

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,

v.

AJANI PLANTE,

Defendant.

1:17-cr-00013-WAL-EAH

TO: Rhonda Williams-Henry, Esq., AUSA
Ajani Plante, *Pro Se*

REPORT AND RECOMMENDATION

THIS MATTER comes before the Court on an Order by the District Judge, dated August 7, 2025, referring the Motion to Vacate or Set Aside Conviction (28 U.S.C. § 2255), Dkt. No. 41, and the Motion for Compassionate Release and Sentence Reduction or Modification, Dkt. No. 44, both filed by Defendant Ajani Plante, pro se, to the undersigned for a Report & Recommendation (“R&R”). Dkt. No. 47. The Government responded to Mr. Plante’s Motion for Compassionate Release, Dkt. No. 45, and he filed a reply, Dkt. No. 46. For the reasons that follow, the Court recommends that the District Judge deny both motions.

BACKGROUND

Although Mr. Plante filed the two motions in the instant case, another case is relevant in adjudicating them—particularly since sentencing in both cases occurred on the same day.

A. United States v Plante, 1:16-cr-0028 (D.V.I.): The “First Case”

This case related to a robbery that took place on June 17, 2013. Dkt. No. 1. In a five-count Indictment, Mr. Plante was charged with: (1) conspiracy to interfere with commerce by robbery, in violation of 18 U.S.C. § 1951; (2) interference with commerce by robbery, in

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violation of 18 U.S.C. § 1951; (3) conspiracy to use and carry a firearm during and in relation to a crime of violence (conspiracy to interfere with commerce by robbery, interference with commerce by robbery, and first degree robbery, as set forth in Counts One, Two and Five of the Indictment), in violation of 18 U.S.C. § 924(o); (4) using and carrying a firearm during crimes of violence (conspiracy to interfere with commerce by robbery, interference with commerce by robbery, and first degree robbery, as set forth in Counts One, Two and Five of the Indictment), in violation of 18 U.S.C. 924(c)(1)(A)(ii); and (5) first-degree robbery, in violation of 14 V.I.C. § 1862(2). Dkt. No. 1.

In March 2017, the parties filed a plea agreement. Dkt. No. 20. Mr. Plante agreed to plead guilty to Counts Two and Four of the Indictment. *Id.* As to Count Two, he admitted in the plea agreement that the Government could prove that he unlawfully took personal property (jewelry) from the presence of the owner of a jewelry store against the owner's will. *Id.* at 2. As to Count Four, he admitted that the Government could prove that he committed the crime of interference with commerce by robbery; that he used, carried or brandished a firearm, and did so in relation to the crime of violence; and that he and other robbers took more than \$20,000 in jewelry during the robbery. *Id.* at 2-3. The plea agreement described a completed robbery of the store. *Id.* It also provided that Mr. Plante voluntarily acknowledged that he "expressly waives the right to petition under 28 U.S.C. § 2255, with the exception of the claim of ineffective assistance of counsel." *Id.* at 5-6.

Then-Magistrate Judge George W. Cannon, Jr. presided over the change of plea hearing on March 21, 2017, Dkt. No. 24. The District Judge set the sentencing for this case

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and in another case in which Mr. Plante was a Defendant—*United States v. Plante*, 17-cr-0013—for November 9, 2018. Dkt. No. 40. This case was reassigned to U.S. District Judge Anne E. Thompson for further proceedings, Dkt. No. 41, and Judge Thompson sentenced Mr. Plante in both cases on November 9, 2018. Dkt. No. 42. The Judgment in the instant case issued on November 29, 2018. Dkt. No. 43. Mr. Plante was sentenced to 84 months on Count 4 and 48 months on Count 2, to run consecutively with each other and with the sentence of imprisonment imposed in *United States v. Plante*, 17-cr-0013. *Id.* at 2. Mr. Plante did not file an appeal.

B. United States v Plante, 1:17-cr-0013 (D.V.I.): The “Second Case”

This case concerned a December 2015 conspiracy to rob a St. Croix Bank, where Mr. Plante also discharged a firearm at a police officer. On March 21, 2017, he was charged by information with: (1) conspiracy to interfere with commerce by robbery, in violation of 18 U.S.C. § 1951(a); (2) felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); (3) using a firearm during a violent crime, in violation of 18 U.S.C. § 924(c)(1)(A)(iii); (4) unauthorized possession of a firearm, in violation of 14 V.I.C. § 2253(a); and (5) attempted murder first degree, in violation of 14 V.I.C. §§ 922(a)(1), 331(1), and 11. Dkt. No. 1. On the same day the information was filed, Mr. Plante signed a plea agreement in which he pleaded guilty to Count 3. Dkt. No. 4. The Court subsequently granted his motion to withdraw the plea, Dkt. No. 12, and the parties submitted a second Plea Agreement in April 2017. Dkt. No. 14. Mr. Plante agreed to plead guilty to Count 2 (felon in possession of a firearm, 18 U.S.C. § 922(g)), acknowledging that the Government could prove that he

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knowingly possessed a firearm after he had been convicted of a felony offense. *Id.* at 2. It also provided that Mr. Plante voluntarily acknowledged that he “expressly waives the right to petition under 28 U.S.C. § 2255, with the exception of the claim of ineffective assistance of counsel.” *Id.* at 7.

Magistrate Judge Cannon presided over the change of plea hearing on April 7, 2017, Dot. No. 18. The District Judge eventually set the sentencing in this case and in *United States v. Plante*, 16-cr-0028, for November 9, 2018. Dot. No. 31. The case was reassigned to U.S. District Judge Anne E. Thompson for further proceedings, Dkt. No. 32, and Judge Thompson sentenced Mr. Plante in both cases on November 9, 2018. Dkt. No. 33. The Judgment in the instant case issued on November 29, 2018. Dkt. No. 34. Mr. Plante was sentenced to 48 months on Count 2, to run consecutively with the sentence of imprisonment imposed in *United States v. Plante*, 16-cr-0028. *Id.* at 2. Mr. Plante did not file an appeal.

C. Motion to Vacate under 28 U.S.C. § 2255

On September 27, 2023, Mr. Plante, appearing pro se, filed a Motion to Vacate or Set Aside Conviction pursuant to 28 U.S.C. § 2255 in the second case. Dkt. No. 41. He asserts that, under *United States v. Taylor*, 142 S. Ct. 2015 (2022), the “residual clause of . . . § 924(c) is unconstitutionally vague,” and that he is “actually innocent of 18 U.S.C. § 924(c) because Hobbs Act 18 U.S.C. § 1951(a) is not a crime of violence required under the residual clause.” *Id.* Acknowledging that the statute of limitations under § 2255 has expired, he asserted that “actual innocence waives the tolling provisions.” *Id.* He stated that the *Taylor* Court applied a “categorical approach” to crimes, and that attempted Hobbs Act Robbery did not satisfy the

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elements clause of § 924(c). *Id.* at 2. Although his actual argument is difficult to discern, Mr. Plante appears to contend that attempted Hobbs Act robbery and actual Hobbs Act robbery were not crimes of violence because, under the categorical approach, they did not satisfy the elements clause in § 924(c). *Id.* at 3-4. Further, because these “standards” were not applied when he pleaded guilty, his plea was not intelligently entered and his conviction under § 924(c) should be vacated, he should be resentenced and declared actually innocent. *Id.* at 4.

D. Motion for Compassionate Release and Sentence Reduction

Approximately one month later, on October 30, 2023, Mr. Plante, appearing pro se, filed a Motion for Compassionate Release and Sentence Reduction or Modification. Dkt. No. 44. Once again, he filed the motion in the second case. Similar to his habeas motion, he argued that due to “intervening changes of law upon which [his] plea was entered, [he is] actually innocent of the 18 U.S.C. § 924(c)”;

that he did not know that his crime was not a crime of violence when he took his plea because the elements clause of § 924(c) was unconstitutionally vague, and therefore his plea was involuntarily and unintelligently entered; and attempted Hobbs Act (and Hobbs Act) robbery could not be a § 924(c) predicate based on the categorical approach in *United States v. Taylor*, 596 U.S. 845, 142 S. Ct. 2015 (2022). *Id.* at 1-3. It appears that he seeks a sentence modification and resentencing based on the invalidity of his § 924(c) conviction. He attached a copy of an Individualized Needs Plan from his prison and certificates of programs he completed in prison. Dkt. No. 44-1.

