

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-3488

Thomas Lee Farmer

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Waterloo
(6:16-cv-02056-LRR)

JUDGMENT

Before GRUENDER, BOWMAN and BENTON, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

March 20, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
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Thomas Lee Farmer

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Waterloo
(6:16-cv-02056-LRR)

ORDER

The petition for rehearing by the panel is denied.

May 29, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

THOMAS LEE FARMER,

Movant,

vs.

UNITED STATES OF AMERICA.

No. C16-2056-LRR
No. CR94-2020-LRR

ORDER REGARDING
28 U.S.C. § 2255 MOTION

This matter appears before the court on the movant's second motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 (civil docket no. 1), which he obtained authorization to file. The movant filed such motion on May 25, 2016. In his second § 2255 motion, the movant claims that he is entitled to relief under the recent United States Supreme Court decision in *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551 (2015). The government disputes that the movant is entitled to relief under 28 U.S.C. § 2255. Given the validity of the movant's convictions in the instant case, the movant's criminal history and the sentencing record, the court finds that it is appropriate to apply the concurrent sentence doctrine, which applies if not all concurrent sentences are attacked and success on the claim at issue does not call into question the overall term of imprisonment. See *United States v. Olunloyo*, 10 F.3d 578, 581 (8th Cir. 1993); *United States v. Smith*, 601 F.2d 972, 973-74 (8th Cir. 1979); *United States v. Martinez*, 573 F.2d 529, 532 (8th Cir. 1978); see also *Sun Bear v. United States*, 644 F.3d 700, 705 (8th Cir. 2011) (en banc) (explaining that movant already had been afforded fair procedure and it is a "basic principle that, in sentencing, a miscarriage of justice cognizable under § 2255 occurs when the sentence is in excess of that authorized by law" (citing *United States v.*

Addonizio, 442 U.S. 178, 184 (1979)); *Olten v. United States*, 565 F. App'x 558, 561 (8th Cir. 2014), *cert. denied*, ___ U.S. ___, 135 S. Ct. 1893 (2015) (concluding that relief under 28 U.S.C. § 2255 is inappropriate where the same sentence “could be reimposed were [the movant] granted the § 2255 relief he requests.”).¹ The movant’s assertions as to the validity of his enhanced sentences under 18 U.S.C. § 3559(c) and the possible relief he might someday obtain are too speculative, and, thus, he failed to show that he would be substantially prejudiced or exposed to a substantial risk of adverse collateral consequences if his concurrent sentence of 327 months imprisonment under 18 U.S.C. § 924(e) is not corrected, that is, reduced to 120 months imprisonment. Because it is appropriate to decline to address the validity of the movant’s concurrent sentence under count 4 in light of the record, the movant’s second motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 (civil docket no. 1) is denied. Additionally, a certificate of appealability will not issue. *See generally* 28 U.S.C. § 2253.

IT IS SO ORDERED.

DATED this 15th day of September, 2017.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

¹ The court notes that the movant is unable to advance non-Armed Career Criminal Act claims as a result of procedural obstacles. *Cf. Raybon v. United States*, No. 16-2522, 2017 U.S. App. LEXIS 15029, 2017 WL 3470389, at *2-3 (6th Cir. Aug. 14, 2017) (concluding movant could not rely on statute of limitation as set forth in 28 U.S.C. § 2255(f)(3) because *Johnson* did not recognize a new “Constitutional right not to be sentenced as a career offender under the residual clause of the mandatory Sentencing Guidelines”).