

APPENDICIES

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12405-K

BRADY LAVICK ADAMS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

Brady Lavick Adams seeks a certificate of appealability (“COA”), leave to proceed in forma pauperis (“IFP”), and appointment of counsel in his appeal from the District Court’s resolution of his pro se amended motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. Mr. Adams is a federal prisoner serving a life plus five-year sentence for kidnapping, in violation of 18 U.S.C. § 1201, possession of a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c), and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g). At sentencing, the District Court imposed a life sentence for the

kidnapping conviction, a consecutive 60-month sentence for the § 924(c) conviction, and a concurrent 360-month sentence for the § 922(g) conviction.

In 2016, this Court granted Mr. Adams leave to file a second or successive § 2255. In his amended § 2255 motion, he argued that his § 922(g) sentence was unconstitutional in light of Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2551 (2015) because he did not qualify as an armed career criminal. The District Court granted the amended § 2255 motion and reduced the sentence for the § 922(g) conviction to 120 months. The District Court declined to conduct a full resentencing. Mr. Adams appealed, arguing that the District Court should have revisited his entire sentence. The District Court denied him a COA and leave to proceed IFP, which he now seeks in this Court.

To obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that “reasonable jurists would find the District Court’s assessment of the constitutional claims debatable or wrong” or that the issues “deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000) (quotation omitted).

Mr. Adams contends that the District Court erred by failing to conduct a full resentencing because his sentences were a “package.” “[S]entencing on multiple counts is an inherently interrelated, interconnected, and holistic process which

requires a court to craft an overall sentence—the ‘sentence package’—that reflects the guidelines and the relevant § 3553(a) factors.” United States v. Fowler, 749 F.3d 1010, 1015 (11th Cir. 2014).

[W]hen a conviction on one or more of the component counts is vacated for good, the district court should be free to reconstruct the sentencing package . . . to ensure that the overall sentence remains consistent with the guidelines, the § 3553(a) factors, and the court’s view concerning the proper sentence in light of all the circumstances.

Id. Thus, once a sentence package “is opened and something is removed, the contents that remain may be fully revisited upon resentencing.” Id. at 1016 (quotation omitted).

Mr. Adams is serving a life sentence for his kidnapping conviction and a consecutive 60-month sentence for his § 924(c) conviction. During sentencing, the District Court designated him a career offender and an armed career criminal based on his criminal history. However, neither designation impacted the sentences for his kidnapping and § 924(c) convictions.

The guideline range of 360 months to life imprisonment for Mr. Adams’s kidnapping conviction was based on a total offense level of 41 and a criminal history category of VI. The total offense level consisted of (1) a base offense level of 27 for kidnapping in connection with sexual assault; and (2) the addition of 14 levels because he obstructed justice and sexually assaulted, injured, and abducted the victim. Even without consideration of his career-offender or armed-career-

criminal status, Mr. Adams had a criminal history category of VI because he had 13 criminal-history points. The District Court determined that a sentence for the kidnapping at the top of the guideline range was appropriate due to Mr. Adams's "history of violent behavior, as well as the aggravating circumstances of the instant offense." The District Court was required to impose a consecutive, minimum five-year sentence for his § 924(c) conviction. See 18 U.S.C. § 924(c)(1)(A)(i). Because Mr. Adams's armed-career-criminal status and his sentence for his § 922(g) conviction did not impact the sentences for his remaining convictions, the District Court appropriately declined to conduct a full resentencing.

Mr. Adams challenges his career-offender status, arguing that a portion of the career-offender provision in the Sentencing Guidelines is unconstitutionally vague. Although the advisory Sentencing Guidelines are not subject to a due process vagueness challenge, he points out that he was sentenced under the mandatory Sentencing Guidelines. See Beckles v. United States, 580 U.S. ___, 137 S. Ct. 886, 892–97 (2017) (holding that the advisory Sentencing Guidelines are not subject to a due process vagueness challenge); United States v. Booker, 543 U.S. 220, 245, 125 S. Ct. 738, 756–57, 160 L.Ed.2d 621 (2005) (rendering the Sentencing Guidelines advisory by severing and excising the statutory provision that made them mandatory and unconstitutional). However, as discussed above,

Mr. Adams's career-offender status did not impact his sentences. It is immaterial whether he qualifies as a career offender.

