

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 31 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 15-35165

Plaintiff-Appellee,

D.C. Nos. 2:14-cv-00038-DWM

2:10-cr-00001-DWM

v.

ALEXANDER WILLIAM FETTERS,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted May 24, 2017**

Before: THOMAS, Chief Judge, and SILVERMAN and RAWLINSON,
Circuit Judges.

Alexander William Fetters appeals from the district court's judgment dismissing his 28 U.S.C. § 2255 motion. We have jurisdiction under 28 U.S.C. § 2253. We review de novo the district court's denial of a section 2255 motion, *see United States v. Manzo*, 675 F.3d 1204, 1209 (9th Cir. 2012), and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Fetters contends that his sentence as a career offender under U.S.S.G. § 4B1.1 is unconstitutional because *Johnson v. United States*, 135 S. Ct. 2551 (2015), invalidated U.S.S.G. § 4B1.2(a)(2)'s residual clause, and therefore his prior criminal endangerment convictions no longer qualify as predicate crimes of violence. Fetters's argument is foreclosed. *See Beckles v. United States*, 137 S. Ct. 886, 895 (2017) (holding that "the advisory Sentencing Guidelines are not subject to a vagueness challenge under the Due Process Clause and that § 4B1.2(a)'s residual clause is not void for vagueness").

AFFIRMED.