

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

DANIEL RALPH BISHOP,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:04-cr-00024-JAW
	)	1:15-cv-00401-JAW
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

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

Defendant/Petitioner Daniel Ralph Bishop (“Petitioner”), who pled guilty to a charge of possession of a firearm by a felon, has filed a motion pursuant to 28 U.S.C. § 2255, through which motion he argues that his sentence of 188 months must be corrected in light of the Supreme Court decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) (holding that sentence enhancements based on the residual clause of the Armed Career Criminal Act violate due process, overruling *Sykes v. United States*, 131 S. Ct. 2267, 2277 (2011)). *Mot. to Vacate, Set Aside or Correct Sentence* (ECF No. 73).

The Government filed a response in which it conceded “that *Johnson* rendered Bishop’s current sentence illegal and that Bishop has now served more than the otherwise-applicable, 10-year statutory maximum.” *Gov’t’s Response to Petitioner’s Mot. Pursuant to 28 U.S.C. § 2255 and Concurrence in Petitioner’s Request for a Corrected Sentence* at 2 (ECF No. 77). The Government thus has conceded in this

case that *Johnson* should be applied retroactively, that one of Petitioner's three predicate convictions was counted under the residual clause, and that without that conviction Petitioner is not an Armed Career Criminal. *See id.* at 3 – 4.

The Court concludes that based on the holding of *Johnson*, Petitioner is serving a sentence that violates the Constitution and, therefore, relief under 28 U.S.C. § 2255(a) is warranted. Furthermore, the Court finds that a sentence of 120 months, followed by a three-year period of supervised release is an appropriate sentence.<sup>1</sup> 18 U.S.C. § 924(a)(2). Accordingly, the Court grants Petitioner's motion under 28 U.S.C. § 2255, vacates Petitioner's existing sentence, and sentences Petitioner to serve 120 months in prison, followed by a three-year period of supervised release under the same conditions as previously ordered.

SO ORDERED.

/s/ John A. Woodcock, Jr.  
JOHN A. WOODCOCK, JR.  
UNITED STATES DISTRICT JUDGE

Dated this 6th day of October, 2015

**Defendant (1)**

**DANIEL RALPH BISHOP**  
*TERMINATED: 05/10/2005*

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<sup>1</sup> With the ACCA enhancement, because the Armed Career Criminal finding made Petitioner's offense a Class A felony with a minimum prison sentence of 15 years and a maximum sentence of life imprisonment, 18 U.S.C. § 924(e)(1), the maximum period of supervised release was five years, 18 U.S.C. §§ 3581(b)(1), 3583(b)(1). Without the enhancement, the maximum prison sentence is ten years, 18 U.S.C. § 924(a)(2), which resulted in a maximum period of supervised release of three years, 18 U.S.C. §§ 3581(b)(3), 3583(b)(2).

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