

NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

BOBBY JO GIPSON,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITIONERS' APPENDIX

COMES NOW, Petitioner Bobby Jo Gipson,¹ by and through his counsel of record, Doris Randle-Holt, Federal Public Defender for the Western District of Tennessee, by Tyrone J. Paylor, First Assistant Federal Defender, pursuant to Supreme Court Rule 14.1(h)(i), and submits the following Appendices A and B for this Court's review with his Petition for Writ of Certiorari.

Dated this 17th day of April, 2018.

Respectfully submitted,

/s/ Tyrone J. Paylor

Doris A. Randle-Holt

Federal Public Defender for the
Western District of Tennessee

By: Tyrone J. Paylor

First Assistant Federal Public Defender

Attorneys for Petitioner

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Memphis, Tennessee 38103

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¹ Pursuant to Supreme Court Rule 12.4, Petitioner Keith Walker, has joined this Petition seeking review of his Sixth Circuit judgment. The cases involve an identical issue.

APPENDIX A



Gipson v. United States

United States Court of Appeals for the Sixth Circuit

February 7, 2018, Filed

File Name: 18a0065n.06

No. 17-5333

Reporter

710 Fed. Appx. 697 *; 2018 U.S. App. LEXIS 2927 **; 2018 FED App. 0065N (6th Cir.); 18a0065n.06;; 2018 WL 739382

BOBBY JOE GIPSON, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.

Notice: NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. *SIXTH CIRCUIT RULE 28* LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE *RULE 28* BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

Prior History: **[**1]** ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE.

United States v. Gipson, 182 F.3d 919, 1999 U.S. App. LEXIS 24490 (6th Cir. Tenn., July 14, 1999)

Counsel: For BOBBY JOE GIPSON (Federal Prisoner: #16171-076), Petitioner - Appellant: Tyrone Jemal Paylor, Federal

Public Defender, Memphis, TN.

BOBBY JOE GIPSON (Federal Prisoner: #16171-076), Petitioner - Appellant, Pro se, Memphis, TN .

For UNITED STATES OF AMERICA, Respondent - Appellee: Kevin G. Ritz, Assistant U.S. Attorney, Office of the U.S. Attorney, Memphis, TN.

Judges: Before: BOGGS, CLAY, and KETHLEDGE, Circuit Judges.

Opinion by: KETHLEDGE

Opinion

[*697] KETHLEDGE, Circuit Judge. Bobby Gipson challenges under 28 U.S.C. § 2255 a prison sentence he received nearly 20 years ago. He contends that he was sentenced under the "residual clause" of the then-mandatory Sentencing Guidelines, which required higher sentences for defendants with at least two prior convictions for crimes involving "conduct that presents a serious potential risk of physical injury to another." [U.S.S.G. §](#)

[4B1.2\(a\)\(2\)](#) (1997). In *Johnson v. United States*, the Supreme Court found unconstitutionally vague an identically worded [*698] clause in the *Armed Career Criminal Act*. [135 S. Ct. 2551, 2557, 192 L. Ed. 2d 569 \(2015\)](#). Gipson argues that sentences decided under the Guidelines' residual clause when that clause was still mandatory—*i.e.*, as binding on courts as the Armed Career Criminal [**2] Act—are likewise unconstitutional under *Johnson*.

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That argument comes to us in the context of a § 2255 motion, so Gipson's motion is untimely unless *Johnson* recognized a new right that applies retroactively to him on collateral review. See 28 U.S.C. § 2255(f)(3). The problem, then, is that *Johnson* dealt only with the Armed Career Criminal Act, not with the Guidelines. See [Welch v. United States, 136 S. Ct. 1257, 1265, 194 L. Ed. 2d 387 \(2016\)](#). That leaves defendants sentenced under the Guidelines' residual clause—even when that clause was mandatory—without "a 'right' that 'has been newly recognized by the Supreme Court' let alone one that was 'made retroactively applicable to cases on collateral review.'" [Raybon v. United States, 867 F.3d 625, 630 \(6th Cir. 2017\)](#) (quoting § 2255(f)(3)).