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E. The Government's Opposition

The Government filed an opposition to the Motion for Compassionate Release and Sentence Reduction or Modification on November 15, 2023. Dkt. No. 45. It stated in a footnote that it also opposed the § 2255 motion that raised the same arguments as the compassionate release motion and would respond to that motion if ordered to do so after the court conducted its initial screening of that motion pursuant to Rules 4(b) and 5(a) of the Rules Governing § 2255 Cases. *Id.* at 3 n.2. It also noted that both the Habeas and Compassionate Release motions appear to have been filed on the wrong docket. *Id.* at 4. Since both motions addressed the purported invalidity of § 924(c) conviction, and Mr. Plante was convicted of that violation only in the first case, they should have been docketed there. *Id.*

As to the merits, the statute permitting sentence reductions, 18 U.S.C. § 3582(c)(1)(A)(i), provides that, under certain conditions, a court could reduce a sentence if it found that “extraordinary and compelling reasons warrant such a reduction, and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” *Id.* at 4 (quoting 18 U.S.C. § 3582(c)(1)(A)(i).) The Sentencing Commission recently issued a policy statement defining “extraordinary and compelling reasons,” U.S.S.G. § 1B1.13, but only one provision permitted a sentence reduction for legal developments: if a defendant received an unusually long sentence and had served ten years, then a change in the law (other than a non-retroactive amendment to the Guidelines Manual) could be considered only where that change would produce a gross disparity between the sentence

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being served and one imposed at the time the motion was filed. *Id.* at 4-5 (quoting U.S.S.G. § 1B1.13(b)(6)). Otherwise, a change in the law would not be considered. *Id.* at 5.

The Government argued that Mr. Plante did not present an extraordinary and compelling reason for a sentence reduction under § 1B1.13(b)(6)—which did not apply in any case because he served only five years of his sentence (imposed on November 9, 2018). *Id.* Second, he invoked intervening judicial decisions to establish that his § 924(c) conviction was invalid, but he was not relying on a change in the law that was not applicable at his sentencing (i.e., a later decision by Congress to lower the penalties for his offense), but he attempted to challenge the validity of his judgment “based on a judicial decision interpreting existing law in a manner that supports a claim of legal error that he did not previously recognize.” *Id.* at 7. Section 1B1.13(b)(6) did not recognize that sort of error as an extraordinary and compelling reason for a sentence reduction under § 3582(c)(1)(A)(i); rather, the remedy lay in a direct appeal or a § 2255 motion. *Id.* at 7-8. All circuit courts (including the Third Circuit) hold that a claimed error in the judgment cannot provide an extraordinary and compelling reason for a sentence reduction. *Id.* (citing, *inter alia*, *United States v. Amato*, 48 F.4th 61, 65 (3d Cir. 2022) (per curiam)).

The Government also contended that the Sentencing Commission exceeded its authority in promulgating 1B1.13(b)(6), and thus that provision was unreasonable and invalid. *Id.* at 9, 10. No reasonable interpretation of “extraordinary and compelling reasons” in § 3582(c)(1)(A)(i) could encompass a nonretroactive or intervening change in law, as held by the Third Circuit in *United States v. Andrews*, 12 F. 4th 255, 260-61 (3d Cir. 2021). *Id.* at

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10. The intervening decisions pointed to by the Defendant did not establish a change in the law; he asserted they established an error in his conviction. *Id.* And even if the Court construed such an error as extraordinary and compelling, intervening legal developments in sentencing law are legally impermissible considerations under § 3582(c)(1)(A)(i). *Id.* at 12, 13. The Government provided additional reasons why intervening changes in the law should not be considered for sentencing reductions: they (1) undermine motions under 28 U.S.C. § 2255 by allowing prisoners to avoid strictures on post-conviction relief; (2) undermine the Sentencing Reform Act in general by allowing sentencing disparity; (3) focus on substantive changes in the law when the First Step Act addressed procedural changes; and (4) run afoul of separation-of-powers principles by impinging on legislative policy. *Id.* at 14-19.

F. The Defendant's Reply

In his Reply, Mr. Plante asked the Court to take judicial notice of the First Step Act and *Concepcion v. United States* (2022),¹ as providing the basis for his objection to “each and every opinion of the attorney for the Government in their Opposition.” Dkt. No. 46 at 1. He

¹ In *Concepcion v. United States*, 597 U.S. 481 (2022), the Supreme Court considered motions brought under § 404(b) of the First Step Act (governing resentencing of imprisoned individuals who had been convicted of certain offenses involving crack cocaine). The Court addressed the type of evidence a court could consider after concluding that a defendant was eligible for relief. After clearing that threshold, a court at resentencing could consider “intervening changes of law or fact in exercising its discretion to reduce a sentence.” *Id.* at 500. In *United States v. Stewart*, 86 F.4th 532, 535 (3d Cir. 2023), the Third Circuit held that *Concepcion* did not abrogate its holding in *United States v. Andrews*, 12 F.4th 255, 261-62 (3d Cir. 2021), that focused on nonretroactive changes to mandatory minimums not establishing extraordinary and compelling circumstances warranting release.

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stated that the Government attorney misinformed the Court that he served less than 10 years when the sentencing transcript reveals that to be false. *Id.* He asserted that Hobbs Act robbery was never a crime of violence and clarified that he was not arguing that *Taylor* constituted an intervening change in law but that he had been convicted in “plain error” and if he had been tried today, he would not have received a conviction under 18 U.S.C. § 924(c)—apparently because attempted Hobbs Act robbery is not a predicate under § 924(c). *Id.* at 2-3. Since his plea agreement lessened his due process right to be heard on direct appeal or § 2255, the Court had discretion to grant relief. *Id.* at 4. He added that he has served approximately 11 years, and he presented a minimal danger to society. He has strong family ties and an adequate home plan and employment. *Id.* at 5.

Mr. Plante attached several exhibits, including his Sentence Monitoring Computation Data, two pages of a document addressing the 2023 Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary, and reprints of various cases. Dkt. No. 46-1, 46-2, 46-3.

DISCUSSION

I. The 28 U.S.C. § 2255 Motion

Motions filed under 28 U.S.C. § 2255 are the presumptive means by which federal defendants can challenge their convictions or sentences that are allegedly in violation of the Constitution or laws of the United States or are otherwise subject to collateral attack. *Davis v. United States*, 417 U.S. 333, 343 (1974); *O’Kereke v. United States*, 307 F.3d 117, 122-23 (3d Cir. 2002). Section 2255 “states four grounds upon which such relief may be claimed: (1)

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‘that the sentence was imposed in violation of the Constitution or laws of the United States;’ (2) ‘that the court was without jurisdiction to impose such sentence;’ (3) ‘that the sentence was in excess of the maximum authorized by law;’ and (4) that the sentence ‘is otherwise subject to collateral attack.’ ” *Hill v. United States*, 368 U.S. 424, 426-27 (1962) (quoting 28 U.S.C. § 2255(a)).

A. Waiver

“A criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution. Such waivers can include the waiver of the right to file a petition to vacate, set aside or correct sentence under 28 U.S.C. § 2255 in a plea agreement with the government. Waivers of the right to collaterally attack criminal proceedings do not contravene public policy and courts should strictly construe such waivers.” *United States v. Douglas*, No. 23-cr-286, 2025 WL 1748353, at *3 (E.D. Pa. June 24, 2025) (citation modified). “In deciding whether to enforce a waiver, the Court must (1) determine whether it was knowing and voluntary and (2) decide whether enforcing it would work a miscarriage of justice.” *United States v. Kastory*, No. 22-cr-142, 2023 WL 5901646, at *3 (W.D. Pa. Sept. 11, 2023) (citation modified).

The record confirms that Mr. Plante knowingly, voluntarily, and intelligently waived his right to seek the relief sought in his habeas motion. First, he signed a written plea agreement in March 2017 in the first case providing that he “expressly waives the right to petition under 28 U.S.C. § 2255, with the exception of the claim of ineffective assistance of counsel” and that he “waives these rights knowingly, intelligently, and voluntarily.” Dkt. No.

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20 at 5-6. He swore he read the plea agreement, discussed it with his attorney, waived his rights knowingly, intelligently, and voluntarily, and accepted its terms. *Id.* at 5-7. The terms of the agreement were sufficient and clear.

The March 21, 2017 plea colloquy further demonstrated Mr. Plante's knowledge and understanding of the plea agreement. He was placed under oath and was found competent to enter into the agreement. He swore that he read and understood the agreement, the factual basis of the charges he was pleading to, and that he waived his right to appeal other than an ineffective assistance of counsel claim. He stated that taking a plea was "the best choice for me," and confirmed multiple times that he entered the guilty plea voluntarily. Thus, the record confirms that he knowingly, voluntarily, and intelligently accepted the plea, in which he waived his right to raise any claims other than ineffective assistance of counsel through a § 2255 motion.

Mr. Plante argued, in a conclusory manner, that his plea was "unintelligent" because he did not know in March 2017 that, five years later in *Taylor*, the law would change, where attempted Hobbs Act robbery would not be considered a crime of violence as a predicate to a § 924(c) conviction.² He reasoned that, if he had known of the change, he would not have taken the plea. But not being clairvoyant by not knowing about a possible change in the law sometime in the future when accepting a plea does not make a plea unintelligent, as he accepted the plea based on circumstances evaluated by him and his attorney. Moreover, the

² As discussed *infra*, this argument is inapplicable in any event because Mr. Plante was never charged with or convicted of attempted Hobbs Act robbery.

