

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12957
Non-Argument Calendar

D.C. Docket Nos. 1:16-cv-22585-RNS,
1:14-cr-20130-RNS-1

ANTRON DEMOND EDWARDS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(August 2, 2018)

Before WILSON, WILLIAM PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

Antron Demond Edwards appeals the district court's denial of his 28 U.S.C. § 2255 motion to vacate his sentence. On appeal, Edwards argues that his sentence

was unconstitutionally enhanced under the Armed Career Criminal Act (ACCA) in light of *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015), which held that the ACCA’s residual clause was void for vagueness. After careful review of the parties’ briefs and the record, we affirm.

I.

We review the legal conclusions in the denial of a motion to vacate under 28 U.S.C. § 2255 de novo and the findings of fact for clear error. *Stoufflet v. United States*, 757 F.3d 1236, 1239 (11th Cir. 2014). We may affirm on any ground supported by the record, regardless of the ground stated by the district court. *Beeman v. United States*, 871 F.3d 1215, 1221 (11th Cir. 2017).¹

II.

Under the ACCA, a defendant faces a 15-year mandatory minimum sentence if he is convicted of being a felon in possession of a firearm or ammunition following three prior felony convictions for a “violent felony” or a “serious drug offense,” or a combination of both. 18 U.S.C. § 924(e)(1). The term “violent felony” includes “any crime punishable by imprisonment for a term exceeding one year” that: “has as an element the use, attempted use, or threatened use of physical force against the person of another” (the elements clause), or “is burglary, arson, or

¹ The mandate in *Beeman* has not yet issued, but it is still the law of this circuit. See *Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (per curiam); 11th Cir. R. 36 I.O.P. 2 (“Under the law of this circuit, published opinions are binding precedent. The issuance or non-issuance of the mandate does not affect this result.”).

extortion, [or] involves use of explosives" (the enumerated-offenses clause). *Id.* at § 924(e)(2)(B). Before *Johnson*, "violent felony" also included an offense that "otherwise involves conduct that presents a serious potential risk of physical injury to another" (the residual clause). *Id.*; *Johnson*, 576 U.S. at ___, 135 S. Ct. at 2563.

We held in *Beeman* that to prove a *Johnson* claim, a movant must establish that his sentence enhancement turned on the validity of the residual clause, such that he would not have been sentenced as an armed career criminal absent the existence of the residual clause. *Beeman*, 871 F.3d at 1221. We explained that a movant meets his burden only if (1) the sentencing court relied solely on the residual clause to qualify a prior conviction as a violent felony, as opposed to also or solely relying on either the enumerated-offenses clause or elements clause, and (2) there were not at least three other prior convictions that could have qualified under either of those two clauses as a violent felony or a serious drug offense. *Id.* We further held that, to carry his burden of proof, a § 2255 movant asserting a *Johnson* claim must show that—more likely than not—it was the sentencing court's use of the residual clause that led to its enhancement of his sentence. *Id.* at 1221–22.

III.

The district court did not apply the proper standards when assessing Edwards's *Johnson* claim because it did not have the benefit of our ruling in

Beeman.² Nevertheless, the *Beeman* issue has been fully briefed on appeal and neither party requests a remand for reconsideration of Edwards's § 2255 motion in light of *Beeman*. Under *Beeman*, Edwards cannot carry his burden of proving that he was sentenced under the ACCA's residual clause because nothing in the record shows that the sentencing court relied on the residual clause in concluding that his Florida arson conviction qualified as an ACCA predicate and Edwards has cited no precedent from the time of sentencing showing that Florida arson qualified only under the residual clause.

AFFIRMED.

² Because the government therefore had no opportunity to raise the *Beeman* issue in the district court, we can consider it in on appeal. *See Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331–32 (11th Cir. 2004) (explaining that one exception to the general rule that we will not consider arguments in the first instance occurs if the argument could not have been raised in the district court).

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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August 02, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-12957-EE
Case Style: Antron Edwards v. USA
District Court Docket No: 1:16-cv-22585-RNS
Secondary Case Number: 1:14-cr-20130-RNS-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Elora Jackson, EE at (404) 335-6173.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion