

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

JIMMY D. WALLACE,)	
)	
Petitioner,)	
)	
v.)	No. 1:16CV255 RWS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

Before the Court is petitioner Jimmy D. Wallace’s “Second Petition to Vacate Sentence and Conviction Under 28 U.S.C. § 2255 Based on Johnson v. US” (Docket No. 3). Therein, petitioner seeks a reduction in his sentence pursuant to the Johnson v. United States, 135 S.Ct. 2551 (2015).

In Johnson, the United States Supreme Court held the “residual clause” of the Armed Career Criminal Act (“the ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), unconstitutionally vague. As petitioner was convicted under the ACCA and as it appears from the motion to vacate that he is relying on Johnson as the basis for his arguments for resentencing, this Court will request assistance from the United States Probation Office for the Eastern District of Missouri in reviewing the instant petition.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall notify the United States Probation Office of petitioner’s “Second Petition to Vacate Sentence and Conviction Under 28 U.S.C. § 2255 Based on Johnson v. US” and that it is brought pursuant to Johnson, 135 S.Ct. 2551.

IT IS FURTHER ORDERED that, within a reasonable time, and in its usual course of business, the United States Probation Office shall prepare and file in petitioner's criminal case a new Resentence Report relative to his contentions under Johnson, which shall be filed under seal, with access to the Court and the parties who have entered their appearance in this matter.

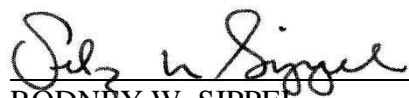
IT IS FURTHER ORDERED that within fourteen (14) days of the filing of the Probation Office's Disclosure Copy of the Resentence Report, the parties shall file, in petitioner's criminal case, simultaneous objections to the Resentence Report or statements that they have no objection. Within seven (7) days of such time, the United States Probation Office shall file a final copy of the Resentence Report in petitioner's criminal case.

IT IS FURTHER ORDERED that within fourteen (14) days of the filing of the Final Resentence Report by the Probation Office in the criminal case, the Government shall file its response to petitioner's "Second Petition to Vacate Sentence and Conviction Under 28 U.S.C. § 2255 Based on Johnson v. US" in this case.

IT IS FURTHER ORDERED that any reply to the Government's response to the motion to vacate shall be filed, in this case, no later than fourteen (14) days from the date the response is filed.

IT IS FURTHER ORDERED that the document entitled "Application for Leave to File a Second Habeas Corpus Petition Under 28 U.S.C. § 2255 Based on Johnson v. US" (Docket No. 1), improperly docketed in this Court as a petition under § 2255, is **DENIED** as moot.

Dated this 1st day of November, 2016.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE