

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MEMORANDUM AND ORDER

This matter is before the Court on the motion of Brandon L. Blackmon to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255, and the parties' joint motion for relief.

After pleading guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), movant was sentenced under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), to a 120-month term of imprisonment. His status as an armed career criminal was premised on his three prior Missouri felony convictions for burglary first degree and burglary second degree. Following the decision of the Supreme Court in *Mathis v. United States*, 136 S.Ct. 2243 (2016), burglary second degree under Missouri law is not generic burglary under the ACCA, and is not a predicate offense that may be used to enhance a sentence under the ACCA. See also *Henderson v. United States*, 2016 WL 4967898 at *6 (W.D. Mo. 2016). Thus, movant is entitled to relief under *Johnson v. United States*, 135 S.Ct. 2551 (2015). The judgment entered on January 11, 2011 will be vacated, and movant will be resentenced without application of the ACCA.

Accordingly,

IT IS HEREBY ORDERED that the motion of Brandon L. Blackmon to vacate, set aside, or correct sentence [Doc. # 1] is **granted**.

IT IS FURTHER ORDERED that the joint motion for relief under 28 U.S.C. § 2255 [Doc. # 3] is **granted**.

IT IS FURTHER ORDERED that movant Brandon L. Blackmon shall be brought before the Court for re-sentencing on **Thursday, March 2, 2017, at 11:00 a.m.**

An order vacating the judgment will be entered separately.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 17th day of February, 2017.