Finally, Mr. Adams asserts that the District Court erred by applying the concurrent-sentence doctrine. Under that doctrine, "if a defendant is given concurrent sentences on several counts and the conviction on one count is found to be valid, an appellate court need not consider the validity of the convictions on the other counts" unless "the defendant would suffer adverse collateral consequences from the unreviewed conviction." United States v. Bradley, 644 F.3d 1213, 1293 (11th Cir. 2011) (quotations omitted). The District Court did not apply the concurrent-sentence doctrine, but rather reduced the sentence for Mr. Adams's § 922(g) conviction. It is permissible for Mr. Adams to continue to have collateral consequences from his § 922(g) conviction because that conviction has not been vacated.

Because Mr. Adams has not made a substantial showing of the denial of a constitutional right, his motion for a COA is DENIED. His motion for leave to proceed on appeal IFP is DENIED AS MOOT. His motion for appointment of counsel is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12405-K

BRADY LAVICK ADAMS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: MARTIN and JILL PRYOR, Circuit Judges.

BY THE COURT:

Brady Lavick Adams has moved for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated November 27, 2017, denying him a certificate of appealability, leave to proceed *in forma pauperis*, and appointment of counsel in his appeal from the district court's resolution of his *pro se* amended motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. Upon review, the motion for reconsideration is DENIED because Adams has offered no new evidence or arguments of merit to warrant relief.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA

vs.

Case Nos.: 4:94cr4045/WS/CAS
4:16cv429/WS/CAS

BRADY LAVICK ADAMS

ORDER

Defendant Brady Lavick Adams has filed a Motion to Correct Sentence Under 28 U.S.C. § 2255 and Memorandum in Support thereof contending that he is entitled to sentencing relief based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). (ECF Nos. 225, 226). The Government concedes that Defendant is entitled to resentencing on one of his convictions, but maintains that this resentencing has no effect on his total sentence due to the life term imposed on another count. (ECF No. 228). Defendant filed a reply urging the court to vacate his entire sentence and resentence him under the advisory guidelines using the “sentencing package doctrine.” (ECF No. 229).

A jury convicted Defendant in 1995 of kidnapping (Count One), possession of a firearm during a crime of violence (Count Two) and possession of a firearm by a convicted felon (Count Three). This court sentenced him to a term of life

imprisonment as to Count One, a consecutive term of 60 months on Count Two, and a concurrent term of 360 months on Count Three. (ECF No. 48). It is the latter sentence, which was based in part on the court's finding that Defendant was an Armed Career Criminal, that is now at issue. (ECF No. 219, PSR ¶ 89).

Pursuant to the Armed Career Criminal Act, ("ACCA"), a person who has three previous convictions for a violent felony, a serious drug offense, or both is subject to a mandatory minimum fifteen-year sentence. 18 U.S.C. § 924(e)(1). The statutory definition of a violent felony under the ACCA is an offense that either "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another [*known as the elements clause*] or (ii) is burglary, arson, or extortion, involves the use of explosives [*known as the enumerated offenses clause*] or otherwise involves conduct that presents a serious potential risk of physical injury to another [*known as the residual clause*]." 18 U.S.C. § 924(e)(2)(B)(i) and (ii). An individual subject to ACCA's enhanced penalties also is subject to a greater guidelines range pursuant to U.S.S.G. § 4B1.4. However, in this case, Defendant's status as an Armed Career Criminal had no impact on the calculation of his total offense level or his criminal history category. Still, absent the application of the ACCA enhancement, Defendant would have faced a maximum

sentence of only ten years imprisonment on Count Three. *See* 18 U.S.C. § 924(a)(2).

In *Johnson v. United States*, 135 S. Ct. 2551 (2015), the Supreme Court ruled that the ACCA's "residual clause" was unconstitutionally vague. *Johnson*, 135 S. Ct. at 2563. Thus, a prior conviction can only qualify as a "violent felony" if it falls within the elements clause or is one of the enumerated offenses. The Government concedes that one of the convictions used to support the ACCA enhancement was a 1983 conviction for child molestation, which was counted as a violent felony under the residual clause. Absent consideration of this conviction, Defendant does not have the three predicate convictions required for the application of the ACCA enhancement, and he is entitled to be resentenced as to this conviction.