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Supreme Court has held that pleas qualify as intelligent if “a criminal defendant first receives real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.” *Bousley v. United States*, 523 U.S. 614, 618 (1998) (citation modified); *see also Brady v. United States*, 397 U.S. 742, 756-57 (1970) (plea was intelligent because, although later judicial decisions indicated that at the time of his plea the defendant “did not correctly assess every relevant factor entering into his decision,” he was advised by competent counsel, was in control of his mental faculties, and “was made aware of the nature of the charge against him.”). The plea agreement and the colloquy at the change of plea hearing show that Mr. Plante’s plea was intelligently made, providing him notice of the nature of the charges against him.

“The miscarriage of justice exception is meant to be applied sparingly and without undue generosity. In assessing whether a miscarriage of justice will occur, a court should consider the clarity of the error, its gravity, its character (e.g., whether it concerns a fact issue, a sentencing guideline, or a statutory maximum), the impact of the error on the defendant, the impact of correcting the error on the government, and the extent to which the defendant acquiesced in the result.” *Douglas*, 2025 WL 1748353, at *4 (citation modified). Mr. Plante has not argued that any error occurred to support a conclusion that a miscarriage of justice took place.

The Third Circuit has upheld waivers of habeas motions, as set forth in plea agreements. *United States v. Parker*, 793 F. App’x 64, 66 (3d Cir. 2019) (“[C]ollateral challenge waivers are valid as long as they are knowing, voluntary, and do not work a

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miscarriage of justice.” (citing *United States v. Khattak*, 273 F.3d 557, 563 (3d Cir. 2001))). It should do so here. The Court therefore recommends that Mr. Plante’s habeas motion be denied on grounds of waiver.

B. Statute of Limitations Bar

The statute of limitations bar serves as a separate and independent basis for dismissal. Section 2255 motions are subject to a one-year period of limitations that runs from the latest of several possible dates: (1) the date on which the petitioner’s judgment of conviction becomes final; (2) the date on which an impediment to making the motion created by government action is removed; (3) the date on which the Supreme Court first recognizes the right asserted, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or (4) the date on which the facts supporting the claim first could have been discovered through due diligence. 28 U.S.C. § 2255(f)(1)-(4). Mr. Plante’s judgment (in both cases) was entered on November 29, 2018. Timeliness is a threshold issue that habeas courts address *before* considering the merits of a petitioners’ substantive habeas claims. *Smith v. United States*, No. 14-cv-7142, 2019 WL 6724298, at *2 (D.N.J. Dec. 11, 2019).

“In most cases, the operative date from which the limitation period is measured will be . . . the date on which the judgment of conviction becomes final.” *Dodd v. United States*, 545 U.S. 353, 357 (2005) (citation modified). Where, as here, a petitioner failed to file a direct appeal, the conviction is considered final when the time for the filing an appeal has run. *See Kapral v. United States*, 166 F. 3d 565, 577 (3d Cir. 1999). Mr. Plante had fourteen days, or

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until December 13, 2018, within which to file a notice of appeal pursuant to Fed. R. App. P. 4(b)(1)(A). He failed to file any notice within that time frame and, therefore, the judgment became final on December 13, 2018. As a result, his § 2255 motion was required to be filed no later than one year from that date—December 13, 2019. He did not file his motion until September 2023, approximately four years later.

That is not the latest time frame the Court can apply to begin the limitations period. Mr. Plante has relied on *United States v. Taylor*, entered on June 21, 2022, as providing the legal “right” undergirding his appeal. He asserts that *Taylor* held that attempted Hobbs Act robbery and Hobbs Act robbery did not satisfy the elements clause of § 924(c)(3); those offenses could not serve as the predicate to his § 924(c) conviction; *Taylor*’s holding was retroactive; and therefore, he should be resentenced. Construing his § 2255 motion liberally, *Simmons v. United States*, 142 S. Ct. 23, 25 (2021), the Court may consider the limitations period for Mr. Plante’s habeas motion as starting from “the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.” 28 U.S.C. § 2255(f)(3); see *Dodd*, 545 U.S. at 358 (opining that a petitioner seeking to take advantage of the later habeas statute of limitations start date must show that his claim relies on a rule of law “newly recognized” by the Supreme Court, and that that newly recognized right has been made retroactive to cases on collateral review).

In *In re Andrews*, No. 23-1167, 2024 WL 467521, at *1-2 (3d Cir. Feb. 7, 2024), a panel of the Third Circuit held that, in *United States v. Davis*, 588 U.S. 445 (2019), the U.S. Supreme

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Court announced a new, retroactive rule of constitutional law by invalidating the residual clause definition of ‘crime of violence’ found in 18 U.S.C. § 924(c)(3)(B). But *Davis* is inapplicable here, since Mr. Plante’s arguments focus on the elements clause, § 924(c)(3)(A). Courts that have reached the issue have held that *United States v. Taylor*, 596 U.S. 845 (2022), did not announce a new, retroactively applicable rule of constitutional law. Rather, in concluding that attempted Hobbs Act robbery was not a crime of violence under the elements clause, *Taylor* “did not announce a new rule of *constitutional* law; rather, the Supreme Court addressed a question of statutory interpretation and held that attempted Hobbs Act robbery did not constitute a crime of violence under the elements clause of § 924(c) by applying the reasoning in *Davis* and interpreting the term crime of violence under § 924(c).” *United States v. Mathis*, No. 09-cr-339, 2025 WL 1194335, at *2 (W.D. Pa. Apr. 24, 2025) (citation modified). Therefore, *Taylor*, issued on June 21, 2022, cannot provide a later starting point for the statute of limitations under 28 U.S.C. § 2255(f)(3), and Mr. Plante’s habeas motion is untimely under this provision as well.

As a final possibility, case law provides that, “to prevent a ‘fundamental miscarriage of justice,’ an untimely petition is not barred when a petitioner makes a ‘credible showing of actual innocence,’ which provides a gateway to federal review of the petitioner’s otherwise procedurally barred claim of a constitutional violation.” *Reeves v. Fayette SCI*, 897 F.3d 154, 160 (3d Cir. 2018), *as amended* (July 25, 2018). “Although a habeas petitioner’s actual innocence can serve as a gateway to pierce the § 2255(f) statute of limitations, it is not enough that a habeas petitioner merely *assert* his innocence, he must actually show ‘that it

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is more likely than not that no reasonable juror would have convicted him.” *Cruz v. Davis*, No. 19-13351, 2022 WL 671358, at *3 (D.N.J. Mar. 7, 2022) (quoting *McQuiggin v. Perkins*, 569 U.S. 383, 391-99 (2013)). Actual innocence means “factual innocence, not mere legal insufficiency.” *Bousley*, 523 U.S. at 623. The Supreme Court has required a petitioner “to support his allegations of constitutional error with *new reliable evidence*—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.” *Schlup v. Delo*, 513 U.S. 298, 324 (1995). Here, Mr. Plante “merely assert[s] his innocence” and makes no showing whatsoever that he is, in fact, actually innocent. His arguments focus on legal sufficiency, not factual innocence. That exception does not equitably toll the statute of limitations for his late § 2255 motion. Therefore, untimeliness of the habeas motion provides another ground for denial of Mr. Plante’s habeas motion, and the Court recommends denial on this ground (in the alternative) should the District Judge conclude that waiver is inapplicable. Moreover, there is no basis for the issuance of a certificate of appealability.

II. Motion for Compassionate Release

A judgment of conviction that includes a sentence is a final judgment that district courts may modify only in limited circumstances. *Dillon v. United States*, 560 U.S. 817, 824 (2010). The compassionate release statute, 18 U.S.C. § 3582(c)(1)(A)(i), as amended by the First Step Act (“FSA”) on December 21, 2018, provides, in pertinent part, that a district court “may not modify a term of imprisonment once it has been imposed.” 18 U.S.C. § 3582(c). However, “upon motion of the defendant,” a court “may reduce the term of imprisonment

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after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that *extraordinary and compelling reasons warrant such a reduction.*”³ 18 U.S.C. § 3582(c)(1)(A)(i) (emphasis added). Accordingly, under the FSA, a prisoner may initiate a motion for compassionate release which may be granted “if the court finds that the sentence reduction is (1) warranted by “extraordinary and compelling reasons; (2) consistent with applicable policy statements issued by the Sentencing Commission; and (3) supported by the traditional sentencing factors under 18 U.S.C. § 3553(a), to the extent they are applicable.” *United States v. Andrews*, 12 F.4th 255, 258 (3d Cir. 2021) (citation modified). Courts should examine a compassionate release motion in two parts: determining whether a prisoner “has established an extraordinary and compelling reason for release” is a “threshold question” that determines a prisoner's eligibility for compassionate release. *United States v. Stewart*, 86 F.4th 532, 535 (3d Cir. 2023) (citation modified). After a prisoner “clears the threshold eligibility hurdle of showing extraordinary and compelling reasons, sentencing courts are then permitted to exercise broad discretion to determine whether and to what extent the prisoner warrants, or, in other words, is qualified for, a sentence reduction.” *United States v. Rutherford*, 120 F.4th 360, 365 (3d Cir. 2024), *cert. granted*, No. 24-820, 2025 WL 1603603 (U.S. June 6, 2025) (citation modified). “Congress did not define

³ Prior to a defendant's motion, the statute also requires the defendant to have “fully exhausted all administrative rights.” 18 U.S.C. § 3582(c)(1)(A). The Government has not contested whether Mr. Plante has satisfied this requirement, so this Court will not address this issue.

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the phrase extraordinary and compelling reasons in the compassionate release statute. Instead, it instructed the [Sentencing] Commission to define it.” *Id.* (citing 28 U.S.C. § 994(t)).

In April 2023, the Sentencing Commission amended the applicable policy statement, § 1B1.13, to define “extraordinary and compelling reasons” for purposes of compassionate release motions. The Commission’s Policy Statement provides that extraordinary and compelling reasons “exist under any of the following six circumstances or a combination thereof: (1) Medical Circumstances of the Defendant; (2) Age of the Defendant; (3) Family Circumstances of the Defendant; (4) Victim of Abuse; (5) Other Reasons; and (6) Unusually Long Sentence.” *United States v. Manning*, No. 14-cr-326, 2025 WL 24717, at *2 (D.N.J. Jan. 2, 2025) (citation modified; quoting U.S.S.G. § 1B1.13(b)). “The defendant bears the burden of proof, by a preponderance of the evidence, with respect to a motion for compassionate release brought pursuant to Section 3582(c)(1)(A).” *United States v. Winchester*, No. 18-cr-290, 2024 WL 3378198, at *3 (W.D. Pa. July 11, 2024).

Although Mr. Plante’s motion for compassionate release is hard to follow, on first blush it appears that he is focusing on an “intervening change of law” to support compassionate release, which would fall under the “other reasons” catchall category pursuant to the 2023 Policy Statement.⁴ But, upon closer review, he is actually seeking relief under subsection 6, “unusually long sentence,” because he cited changes in the law, and he

⁴ In *United States v. Gricco*, No. 01-cr-0090, 2025 WL 220022, at *3 (E.D. Pa. Jan. 15, 2025), the district court did not permit a defendant to “avoid the limitations” inherent in other provisions of § 1B1.13(b) by arguing instead that his release was supported by § 1B1.13(b)(5)’s “more general catch-all provision.”

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attached a copy of his Bureau of Prisons Sentence Monitoring Computation Data Sheet showing that the time he has served as of December 5, 2023 was 10 years, 4 months, and 19 days.⁵ Dkt. No. 46-1.

The Third Circuit described the unusually long sentence provision, § 1B1.13(b)(6), as follows:

If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

Rutherford, 120 F.4th at 366–67. Further, Section 1B1.13(c) delineates the limitations to the policy exception regarding changes in law:

(c) Limitation on Changes in Law. — Except as provided in subsection (b)(6), a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) shall not be considered for purposes of determining whether an extraordinary and compelling reason exists under this policy statement. However, if a defendant otherwise establishes that

⁵ Mr. Plante filed his motion for compassionate release on October 30, 2023—two days before the 2023 version of the Sentencing Guidelines took effect on November 1, 2023. Therefore, the 2023 version technically does not apply here. *United States v. Kramer*, No. 23-1246, 2024 WL 313389, at *1 n.3 (3d Cir. Jan. 26, 2024). But because the timing is so close, and because case law signals that “failing to account for the 2023 Sentencing Guidelines (or denying a motion that would be meritorious under those Sentencing Guidelines but not under earlier Sentencing Guidelines) would be a waste of judicial resources and would not be in the interests of justice and would only delay consideration of the claims” (as the movant could simply file a new motion for compassionate release immediately after the denial of this motion), courts have opted to consider whether a motion for compassionate release is meritorious under the 2023 Sentencing Guidelines when those guidelines might not technically apply. *See, e.g., United States v. Edmond*, 730 F. Supp. 3d 146, 154 (M.D. Pa. 2024), *reconsideration denied*, No. 4:96-cr-00203, 2024 WL 3555373 (M.D. Pa. July 26, 2024).

