

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA,)	
)	
)	
v.)	CRIMINAL No. 2:06-cr-21-DBH
)	CIVIL No. 2:15-cv-391-DBH
MARKUS BROOKS,)	
)	
DEFENDANT/PETITIONER)	

**ORDER ON DEFENDANT’S MOTION TO VACATE,
SET ASIDE, OR CORRECT SENTENCE**

The defendant/petitioner has filed a motion under 28 U.S.C. § 2255 arguing that his Armed Career Criminal sentence of 15 years must be corrected in light of the Supreme Court decision in Johnson v. United States, 135 S. Ct. 2551 (2015), holding the residuary clause portion of that statute void for vagueness. The government has filed a response in which it recognizes that Johnson should be applied retroactively, that one of his three predicate convictions was counted under the residuary clause, and that without that conviction the defendant/petitioner is not an Armed Career Criminal. If he is not an Armed Career Criminal, then the statutory maximum sentence is ten years. 18 U.S.C. § 924(a)(2).

Accordingly I **GRANT** the motion under 28 U.S.C. § 2255 and **ORDER** that the sentence be corrected to ten (10) years.

SO ORDERED.

DATED THIS 5TH DAY OF OCTOBER, 2015

/s/D. BROCK HORNBY

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CRIMINAL DOCKET NO. 2:06-CR-21-DBH**

United States of America

Represented By Renee M. Bunker
Assistant United States Attorney
100 Middle Street Plaza
Portland, ME 04101
(207) 780-3257
email: renee.bunker@usdoj.gov

v.

**Markus Brooks,
Defendant**

Represented By David R. Beneman
Federal Defender's Office
P.O. Box 595
Portland, ME 04112-0595
(207) 553-7070
email: David.Beneman@fd.org