The Supreme Court's decision in *Johnson* has no bearing upon the sentences imposed on the remaining counts, as *Johnson* does not apply to determinations under the career offender provisions of the guidelines. *Beckles v. United States*, 137 S. Ct. 886 (2017); *United States v. Matchett*, 802 F.3d 1185 (2015). The Government notes that U.S.S.G. Amendment 795 removed the residual clause from the definition of "crime of violence" in § 4B1.2 of the guidelines. However, because this amendment was not listed in U.S.S.G. § 1B1.10(d), it is not retroactive. Thus,

Defendant may not now challenge this court's finding in 1995 that his convictions for felonious assault and child molestation were crimes of violence and that he was a career offender. Furthermore, the career offender designation, like the ACCA enhancement, had no effect on the calculation of the applicable sentencing range. (See ECF No. 219, PSR ¶¶ 40-41, 52). Defendant's offense level was based upon the aggravating factors involved in the offense conduct in this case and his criminal history category was calculated based on the number of prior convictions and their temporal proximity to the instant offense conduct. (ECF No. 219, PSR ¶¶ 32-39, 46-51).

The statute of conviction in Count One, 18 U.S.C. § 1201, specifically authorizes a term of life imprisonment for kidnapping. 18 U.S.C. § 1201(a). The court's statement of reasons indicated that it chose to impose a sentence at the top of the prescribed guideline range in recognition of the Defendant's history of violent behavior, as well as the aggravating circumstances of the instant offense. (ECF No. 48 at 5). As explained in the PSR, Defendant had previously dragged his wife by the throat out of the residence to which she had fled after leaving a battered woman's shelter (¶ 11), he lied to her relatives about his identity in order to locate her when she fled again (¶ 13), he kidnapped her at gunpoint two days after police

officers had warned him that he would be arrested if he contacted her again, and shot her when she tried to escape (§§ 13-15), he refused to permit her any medical treatment other than over the counter pain medication for more than 24 hours after shooting her, despite her serious condition (§§ 15-19, 24), he forced her to have sex against her will despite her injuries (§ 17), and he held FBI agents at bay for twelve hours by threatening to kill her (§ 18). Defendant also lied about his conduct at trial (PSR § 25) and showed “absolutely no remorse” for his crime (§ 28). In light of the circumstances surrounding this offense, the court declines Defendant’s invitation to revisit his sentencing on the remaining two charges, even if such were legally permissible.

After granting a section 2255 motion, a court has authority to correct a prisoner’s sentence without conducting a formal resentencing hearing. *United States v. Hadden*, 475 F.3d 652, 669 (4th Cir. 2007); *see United States v. Joseph*, 569 F. App’x 861, 864 (11th Cir. 2014); *United States v. Jackson*, 923 F.2d 1494, 1497-98 (11th Cir. 1991); *United States v. Brewer*, 360 F. App’x 28 (11th Cir. 2010) (per curiam). In light of the fact that resentencing on Count Three will not affect Defendant’s total sentence, formal resentencing is not warranted in this case.

Accordingly it is **ORDERED**:

1. Defendant's Amended Motion to Correct Sentence under 28 U.S.C. § 2255 (ECF No. 225) is **GRANTED**.
2. Defendant's term of incarceration as to Count Three is reduced from **360 months to 120 months**, and his sentence of supervised release as to Count Three only is reduced from **5 years to 3 years**. The clerk is directed to enter an amended judgment reflecting this change.
3. All other provisions of the Court's Judgment and Sentence imposed on April 18, 1995 (ECF No. 48) shall remain in full force and effect.
4. Defendant's request for appointment of counsel (ECF No. 241) is **DENIED as moot**.

DONE AND ORDERED this 12th day of May, 2017.

/s/ William Stafford

WILLIAM STAFFORD

SENIOR UNITED STATES DISTRICT JUDGE