

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARLIN BEVLY,)
)
 Petitioner,)
)
 vs.) Case No. 4:16CV00965 ERW
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner Marlin Bevly’s Motion for Reconsideration of the Court’s November 23, 2016 Memorandum and Order [ECF No. 9].

On November 23, 2016, this Court denied Petitioner’s Motion to Correct Sentence under 28 U.S.C. § 2255, finding Petitioner remained an Armed Career Criminal because his prior convictions for robbery in the first degree in Missouri qualified as violent felonies under the Armed Career Criminal Act (“ACCA”). On March 7, 2017, the Court vacated its denial of Petitioner’s Motion to Correct Sentence, because it should have applied the modified categorical approach, rather than the categorical approach.

The Government submitted to the Court records of Petitioner’s prior convictions for the Court to apply the modified categorical approach. The indictment for Petitioner’s prior six convictions for Robbery First Degree charges Petitioner with forcibly stealing, and in the course Petitioner threatened immediate use of a dangerous instrument against a person. This element of the statute for Robbery in the First Degree, is clearly an element involving the use, attempted use, or threatened use of physical force, which qualifies as a violent felony in the Armed Career

Criminal Act. Therefore, Petitioner remains an armed career criminal and is not entitled to be resentenced.

Accordingly,

IT IS HEREBY ORDERED that Motion for Reconsideration of the Court's November 23, 2016 Memorandum and Order [ECF No. 9] is **GRANTED, in part,** and **DENIED, in part.**

IT IS FURTHER ORDERED that Petitioner Marlin Bevly's Motion to Correct Sentence under 28 U.S.C. § 2255 is **DENIED,** and **DISMISSED.**

So Ordered this 23rd day of March, 2017.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE