

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 15a0509n.06

Case Nos. 14-3956/3964

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Jul 20, 2015
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
DESEAN R. HARBIN,)
)
Defendant-Appellant.)
)
)
)

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF
OHIO

ORDER

Before: SILER, COOK, and WHITE, Circuit Judges.

PER CURIAM. At Desean Harbin’s sentencing, the district court applied the career offender enhancement, USSG § 4B1.1. The issue before this court is whether Harbin’s prior burglary conviction constitutes a “crime of violence” under the residual clause of the career offender enhancement, USSG § 4B1.2(a)(2). In *Johnson v. United States*, No. 13-7120, 2015 WL 2473450, at *4–5 (U.S. June 26, 2015), the Supreme Court held that the identically worded residual clause of the Armed Career Criminal Act (ACCA) is void for vagueness. Compare USSG § 4B1.2(a)(2), with 18 U.S.C. § 924(e)(2)(B)(ii). We have interpreted both residual clauses identically. See *United States v. Ford*, 560 F.3d 420, 421 (6th Cir. 2009); *United States v. Houston*, 187 F.3d 593, 594–95 (6th Cir. 1999). Following *Johnson*, the Supreme Court has vacated the sentences of offenders who were sentenced under the residual clause of the Sentencing Guidelines. See *United States v. Maldonado*, 581 F. App’x 19, 22–23 (2d Cir. 2014),

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vacated, No. 14-7445, 2015 WL 2473524, at *1 (U.S. June 30, 2015); *Beckles v. United States*, 579 F. App'x 833, 833–34 (11th Cir. 2014), vacated, No. 14-7390, 2015 WL 2473527, at *1 (U.S. June 30, 2015); see also *Wynn v. United States*, No 14-9634, 2015 WL 2095652, at *1 (U.S. June 30, 2015) (vacating a Sixth Circuit order, which denied habeas relief based on a predicate offense qualifying under the residual clause of the career offender enhancement). Accordingly, Harbin is entitled to the same relief as offenders sentenced under the residual clause of the ACCA. See *United States v. Darden*, No. 14-5537 (6th Cir. Jul. 6, 2015) (per curiam).

For these reasons, we vacate the judgment of the district court and remand for reconsideration in light of *Johnson*.