

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<u>UNITED STATES OF AMERICA</u>	:	
	:	
v.	:	CRIMINAL ACTION NO. 08-334
	:	
<u>MARK LAWRENCE</u>	:	CIVIL ACTION 17-1430
	:	

MEMORANDUM OPINION

Rufe, J.

June 11, 2018

Defendant Mark Lawrence filed a *pro se* Motion for Relief under 28 U.S.C. § 2255, asserting that his 20-year mandatory minimum sentence, which was based in part on his armed career criminal status pursuant to the Armed Career Criminal Act, 18 U.S.C. § 924(e) (the “ACCA”), is unconstitutional in light of the Supreme Court’s decision in *United States v. Johnson*.¹ Because Defendant had at least three prior convictions for serious drug offenses, which qualified him for armed career criminal status, he is not entitled to relief under *Johnson*, and his Motion will be denied.

I. BACKGROUND

In January 2010, Defendant Mark Lawrence pleaded guilty to one count of possession with intent to distribute cocaine base (“crack”), in violation of 21 U.S.C. § 841 (Count One), one count of using and carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A) (Count Two), and one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(e) (Count Three).

In the pre-sentence report, the Probation Office calculated a mandatory minimum sentence of 20 years, based on a 15-year statutory minimum for Count Three pursuant to the

¹ 135 S. Ct. 2551 (2015).

ACCA and a five-year mandatory minimum for Count Two pursuant to § 924(c)(1)(A), which must be served consecutively, and a sentencing guideline range of 262 to 327 months' imprisonment.² Defendant's status as an armed career criminal under the ACCA was predicated on at least four previous state convictions for possession with intent to deliver crack cocaine committed after the age of 18.³

Pursuant to Federal Rule of Criminal Procedure (11)(c)(1)(C), the Government and Defendant agreed and stipulated that the appropriate sentence was the mandatory minimum sentence of 20 years' imprisonment. On July 14, 2010, the Court sentenced Defendant to the agreed-upon sentence.

I. LEGAL STANDARD

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a prisoner serving a sentence in federal custody may petition the court which imposed the sentence to vacate, set aside, or correct the sentence by asserting that "the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack."⁴ "Habeas corpus relief is generally available only to protect against a fundamental defect which inherently results in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands of fair procedure."⁵

² PSR ¶¶ 99-100, 101.

³ *Id.* ¶¶ 33, 42-44, 45-47, 52-54, 58-59.

⁴ 28 U.S.C. § 2255(a).

⁵ *United States v. DeLuca*, 889 F.2d 503, 506 (3d Cir. 1989) (citations omitted).

II. ANALYSIS

Defendant asserts that his sentence as an armed career criminal should be vacated pursuant to the Supreme Court's decision in *Johnson v. United States*.⁶ The ACCA prescribes sentencing enhancements and a mandatory minimum sentence for defendants who violate § 922(g) and have three or more previous convictions for "a violent felony or a serious drug offense."⁷ In 2016, the Supreme Court invalidated the residual clause of the ACCA's definition of "violent felony" as unconstitutionally vague.⁸ The *Johnson* decision did not pertain to other aspects of the ACCA, including the statute's definition of a "serious drug offense."

A "serious drug offense," under the ACCA includes:

an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance . . . , for which a maximum term of imprisonment of ten years or more is prescribed by law.⁹

Defendant has multiple previous Pennsylvania state court convictions for possession with intent to distribute controlled substances, including four convictions involving crack cocaine in 1994, 1995, 1999, and 2006.¹⁰ Pursuant to the relevant state statute, "the manufacture, deliver, or possession with intent to deliver, a controlled substance," is punishable by up to 10 years for offenses involving crack cocaine.¹¹ Defendant has not challenged these previous drug convictions as predicate "serious drug offenses" for purposes of the ACCA.

⁶ *Johnson*, 135 S. Ct. at 2557.

⁷ 18 U.S.C. § 924(e)(1).

⁸ *Johnson*, 135 S. Ct. at 2557.

⁹ 18 U.S.C. § 924(e)(2)(A)(ii).

¹⁰ PSR ¶¶ 42-44, 45-47, 52-54, 58-59.

¹¹ 35 Pa. Cons. Stat. § 780-113(a)(30), (f)(1.1).

Thus, because Defendant's ACCA status relied on his prior convictions for "serious drug offenses" and not on any predicate "violent offenses," Defendant is not entitled to relief under *Johnson*, and his Motion pursuant to § 2255 will be denied.

III. CONCLUSION

For the reasons discussed above, Defendant does not qualify for relief under *Johnson*, and his Motion pursuant to 28 U.S.C. § 2255 will be denied without a hearing. Because Defendant has not made a substantial showing of the denial of a constitutional right, a certificate of appealability shall not issue.¹²

¹² 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

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ORDER

AND NOW, this 11th day of June 2018, upon consideration of Defendant’s Pro Se Motion to Vacate, Set Aside or Correct Sentence (Doc. No. 38), and the Government’s Response thereto, and for the reasons outlined in the Memorandum Opinion issued on this date, it is hereby **ORDERED** that Defendant’s Motion is **DENIED**. No Certificate of Appealability shall issue, and no evidentiary hearing shall be held. The Clerk of Court is directed to **CLOSE** this case.

IT IS SO ORDERED.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.