

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

BERNARDO LEE TIGNOR,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 3:09cv291-WHA
	)	(WO)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

The Magistrate Judge entered a Recommendation (Doc. #52) in this case to which no timely objections have been filed. After a review of the Recommendation, and after an independent review of the entire record, the Court finds that the Recommendation should be adopted, with one modification. Accordingly, it is

ORDERED that

1. The Recommendation (Doc. #52) of the Magistrate Judge is ADOPTED, with the modification that the court construes Doc. #51 filed by the United States as a waiver by the United States of the procedural default it earlier had raised (Doc. #11) and a waiver of the Petitioner’s agreement in the plea agreement entered in his criminal case (*United States v. Tignor*, 3:05cr 71 (M.D. Ala.) (Doc. #23)) to waive collateral attack;

2. Petitioner’s motion to set aside, vacate, or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. #1) is GRANTED to the extent that Petitioner challenges his sentence as an armed career criminal under the ACCA, and asks that he be re-sentenced

without the ACCA and with the benefit of any applicable reduction; and

3. Petitioner's motion to set aside, vacate, or correct his sentence pursuant to 28 U.S.C. § 2255 is DENIED to the extent that Petitioner requests any other relief.

4. Resentencing will be set by separate order.

Done this 7th day of October, 2011.

/s/ W. Harold Albritton  
UNITED STATES DISTRICT JUDGE