

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

MEMORANDUM AND ORDER

This matter is before the Court on review of movant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. The motion is successive, but movant has not received authorization to file it from the Court of Appeals. As a result, the Court will dismiss it without further proceedings. *See* 28 U.S.C. § 2255, Rule 4.

Movant pled guilty to possession with intent to distribute cocaine base, felon in possession of a firearm, and possession of a firearm in furtherance of a drug trafficking crime. *United States v. Love*, 4:05CR683 ERW (E.D. Mo.). On December 14, 2006, the Court sentenced him to consecutive terms of 60 months, 140 months, and 120 months' imprisonment. *Id.* Movant filed a timely § 2255 motion, and the Court dismissed it on April 8, 2009. *Love v. United States*, 4:08CV1619 ERW (E.D. Mo.).

In the instant motion, movant contends that his sentence should be reduced in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015). In *Johnson*, the Supreme Court of the United States held the “residual clause” of the Armed Career Criminal Act (“the ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), to be unconstitutionally vague. Movant, however, was not sentenced under the ACCA; so it does not appear that *Johnson* provides him with relief.

Under 28 U.S.C. § 2255(h):

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense . . .

Absent certification from the United States Court of Appeals, this Court lacks authority under § 2255 to grant movant's requested relief. As a result, the motion is dismissed.

Finally, movant has failed to show that jurists of reason could disagree whether the motion is successive. Thus, the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c).

Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate under 28 U.S.C. § 2255 is **DENIED**, and this action is **DISMISSED**.

An Order of Dismissal will be filed separately.

So Ordered this 23rd day of February, 2016.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE