

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 10 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-35203

Plaintiff-Appellee,

D.C. Nos. 3:16-cv-01292-HZ

3:11-cr-00273-HZ-1

v.

DANIEL JESUS ORTIZ,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernández, District Judge, Presiding

Submitted February 4, 2020**

Before: FERNANDEZ, SILVERMAN, and TALLMAN, Circuit Judges.

Federal prisoner Daniel Jesus Ortiz 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).

Ortiz contends that his conviction for assault with a dangerous weapon, in violation of 18 U.S.C. § 113(a)(3), is not a crime of violence for purposes of 18 U.S.C. § 924(c). Contrary to Ortiz’s assertion, assault with a dangerous weapon under section 113(a)(3) qualifies as a crime of violence under the force clause of section 924(c)(3)(A) because the offense “necessarily entails at least the threatened use of violent physical force.” *United States v. Gobert*, 943 F.3d 878, 882 (9th Cir. 2019) (internal quotation marks omitted). Accordingly, the district court properly denied relief under section 2255.

AFFIRMED.