



Substance Represented to be a Controlled Substance incurred in Marion County, Indiana, on September 24, 2004.

On June 26, 2015, the United States Supreme Court held the residual clause of the ACCA unconstitutional expressly overruling *Sykes*. *Johnson*, 135 S. Ct. at 2584. Subsequently, the Seventh Circuit held that *Johnson* announced a new substantive rule of constitutional law that the Supreme Court had categorically made retroactive. *Price*, 795 F.3d 731. On November 19, 2015, the Seventh Circuit notified the Court that it had given Petitioner permission to proceed with a second and/or successive motion under 28 U.S.C. § 2255. 1:07-cr-00017-LJM-DKL-1, ECF Dkt. No. 3.

Pursuant to *Johnson* and *Price*, the prior Residential Entry conviction, which depended upon the residual clause for classification as a violent felony, would not count for ACCA status. Petitioner and the Government have so stipulated. Dkt. No. 1, ¶ 4. Moreover, based on the underlying facts of the case and this analysis, the parties agree that the sentence imposed in the underlying criminal action is unconstitutional in that it exceeded the otherwise applicable statutory maximum penalty under 18 U.S.C. § 922(g)(1) of ten years of incarceration and three years of supervised release. Petitioner has served 109 months toward his sentence and, considering the good time credit earned under 18 U.S.C. § 3624(b), Petitioner has served in excess of the statutory maximum sentence. Therefore, the parties have stipulated that a sentence of time served period of incarceration and a three-year term of supervised release is sufficient, but not greater than necessary. Dkt. No. 1, ¶ 7.

The Court agrees that Petitioner's previous sentence was unconstitutional and that a reduction is necessary pursuant to *Johnson* and *Price*. The Court concludes that the

parties' stipulation is fair and just under the law and hereby **GRANTS** Petitioner's Motion pursuant to 28 U.S.C. § 2255. Petitioner shall be sentenced to time served of incarceration to be followed by a three-year term of supervised release. A Judgment and Commitment in the associated criminal matter shall be forthcoming. Judgment consistent with this Order shall issue in this matter.

**This Order shall also be entered on the docket in the underlying criminal action, *United States v. Austin*, Cause No. 1:07-cr-00017-LJM-DKL-1.**

IT IS SO ORDERED this 22d day of December, 2015.

  
LARRY J. MCKINNEY, JUDGE  
United States District Court  
Southern District of Indiana

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