

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:07-cr-336-T-23MAP
8:15-cv-1951-T-23MAP

DARRYL MARTIN
_____ /

ORDER

Martin moves to vacate under 28 U.S.C. § 2255 and asserts entitlement to relief under *Johnson v. United States*, 135 S. Ct. 2551, 2563 (2015), which holds “that imposing an increased sentence under the residual clause of the Armed Career Criminal Act violates the Constitution’s guarantee of due process,” and *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016), which applies retroactively the right established in *Johnson*. In a joint statement (Doc. 21), the United States and Martin agree (1) that after *Johnson*; *Welch*; *Mathis v. United States*, No. 15-6092, 2016 WL 3434400 (U.S. June 23, 2016), and *United States v. Lockett*, 812 F.3d 1262 (11th Cir. 2016), Martin’s burglary conviction no longer supports an enhancement under the Armed Career Criminal Act (“ACCA”) (absent the residual clause) and (2) without the burglary conviction Martin lacks the necessary felonies to support an enhanced sentence under the ACCA.

Accordingly, Martin's motion to vacate under Section 2255 (Doc. 1) is **GRANTED**. The Clerk must (1) docket this order in the criminal action, (2) enter a judgment for Martin in the civil action, and (3) close the civil case. The judgment in the criminal action (Doc. 52) is **VACATED**. All further proceedings will occur in the criminal action.

ORDERED in Tampa, Florida, on August 17, 2016.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE