

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6084

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL SCOTT PANNELL,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Michael F. Urbanski, Chief District Judge. (7:02-cr-00002-MFU-RSB-1; 7:16-cv-81100-MFU-RSB)

Submitted: October 25, 2018

Decided: October 31, 2018

Before GREGORY, Chief Judge, MOTZ and KING, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Christine Madeleine Lee, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Roanoke, Virginia, for Appellant.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Scott Pannell seeks to appeal the district court's order denying his 28 U.S.C. § 2255 (2012) motion challenging his sentence as an armed career criminal based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). We previously placed the appeal in abeyance for *United States v. Hodge*, 902 F.3d 420 (4th Cir. 2018). Pannell now moves to vacate his sentence and remand his case for further proceedings in accordance with *Hodge*. The Government contends that vacatur of Pannell's sentence is inappropriate because Pannell appeals the denial of § 2255 relief rather than the sentence in his criminal case. However, the Government agrees that it is appropriate to vacate the district court's order and remand the case for further proceedings.

In view of our decision in *Hodge*, we grant a certificate of appealability. We deny Pannell's motion to vacate his sentence, grant the motion to remand, vacate the district court's order denying § 2255 relief, and remand for further proceedings in light of *Hodge*. Pannell's motion to expedite is denied as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED