

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

JERRY RAY MORGAN,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF)
 AMERICA,)
)
 Respondent.)

**Case No.: 1:16-CV-8000-VEH
(1:10-CR-178-VEH-JEO-1)**

MEMORANDUM OPINION AND ORDER

INTRODUCTION

This matter is before the Court on Defendant Jerry Ray Morgan’s (“Defendant”) motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. 1), filed on behalf of Defendant by the Federal Public Defender of the Northern District of Alabama. The motion states that the United States of America (the “Government”) does not oppose the relief sought in the motion. (*Id.* at p. 8.). Further, the Government has filed a response stating that it is not opposed to such relief and that it affirmatively waives any statute-of-limitations or procedural defenses. (Doc. 4, *passim*). In sum, although the Government believes

that Defendant's arguments are more appropriately raised under *Descamps*¹ (as opposed to under *Johnson*²), the Government agrees that Defendant's sentence is due to be vacated and he is due to be resentenced without application of the Armed Career Criminal Act ("ACCA") enhancement.

This court agrees. Accordingly, it is hereby **ORDERED** as follows:

ORDER

1. Defendant Jerry Ray Morgan's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct His Sentence (Doc. 1) is **GRANTED**.

2. The Federal Public Defender of the Northern District of Alabama is hereby **APPOINTED** to represent the Defendant at resentencing.

3. The Court will set a date for resentencing consistent with this Order.

DONE and **ORDERED** this the 15th day of March, 2016.



VIRGINIA EMERSON HOPKINS
United States District Judge

¹ *Descamps v. United States*, ___ U.S. ___, 133 S. Ct. 2276 (2013).

² *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551 (2015).