the district court dismissed it and denied a certificate of appealability (COA). In so doing, it applied our holding in *United States v. Melgar-Cabrera*, 892 F.3d 1053, 1060 n.4 (10th Cir. 2018) that “Hobbs Act robbery is a crime of violence under the elements clause of § 924(c)(3).” Because Mr. Brooks’s conviction was a crime of violence under the elements clause of § 924(c)(3), not the residual clause, the district court concluded *Davis* did not affect its validity.

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<sup>1</sup> Section 924(c)(3) comprises two parts. Part A defines a “crime of violence” as a felony offense that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. § 924(c)(3). We refer to part A as the “elements clause.” *See United States v. Baker*, 49 F.4th 1348, 1351 & n.2 (10th Cir. 2022). Part B defines a “crime of violence” as a felony offense “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.” *Id.* We refer to part B as the “residual clause.”

This court granted Mr. Brooks a COA on the following issue: “In light of the contention that Hobbs Act robbery can be accomplished by a threat to property, is Mr. Brooks’s conviction for Hobbs Act robbery considered a ‘crime of violence’ under 18 U.S.C. § 924(c)(3)?” Order at 1 (July 6, 2021). We then abated this appeal, awaiting the decisions subsequently announced in *United States v. Taylor*, 142 S. Ct. 2015 (2022), and *United States v. Baker*, 49 F.4th 1348 (10th Cir. 2022).

In supplemental briefing, Mr. Brooks concedes that *Taylor*, which concerned use of a firearm in connection with *attempted* Hobbs Act robbery, 142 S. Ct. at 2020, does not alter the validity of his convictions for use of a firearm in connection with *completed* Hobbs Act robbery. Aplt. Suppl. Br. at 1. And in *Baker*, we confirmed the holding in *Melgar-Cabrera* that completed Hobbs Act Robbery is categorically a crime of violence under the elements clause of § 924(c)(3). *See* 49 F.4th at 1356. Mr. Brooks acknowledges that, in light of *Taylor* and *Baker*, he “does not have a legal basis for asserting that this Court should not follow the precedent[i]al law in *Melgar-Cabrera*.” Aplt. Suppl. Br. at 5.

We therefore affirm the judgment of the district court.

Entered for the Court

Per Curiam