

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

BRAD DAVIS,

Petitioner,

v.

No. 1:13-cv-01225-JDB-egb

No. 1:07-cr-10063-JDB-1

UNITED STATES OF AMERICA,

Respondent.

ORDER DIRECTING PETITIONER TO FILE RESPONSE

On September 25, 2017, the Court granted the motion of Petitioner, Brad Davis, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (“Petition”). (Case Number (“No.”) 13-cv-01225, Docket Entry (“D.E.”) 17.) Judgment was entered on September 26, 2017, (*Id.*, D.E. 18), and a hearing for resentencing was set in Davis’s criminal case. (*See* No. 07-cr-10063, D.E. 97.) Before the Court is the motion of Respondent, United States of America, for relief from judgment under Fed. R. Civ. P. 60(b). (No. 13-cv-01225, D.E. 19.)

Respondent argues that the judgment in this case must be vacated in light of the Sixth Circuit’s September 27, 2017, decision in *United States v. Verwiebe*, No. 16-2591, 2017 WL 4273974 (6th Cir. Sept. 27, 2017). In that case, the appellate court extended the Supreme Court’s ruling in *Voisine v. United States*, 136 S. Ct. 2272 (2016), to the Career Offender provision of the Sentencing Guidelines. *Verwiebe*, 2017 WL 4273974, at *3. The Supreme Court in *Voisine* held that “use of . . . physical force” under 18 U.S.C. § 922(g)(9), includes reckless conduct. *Voisine*, 136 S. Ct. at 2279-80. Respondent contends that *Verwiebe* requires extension of *Voisine*’s use-of-physical-force definition to the Armed Career Criminal Act

(“ACCA”), 18 U.S.C. § 924(e), under which Davis was sentenced. (No. 13-cv-01225, D.E. 19 at PageID 88-89.)

Petitioner is ORDERED to file a response to the government’s motion within fifteen (15) days of the entry-date of this order. The response shall address whether, and in what way, a distinction should be drawn between *Verwiebe*’s application of *Voisine* to the Guidelines’ Career Offender provision and application of *Voisine* to the ACCA. Respondent shall have seven (7) days to file a reply.

The resentencing currently set for October 12, 2017, is hereby removed from the Court’s calendar and will be reset at a later date.

IT IS SO ORDERED, this 4th day of October 2017.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE