

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

DARWIN LYNN CRAIG,

Movant,

UNITED STATES OF AMERICA,

Respondent,

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No. 1:16-CV-218 SNLJ

**MEMORANDUM AND ORDER**

This matter is before the Court on movant’s motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The motion appears to be time-barred, and the Court will order him to show cause why it should not be summarily dismissed.

On September 3, 2013, movant pled guilty to felon in possession of a firearm. On March 24, 2014, the Court sentenced him to 100 months’ imprisonment.

In the instant motion, movant argues that, in light of Johnson v. United States, 135 S.Ct. 2551 (2015), he no longer qualifies as a career offender because controlled substance offenses are no longer grounds for enhancement under U.S.S.G. § 4B1.1(a). The Supreme Court decided Johnson on June 26, 2015. Movant placed his § 2255 motion in the prison mail system on August 10, 2016.

Under 28 U.S.C. § 2255(f):

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

...

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the

Supreme Court and made retroactively applicable to cases on collateral review; or

...

A district court may consider, on its own initiative, whether a habeas action is barred by the statute of limitations. *Day v. McDonough*, 547 U.S. 198, 210 (2006). However, before dismissing a habeas action as time-barred, the court must provide notice to the movant. *Id.*

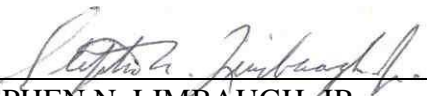
A review of the instant motion indicates that it is time-barred under 28 U.S.C. § 2255(f)(3) and is subject to summary dismissal. The deadline for filing cases under Johnson was June 27, 2016. Movant did not file this action, however, until August 10, 2016. As a result, the Court will order him to show cause why this action should not be summarily dismissed.

Accordingly,

**IT IS HEREBY ORDERED** that movant shall show cause, in writing and no later than twenty-one (21) days from the date of this Order, why this action should not be dismissed as time-barred.

**IT IS FURTHER ORDERED** that if movant fails to comply with this Order, this action will be dismissed without further proceedings.

Dated this 16<sup>th</sup> day of August 2016.

  
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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE