

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEVIN ANTHONY HALE,)	
)	
Movant,)	
)	
v.)	No. 4:16-CV-1006 (CEJ)
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on the motion of Kevin Anthony Hale to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255. The United States has filed a response.

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 192-month term of imprisonment. His status as an armed career criminal was premised on his three prior Missouri felony convictions for burglary first degree of a private residence, unlawful use of a weapon-flourishing, and unlawful use of a weapon-exhibiting.

In its response to the motion to vacate, the United States concedes that unlawful use of a weapon-flourishing is a felony offense that falls under the ACCA's "residual clause" which was invalidated by the Supreme Court in *Johnson v. United States*, 135 S.Ct. 2551 (2015). Because unlawful use of a weapon-flourishing is no longer an offense that can be used to enhance a sentence under the ACCA, movant does not have the requisite number of predicate felony convictions to qualify him as an armed career criminal.

Movant is entitled to relief under *Johnson*. The judgment entered in the criminal case will be vacated, and movant will be re-sentenced without application of the ACCA.

Accordingly,

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

IT IS FURTHER ORDERED that a copy of this Memorandum and Order shall be filed in the underlying criminal case, United States v. Kevin Anthony Hale, No. 4:03-CR-548 (CEJ).

An order vacating the judgment will be entered separately.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of March, 2017.