

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4054

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MOHAMED M. EL SHAMY,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, District Judge. (3:15-cr-00055-MHL-1)

Submitted: April 21, 2020

Decided: May 19, 2020

Before WILKINSON, NIEMEYER, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

William J. Dinkin, STONE, CARDWELL & DINKIN, PLC, Richmond, Virginia, for Appellant. Richard Daniel Cooke, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mohamed M. El Shamy pled guilty to two counts of possessing and brandishing a firearm in furtherance of a crime of violence and aiding and abetting, in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii), 2 (2018). The district court sentenced El Shamy to the statutory mandatory minimum sentence applicable at the time of his sentencing: 84 months on the first § 924(c) offense and a consecutive 300 months on the second § 924(c) offense, for a total sentence of 384 months in prison. On appeal, El Shamy challenges his § 924(c) convictions, arguing that Hobbs Act robbery is not a crime of violence under § 924(c) and that the district court erred in denying his motion to withdraw his guilty plea. We affirm.

Section 924(c)(3) provides two definitions of the term “crime of violence”—the force clause in § 924(c)(3)(A) and the residual clause in § 924(c)(3)(B). Although the Supreme Court recently concluded that the residual clause in § 924(c)(3)(B) is unconstitutionally vague, *United States v. Davis*, 139 S. Ct. 2319, 2336 (2019), the force clause in § 924(c)(3)(A) remains intact. Shortly after *Davis*, we held in *United States v. Mathis*, 932 F.3d 242 (4th Cir.), *cert. denied*, 140 S. Ct. 639, 140 S. Ct. 640 (2019), that “Hobbs Act robbery constitutes a crime of violence under the force clause of Section 924(c).” Accordingly, El Shamy’s claim of legal innocence is foreclosed by *Mathis*. As El Shamy relied solely on that claim to support his motion to withdraw his guilty plea, the district court did not abuse its discretion in denying the motion because El Shamy is not legally innocent of his § 924(c) convictions. See *United States v. Nicholson*, 676 F.3d 376, 383 (4th Cir. 2012) (stating standard of review for denial of motion to withdraw guilty plea).

We also conclude that El Shamy is not entitled to relief under the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. “[T]he First Step Act . . . amend[ed] § 924(c) so that the 25-year mandatory minimum for a second or subsequent offense applies only when a prior conviction under § 924(c) already ‘has become final.’” *United States v. Jordan*, 952 F.3d 160, 171 (4th Cir. 2020) (quoting Pub. L. No. 115-391, § 403(a), 132 Stat. 5194, 5222). Although the Act changed the recidivist provision of § 924(c), this amendment does not aid El Shamy, as he was sentenced before the enactment of the First Step Act. *See Jordan*, 952 F.3d at 174 (“Section 403(b) [of the First Step Act] expressly addresses the circumstances under which § 403(a) will apply to pre-enactment cases, and by its plain terms, it excludes cases . . . in which a defendant is sentenced before the Act’s effective date.”).

We therefore affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED