

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-1037

Michael Jackson

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:16-cv-00557-DW)

JUDGMENT

Before WOLLMAN, MURPHY and COLLTON, 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.

June 01, 2017

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

/s/ Michael E. Gans

App A

**UNITED STATES COURT OF APPEALS
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No: 17-1037

Michael Jackson

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:16-cv-00557-DW)

ORDER

The petition for rehearing en banc is denied.

July 12, 2018

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

/s/ Michael E. Gans

App B

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ORDER

Before the Court is the Movant Michael Jackson's (the "Movant") Motion to Correct Sentence Under 28 U.S.C. § 2255 (Doc. 1). Movant seeks to be resentenced under the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015), which held that the "residual clause" of the Armed Career Criminal Act ("ACCA") is unconstitutionally vague.¹ Movant argues that absent the residual clause, his prior burglary convictions under Missouri law do not qualify as predicate offenses under the ACCA.² Movant has at least six convictions for second degree burglary and one conviction for first degree burglary. See Presentence Investigation Report, p. 10-21. Movant argues that his "prior offenses for burglary are not violent felonies [for purposes of an ACCA enhancement] in the absence of the residual clause."

¹ The Supreme Court subsequently held that Johnson applies retroactively to cases on collateral review, such as this case. *Welch v. United States*, 136 S. Ct. 1257 (2016).

² Movant initially argued that Missouri's burglary statute is divisible, but his reply brief argues that the statute is indivisible. See Doc. 1, Doc. 8, p. 2 ("Although counsel has previously argued that Missouri burglary is a divisible statute, and that Missouri burglary of a building is generic burglary but Missouri burglary of an inhabitable structure is not, further research reveals that Missouri burglary is not a divisible statute."). Under the case law cited below, the Court rejects Movant's new argument that "because the statute is indivisible, no conviction for Missouri burglary can be generic burglary." Doc. 8, p. 11.

In the post-Johnson habeas context, however, this Court has held that such burglary convictions qualify as ACCA enumerated offenses. Kastner v. United States, Case No. 16-CV-3163-DW, at p. 3-6 (W.D. Mo. Aug. 15, 2016) (holding that “Movant’s prior second-degree burglary convictions are considered enumerated offenses under the ACCA,” and declining to retroactively apply Mathis v. United States, 136 S. Ct. 2243 (2016)); see also United States v. Phillips, 817 F.3d 567, 569-70 (8th Cir. 2016) (reaffirming that “the basic elements of the Missouri second-degree burglary statute are the same as those of the generic burglary offense under the categorical approach”) (quotations and alterations omitted); Thornburgh v. United States, 2016 WL 3264462, at * 2 (W.D. Mo. June 14, 2016). Consequently, under the facts of this case—and even without the residual clause—Movant has three qualifying ACCA convictions. See id.

For these reasons, and for the additional reasons stated by the Government, it is hereby ORDERED that:

- (1) the Movant’s Motion to Correct Sentence Under 28 U.S.C. § 2255 (Doc. 1) is DENIED; and
- (2) an evidentiary hearing is not necessary because Movant’s claims are inadequate on their face; and
- (3) a certificate of appealability will not issue because Movant has not made a substantial showing of the denial of a constitutional right.

IT IS SO ORDERED.

Date: August 31, 2016

/s/ Dean Whipple
Dean Whipple
United States District Judge