

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

THOMAS HORTON,

Movant,

vs.

UNITED STATES OF AMERICA.

No. C15-0071-LRR

No. CR08-0058-LRR

ORDER


This matter appears before the court on the movant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 (civil docket no. 1). The clerk's office filed such motion on August 11, 2015. Additionally, the movant filed a motion for default judgment (civil docket no. 2) on September 7, 2016.

The movant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 is untimely. *See generally* 28 U.S.C. § 2255(f). Moreover, relief is unavailable in light of the law. More specifically, the United States Supreme Court held that the residual clause of the Armed Career Criminal Act ("ACCA") defining "violent felony" was unconstitutionally vague. *See Johnson v. United States*, ___ U.S. ___, ___, 135 S. Ct. 2551, 2557 (2015). In *Welch v. United States*, ___ U.S. ___, 136 S. Ct. 1257 (2016), the United States Supreme Court made *Johnson's* holding retroactive to cases on collateral review. Here, however, the court did not sentence the movant under the ACCA. Instead, the court relied on the United States Sentencing Guidelines when sentencing the movant. And, on March 6, 2017, the United States Supreme Court concluded that the United States Sentencing Guidelines are not subject to a void for vagueness challenge under the Fifth Amendment's Due Process Clause. *See Beckles v. United States*, ___ U.S. ___, ___, ___

S. Ct. ___, ___, 2017 WL 855781, at *6 (Mar. 6, 2017). Therefore, the movant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 (civil docket no. 1) is denied. As for a certificate of appealability, the movant has not made the requisite showing. *See* 28 U.S.C. § 2253(c)(2). Accordingly, a certificate of appealability under 28 U.S.C. § 2253 will not issue. The movant's motion for default judgment (civil docket no. 2) is denied.

IT IS SO ORDERED.

DATED this 26th day of September, 2017.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA