

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 16-22323-CIV-SEITZ  
(Case No. 02-20938-CIV-SEITZ)

JAMAL BROWN,  
Movant,

v.

UNITED STATES OF AMERICA,  
Respondent.

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**ORDER DENYING MOTION TO VACATE**

THIS MATTER is before the Court on the Report and Recommendation [DE 5], recommending that Movant's Motion to Vacate Sentence [DE 1] be denied. Movant challenges the constitutionality of his enhanced sentence as an Armed Career Criminal in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). However, as Magistrate Judge White found in his Report, Movant was not subjected to an enhanced penalty as an Armed Career Criminal under the Armed Career Criminal Act of 1984 ("ACCA"). Rather, Movant was designated a Career Offender under the Federal Sentencing Guidelines based on numerous prior convictions for a controlled substance offense. [DE 5 at 2, 7.] Movant has made no objection to the Report or its findings.


Having reviewed the Report and the Motion, the Court agrees that the Motion should be denied. As stated in the Report, "Nothing in *Johnson* calls into question predicating an ACCA enhancement upon a prior conviction for a 'serious drug offense.'" *Id.* at 13-14 (citations omitted). Similarly, nothing in *Johnson* calls into question predicating a Career Offender enhancement upon a conviction for a "controlled substance offense." *See* U.S.S.G. § 4B1.2. The Court therefore finds that reasonable jurists would not find the Court's treatment

of Movant's claim debatable. Thus, no certificate of appealability is warranted. Accordingly,  
it is

ORDERED THAT

- 1) The Report and Recommendation [DE 5] is **AFFIRMED AND ADOPTED**.
- 2) Movant's Motion to Vacate [DE 1] is **DENIED**.
- 3) A Certificate of Appealability is **DENIED**.
- 4) The case is **CLOSED**.

DONE and ORDERED in Miami, Florida, this 2<sup>nd</sup> day of September, 2016.

  
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PATRICIA A. SEITZ  
UNITED STATES DISTRICT JUDGE

cc: All counsel of record  
Hon. William C. Turnoff