

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

MARVIN DARBY,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 2:09cv52-WHA
	)	(WO)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

In his 28 U.S.C. § 2255 motion, Darby contends that he was erroneously sentenced as an armed career criminal, pursuant to 18 U.S.C. 924(e), when the district court found that his prior state conviction for escape (in addition to his prior state convictions for arson and burglary) constituted a “violent felony” for purposes of the Armed Career Criminal Act. Upon further review of the pleadings, and with particular regard to this claim by Darby, the court deems it appropriate to require the government to file a supplemental response to the § 2255 motion. Accordingly, it is

ORDERED that on or before November 23, 2010, the government shall file a supplemental response addressing the following questions:

Whether in light of the recent holdings in *Begay v. United States*, 553 U.S. 137 (2008), and *Gilbert v. United States*, 609 F.3d 1159 (11<sup>th</sup> Cir. 2010), Darby was erroneously sentenced as an armed career criminal and is thus “actually innocent” of being an armed career criminal, and whether, as a result, he is entitled to be resentenced without the armed career criminal enhancement and with the benefit of any applicable reduction?

Done this 2<sup>nd</sup> day of November, 2010.

/s/Susan Russ Walker  
SUSAN RUSS WALKER  
CHIEF UNITED STATES MAGISTRATE JUDGE