

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 SHAD M. BEACH,  
11  
12 Petitioner,

v.

13 UNITED STATES OF AMERICA,  
14 Respondent.

Case No. 16-855 RAJ

ORDER

15 **I. INTRODUCTION**

16 This matter comes before the Court on Petitioner Shad M. Beach's Motion Under  
17 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence By a Person in Federal  
18 Custody. Dkt. # 1. For the reasons that follow, the Court **GRANTS** Beach's motion.

19 **II. BACKGROUND**

20 On November 19, 2012, Petitioner Shad M. Beach pleaded guilty to one count of  
21 being a felon in possession of a firearm. At sentencing, the Court determined that Beach  
22 qualifies as a career offender under § 2K2.1(a)(2) of the United States Sentencing  
23 Guidelines ("U.S.S.G.") because he had previously been convicted of a "crime of  
24 violence," a term defined by reference to U.S.S.G. § 4B1.2(a). His previous convictions  
25 that the Court considered crimes of violence under the enhancement were for "attempting  
26 to elude." PSR ¶¶ 12, 33, 41. Based on this determination, the Court set Beach's total  
27 offense level at 25, resulting in a guideline range of 110 to 137 months of incarceration.  
28 Had he not been sentenced as a career offender, his guideline range would have been 41

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1 to 51 months. Dkt. 6 at 2. After applying the sentencing factors under 18 U.S.C.  
2 § 3553(a), the Court sentenced Beach to a term of 72 months. *Id.*

3 On June 26, 2015, the Supreme Court decided *Johnson v. United States*, 135 S. Ct.  
4 2551 (2015). The Court held that the residual clause of the Armed Career Criminal Act  
5 (“ACCA”) violates the Constitution’s guarantee of due process because it is  
6 unconstitutionally vague. *Id.* at 2557. The residual clause defines the term “violent  
7 felony” to include any crime that “otherwise involves conduct that presents a serious  
8 potential risk of physical injury to another.” 18 U.S.C. § 924(e)(2)(B)(ii). Section  
9 2K2.1(a)(2), by reference to § 4B1.2, uses similar language to define the term “crime of  
10 violence.” U.S.S.G. § 2K2.1, cmt. n.1.

11 On April 18, 2016, the Supreme Court decided *Welch v. United States*, 136 S. Ct.  
12 1257 (2016). In *Welch*, the Court held that its decision in *Johnson* invalidating the  
13 ACCA’s residual clause “announced a substantive rule that has retroactive effect in cases  
14 on collateral review.” *Id.* at 1268.

15 On June 7, 2016, Beach filed a petition under 28 U.S.C. § 2255 challenging the  
16 Court’s determination that he qualifies as a career offender under § 2K2.1(a)(2). Dkt. 1.  
17 Beach contends that, based on the Supreme Court’s holding in *Johnson*, his prior  
18 convictions do not qualify as crimes of violence, and thus, that it was improper to  
19 sentence him as a career offender. *Id.* The Government opposes the motion. Dkt. # 9.

20 **III. DISCUSSION**

21 a. *Johnson* Applies Retroactively

22 The Government contends that the Supreme Court’s decision in *Johnson* does not  
23 apply retroactively to a defendant seeking to challenge a USSG calculation on collateral  
24 review. The Court recently addressed this issue and found that *Johnson* does apply  
25 retroactively to such cases. *See Haffner v. United States*, No. C16-448-RAJ, 2016 WL  
26 6897812, at \*3-4 (W.D. Wash. Nov. 23, 2016); *see also Gibson v. United States*, No.  
27 C15-5737 BHS, 2016 WL 3349350, at \*2 (W.D. Wash. June 15, 2016); *Pressley v.*

1       *United States*, No. C16-510RSL, 2016 WL 4440672, at \*2 (W.D. Wash. Aug. 11, 2016).  
2       The Court declines to deviate from its previous holding. *Johnson* applies retroactively to  
3       Beach’s claim.

4                   b. Beach’s Claims Are Not Procedurally Defaulted

5       The Government argues that Beach’s claims are procedurally defaulted because he  
6       did not argue on direct appeal that his previous convictions are not crimes of violence.  
7       Beach does not dispute that he failed to raise this issue on direct appeal; instead, he  
8       argues that his failure to do so is excused by cause and prejudice.

9       “A prisoner may obtain federal review of a defaulted claim by showing cause for  
10      the default and prejudice from a violation of federal law.” *Trevino v. Thaler*, 133 S. Ct.  
11      1911, 1917 (2013) (quoting *Martinez v. Ryan*, 132 S. Ct. 1309, 1316 (2012)). A  
12      petitioner may establish cause by showing that the constitutional claim at issue “is so  
13      novel that its legal basis [was] not reasonably available to counsel” at the time of direct  
14      appeal. *Reed v. Ross*, 468 U.S. 1, 16 (1984).

15      The Court, having rejected an identical argument by the Government in a separate  
16      matter, finds that Beach’s *Johnson* argument was not reasonably available to him on  
17      direct appeal. *See Haffner v. United States*, No. C16-448-RAJ, 2016 WL 6897812, at \*4  
18      (W.D. Wash. Nov. 23, 2016) (“Petitioner has demonstrated that the *Johnson* decision  
19      specifically overruled existing precedent . . . , overturned a longstanding and widespread  
20      practice to which a near-unanimous body of lower court authority had adhered and  
21      disapproved a practice which the Supreme Court itself had previously sanctioned . . . .  
22      Under *Reed*, this means that Petitioner has established that his claim was not ‘reasonably  
23      available to him at the time he could have filed a direct appeal.’”).

24                   c. Beach’s Claims Are Timely

25      The Government contends that Beach’s motion is untimely. But Beach filed the  
26      instant motion on June 7, 2016, within one year of the Court’s decision in *Johnson*, which  
27      was published on June 26, 2015. Thus, Beach filed his motion within the statute of

1 limitations set forth under 28 U.S.C. § 2255(f)(3) (“A 1-year period of limitation shall  
2 apply to a motion under this section. The limitation period shall run from the latest of . . .  
3 the date on which the right asserted was initially recognized by the Supreme Court, if that  
4 right has been newly recognized by the Supreme Court and made retroactively applicable  
5 to cases on collateral review.”).

6 **IV. CONCLUSION**

7 For the reasons stated above, the Court **GRANTS** Beach’s motion. The Court  
8 finds that Beach was erroneously sentenced as a career offender in violation of the law.  
9 The Court **VACATES** and **SETS ASIDE** the judgment in *United States v. Shad M.*  
10 *Beach*, Case No. CR-12-56-RAJ-1, Dkt. No. 25 (W.D. Wash. 2013). The Court will  
11 resentence Beach, permit him to submit objections to his Presentence Report pursuant to  
12 Federal Rule of Criminal Procedure 32(i)(1)(D), and allow both sides to argue for an  
13 appropriate and lawful sentence.

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15 DATED this 24th day of January, 2017.

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The Honorable Richard A. Jones  
United States District Judge