

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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.

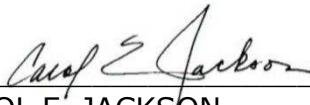
Movant is entitled to relief under *Johnson*. The judgment entered in the criminal case will be vacated, and movant will be re-sentenced without application of the ACCA.

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.