

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	
	)	Docket no. 1:02-cr-37-GZS-2
ROBERT ORCHARD,	)	1:15-cv-485-GZS
	)	
	)	
Defendant/Petitioner.	)	
	)	

**ORDER ON MOTION PURSUANT TO 28 U.S.C. § 2255**

On November 24, 2015, Robert Orchard filed the pending Motion to Correct Sentence Under 28 U.S.C. § 2255 (ECF No. 100), in which he argues that his sentence on counts 2-5 was based on the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924 (e)(1), and must be corrected in light of the Supreme Court decision in Johnson v. United States, 135 S. Ct. 2551 (2015), which held the residual clause portion of ACCA void for vagueness. On December 10, 2015, the Government filed its response (ECF No. 104) in which it concurs with Orchard’s argument that he is entitled to relief under Johnson and 28 U.S.C. § 2255.

The Court agrees with the Government and Defendant/Petitioner that a statutory Johnson error occurred in sentencing Orchard under ACCA, that Orchard has been substantially prejudiced by that error, and that his 186-month sentence should be corrected. The Court incorporates the analysis contained in the Government’s Response as the basis for its ruling. (See Gov’t Response (ECF No. 104) at PageID #s 72-76.)

According to Bureau of Prisons records, as of October 22, 2015, Orchard had served 13 years, 5 months and 12 days (or 161 months and 12 days) of his 186-month term. With good

conduct credit determined as of October 22, Orchard's projected release date is March 7, 2016. The parties have jointly recommended that the Court impose a sentence of 101 months on Counts 2, 3, 4 and 5 to be served concurrently and a sentence of 60 months on Count 7, to run consecutively to the 101 months—for a total length of 161 months of incarceration. The parties also jointly recommend that the Court lower the term of supervised release on Count 2 to three years to bring the term of supervised release in line with 18 U.S.C. §§ 3559(a)(3) & 3583(b)(2) (stating that maximum term of supervised release for an offense with a 10-year maximum is 3 years).

The Court agrees with these recommendations and recognizes that Orchard has waived his right to appear for resentencing in order to expedite the correction of his sentence (ECF No. 105). Therefore, the Court hereby GRANTS the Motion to Correct Sentence Under 28 U.S.C. § 2255 (ECF No. 100) and ORDERS that the sentence be corrected to reflect a sentence of 101 months on Counts 2, 3, 4 and 5 to be served concurrently and a sentence of 60 months on Count 7, to run consecutively to the 101 months—for a total length of 161 months of incarceration. The sentence shall be further corrected to reflect a three-year term of supervised release on Count 2.

SO ORDERED.

/s/ George Z. Singal  
United States District Judge

Dated this 11th day of December, 2015.