

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-16171

Plaintiff-Appellee,

D.C. Nos. 2:17-cv-00534-JAD

2:99-cr-00008-JAD

v.

ROBERT ARTHUR BATES,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Nevada

Jennifer A. Dorsey, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Federal prisoner Robert Arthur Bates appeals from the district court's order denying his 28 U.S.C. § 2255 motion to vacate his sentence. We have jurisdiction under 28 U.S.C. § 2253. Reviewing de novo, *see United States v. Reves*, 774 F.3d 562, 564 (9th Cir. 2014), 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).

In his section 2255 motion, Bates argued that, in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), his conviction for carjacking in violation of 18 U.S.C. § 2119, is no longer a crime of violence for purposes of 18 U.S.C. § 924(c). In *United States v. Gutierrez*, this Court held that the federal offense of carjacking is “categorically a crime of violence under § 924(c)” because it “necessarily entails the threatened use of violent physical force.” 876 F.3d 1254, 1257 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 1602 (2018). As Bates concedes in his reply brief, this decision forecloses his argument.

AFFIRMED.