

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

|                                  |   |                            |
|----------------------------------|---|----------------------------|
| <b>ANTHONY D. TRAVICK,</b>       | ) | <b>CASE NO. 1:09CR46</b>   |
|                                  | ) | <b>1:16CV1639</b>          |
|                                  | ) |                            |
| <b>Petitioner,</b>               | ) | <b>JUDGE JOHN R. ADAMS</b> |
|                                  | ) |                            |
| <b>v.</b>                        | ) |                            |
|                                  | ) |                            |
| <b>UNITED STATES OF AMERICA,</b> | ) | <b>MEMORANDUM OPINION</b>  |
|                                  | ) | <b>AND ORDER</b>           |
| <b>Respondent.</b>               | ) |                            |
|                                  | ) |                            |

The instant matter is before the Court upon Petitioner Anthony Travick’s Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, filed pursuant to 28 U.S.C. § 2255. Doc. 31. The petition is DENIED.

**I. STANDARD OF REVIEW**

“To prevail under 28 U.S.C. § 2255, a defendant must show a ‘fundamental defect’ in the proceedings which necessarily results in a complete miscarriage of justice or an egregious error violative of due process.” *Gall v. United States*, 21 F.3d 107, 109 (6th Cir. 1994). A federal district court may grant relief to a prisoner in custody only if the petitioner can “demonstrate the existence of an error of constitutional magnitude which had a substantial and injurious effect or influence on the guilty plea or the jury’s verdict.” *Griffin v. United States*, 330 F.3d 733, 736 (6th Cir. 2003).

**II. LAW AND ARGUMENT**

In his petition, Travick asserts that *Johnson v. United States*, 125 S.Ct. 2551 (2015) and its progeny warrant relief. In *Johnson*, the Supreme Court invalidated the residual clause of the Armed Career Criminal Act. Travick, however, was not sentenced utilizing the residual clause. As such, his petition has no merit.

Travick was convicted of armed bank robbery in violation of 18 U.S.C. § 2113(a) and (d). Travick focuses his petition on his belief that a violation of § 2113(a) triggers the use of the residual clause in 18 U.S.C. 924(c)(3)(B). In so doing, Travick ignores that a conviction under § 2113(d) requires proof that when Travick committed the robbery he “assault[ed] any person, or put[] in jeopardy the life of any person by the use of a dangerous weapon or device[.]” As such, his conviction by necessity involved the use, attempted use, or threatened use of force” against a person. Travick, therefore, was found to have committed a crime of violence under 18 U.S.C. § 924(c)(3)(A), a provision unaffected by *Johnson*. While Travick asserts at length that this Court should review the lesser included offense of violating 18 U.S.C. § 2113(a), the lesser included offense did not play any role in his sentencing guidelines. Accordingly, it provides no avenue for relief in this petition.

### **III. CONCLUSION**

For the foregoing reasons, Petitioner Anthony Travick’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody is **hereby DENIED**.

Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

**IT IS SO ORDERED.**

Dated: August 30, 2016

/s/ John R. Adams  
**JOHN R. ADAMS**  
**UNITED STATES DISTRICT JUDGE**