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extraordinary and compelling reasons warrant a sentence reduction under this policy statement, a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) may be considered for purposes of determining the extent of any such reduction.

U.S.S.G. § 1B1.13(c) (Nov. 1, 2023).

Mr. Plante argued that he had served more than ten years of his sentence, which includes credit for time served on local charges prior to his sentences in the two cases at issue here. Even if the Court accepts that he has served ten years (of his 15-year term),⁶ Mr. Plante's compassionate release argument fails for several reasons. First, the Third Circuit is clear that "the First Step Act's change to § 924(c) cannot be considered in the analysis of whether extraordinary and compelling circumstances make a prisoner eligible for compassionate release." *Rutherford*, 120 F.4th at 380.

Second, the impact of *Taylor's* holding (even if it were retroactive) has no bearing on his request for relief. This is because Mr. Plante's theory of relief is grounded in an incorrect premise. He believes that *Taylor*—holding that attempted Hobbs Act robbery could not be used as a predicate to a § 924(c) conviction under the elements clause, § 924(c)(3)(A)—

⁶ Mr. Plante did not explicitly argue that his sentence was "unusually long." He was sentenced to 15 years on the federal counts in two cases (132 months in the first case, 48 months in the second case) based on two different incidents. Considered separately, these sentences are not "unusually long" in quantitative terms. As the district court opined in *United States v. Contreras-Buritica*, No. 08-cr-80, 2025 WL 2426729, at *1 (D.N.J. Aug. 22, 2025), where a defendant received a sentence within the range determined by application of the Sentencing Guidelines, and where he had not established that similarly-situated defendants received shorter sentences, his sentence could not be considered to be unusually long. Neither did he argue, much less establish, that application of the change in the law in his case would "produce a gross disparity between the sentence being served and the sentence likely to be imposed at th[is] time." U.S.S.G. § 1B1.13(b)(6).

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applies to his § 924(c) conviction and undermines it. But Mr. Plante pleaded guilty in the first case to Count Two, Hobbs Act robbery (not attempted robbery or conspiracy to commit robbery) and Count Four, a violation of 18 U.S.C. § 924(c)(1)(A)(ii), using and carrying a firearm during and in relation to a crime of violence, where the crime of violence was described in Counts One, Two and Five (conspiracy to commit Hobbs Act robbery, Hobbs Act robbery, and Virgin Islands first degree robbery) where he carried and used a firearm. Dkt. No. 1 at 5. Although conspiracy to commit Hobbs Act robbery and Virgin Islands first degree robbery charges were lumped together with completed Hobbs Act robbery as the predicate for Count Four, “Section 924(c) requires the government to prove that the person committed a qualifying predicate crime of violence.” *United States v. Stoney*, 62 F.4th 108, 110-11 (3d Cir. 2023). By pleading guilty to Count Two, completed Hobbs Act robbery, and with that charge serving as a predicate Count Four, there is no infirmity in the conviction because his conviction for completed Hobbs Act robbery satisfied the “elements clause” of § 924. *See id.* at 112 (finding that the defendant, who used a loaded gun during a holdup while he and his codefendants stole more than \$8,000 from a restaurant was a “completed Hobbs Act robbery” that “has as an element the . . . use of physical force against the person . . . of another” (quoting 18 U.S.C. § 924(c)(3)(A))). “[A] completed Hobbs Act robbery qualifies as a crime of violence under § 924(c)(3)(A).” *Id.* at 112-13 (3d Cir. 2023). Accordingly, Mr. Plante is not entitled to relief because he committed a completed Hobbs Act robbery, which served as a predicate crime of violence for his conviction under § 924(c). Therefore, he has

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not met the threshold of showing an extraordinary and compelling reason for release, and it is recommended that his motion for compassionate release should be denied.

RECOMMENDATION

Accordingly, the Court respectfully **RECOMMENDS** that the Defendant's Motion to Vacate or Set Aside Conviction (28 U.S.C. § 2255), Dkt. No. 41, and his Motion for Compassionate Release and Sentence Reduction or Modification, Dkt. No. 44, be **DENIED**.

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice, 28 U.S.C. § 636(b)(1), and must "specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection." LRCi 72.3. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985). The Clerk of Court shall provide a copy of this R&R to Ajani Plante by certified mail, return receipt requested.

ENTER:

Dated: September 9, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE