

APPENDIX A

United States Court of Appeals For the First Circuit

No. 17-1625

UNITED STATES,

Appellee,

v.

VERISSIMO TAVARES,

Defendant, Appellant.

Before

Howard, Chief Judge,
Torruella and Kayatta, Circuit Judges.

JUDGMENT

Entered: April 5, 2018

Appellant Verissimo Tavares appeals from the sentence imposed by the district court after this court affirmed his 18 U.S.C. § 922(g) conviction but "remand[ed] for reconsideration of the sentence" in light of Johnson v. United States, 135 S. Ct. 2551 (2015) (Johnson II), Mathis v. United States, 136 S. Ct. 2243 (2016), and related precedent. See generally United States v. Tavares, 843 F.3d 1 (1st Cir. 2016), reh'g denied, 849 F.3d 529 (1st Cir. 2017). The district court ultimately imposed the same sentence imposed at the original sentencing after concluding that two of Tavares' prior state convictions still qualified as "crime[s] of violence" for purposes of the version of the advisory guidelines in effect at the time of the original sentencing. See 18 U.S.C. § 3742(g)(1) (for purposes of resentencing, "the court shall apply the guidelines . . . that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date"). Tavares appealed, and the government has moved for summary disposition.

Having considered Tavares' opening brief, the government's motion, and relevant portions of the record, we conclude on de novo review that affirmance is in order. See United States v. Wurie, 867 F.3d 28, 32 (1st Cir. 2017), cert. denied, 138 S. Ct. 690 (2018) (standard of review). In resentencing Tavares to the same term of imprisonment, the district court correctly applied Johnson II and related precedent from the Supreme Court and this court. See Beckles v. United States, 137 S. Ct. 886, 895 (2017) (holding "that the advisory Sentencing Guidelines are not subject to a vagueness challenge under the Due Process Clause and that § 4B1.2(a)'s residual clause is not

void for vagueness"); Wurie, 867 F.3d at 32-35 (post-Beckles case applying pre-Johnson II precedent interpreting and applying the residual clause, including precedent treating Massachusetts assault and battery with a dangerous weapon as a "crime of violence" under the residual clause); United States v. Almenas, 553 F.3d 27, 34 (1st Cir. 2009) (holding that Massachusetts resisting arrest is a qualifying "crime of violence" under the residual clause).

The government's motion for summary disposition is **GRANTED**, and the judgment of the district court is **AFFIRMED**. See Local Rule 27.0(c).

By the Court:

/s/ Margaret Carter, Clerk

cc:

Judith H. Mizner
Behzad Mirhashem
Verissimo Tavares
Cynthia A. Young
John Albert Wortmann Jr.
Caitlin E. Keiper