We acknowledge the irony that a defendant in a similar position to that of the defendant in *Johnson* seems unable even to seek the same relief. But the fact of the matter is that Gipson can seek relief under § 2255(f)(3) only if the Supreme Court recognizes a new right that applies retroactively to him. And per [Raybon](#) the Court has not yet done so.

The district court's judgment is affirmed.

APPENDIX B



[Walker v. United States](#)

United States Court of Appeals for the Sixth Circuit

February 7, 2018, Filed

File Name: 18a0066n.06

No. 17-5500

Reporter

710 Fed. Appx. 696 *; 2018 U.S. App. LEXIS 2929 **; 2018 FED App. 0066N (6th Cir.) ***; 18a0066n.06;; 2018 WL 739381

KEITH WALKER, Petitioner-Appellant, v.
UNITED STATES OF AMERICA,
Respondent-Appellee.

Notice: NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. *SIXTH CIRCUIT RULE 28* LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE *RULE 28* BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

Prior History: [**1] ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE.

[United States v. Walker, 181 F.3d 774, 1999 U.S. App. LEXIS 13692 \(6th Cir.\) \(6th Cir. Tenn., June 22, 1999\)](#)

Counsel: For KEITH WALKER (#15339-076), Petitioner - Appellant: Tyrone Jemal

Paylor, Federal Public Defender, Memphis, TN.

For UNITED STATES OF AMERICA, Respondent - Appellee: Kevin G. Ritz, Assistant U.S. Attorney, Office of the U.S. Attorney, Memphis, TN.

Judges: Before: BOGGS, CLAY, and KETHLEDGE, Circuit Judges.

Opinion by: KETHLEDGE

Opinion

[*696] [***1] KETHLEDGE, Circuit Judge. Keith Walker challenges under 28 U.S.C. § 2255 a prison sentence he received just over 20 years ago. He was sentenced under the "residual clause" of the then-mandatory Sentencing Guidelines, which required higher sentences for defendants with at least two prior convictions for crimes involving "conduct that presents a serious potential risk of physical injury to another." [U.S.S.G. § 4B1.2\(1\)\(ii\)](#) (1995). In *Johnson v. United States*, the Supreme Court found unconstitutionally vague an [*697] identically worded clause in the

Armed Career Criminal Act, [135 S. Ct. 2551, 2557, 192 L. Ed. 2d 569 \(2015\)](#).

Walker argues that sentences decided under the Guidelines' residual clause when that clause was still mandatory—*i.e.*, as binding on courts as the Armed Career Criminal Act—are likewise unconstitutional under *Johnson*.

That argument comes to us in the context of a § 2255 motion, so Walker's motion is untimely [**2] unless *Johnson* recognized a new right that applies retroactively to him on collateral [***2] review. *See* 28 U.S.C. § 2255(f)(3). The problem, then, is that *Johnson* dealt only with the Armed Career Criminal Act, not with the Guidelines. *See Welch v. United States*, [136 S. Ct. 1257, 1265, 194 L. Ed. 2d 387 \(2016\)](#). That leaves defendants sentenced under the Guidelines' residual clause—even when that clause was mandatory—without "a 'right' that 'has been newly recognized by the Supreme Court' let alone one that was 'made retroactively applicable to cases on collateral review.'" [Raybon v. United States](#), [867 F.3d 625, 630 \(6th Cir. 2017\)](#) (quoting § 2255(f)(3)).

We acknowledge the irony that a defendant in a similar position to that of the defendant in *Johnson* seems unable even to seek the same relief. But the fact of the matter is that Walker can seek relief under § 2255(f)(3) only if the Supreme Court recognizes a new right that applies retroactively to him. And per *Raybon* the Court has not yet done so.

The district court's judgment is affirmed.