

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

No: 16-4127

Thomas Boaz

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Springfield
(6:16-cv-03242-DW)

JUDGMENT

Before LOKEN, GRUENDER and KELLY, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

March 13, 2018

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

[App. A](#)

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

No: 16-4127

Thomas Boaz

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Springfield
(6:16-cv-03242-DW)

ORDER

An application for a certificate of appealability is granted on the following issues:

(1) Whether the district court erred in concluding that Boaz's claim under Johnson v. United States, 135 S. Ct. 2551 (2015), was not cognizable under 28 U.S.C. § 2255 based on Sun Bear v. United States, 644 F.3d 700 (8th Cir. 2011) (en banc), and Olten v. United States, 565 Fed. Appx. 558 (8th Cir. 2014) (unpublished per curiam), cert. denied, 135 S. Ct. 1893 (2015); and

(2) whether the district court erred in determining that Boaz's 1974 Arizona conviction for exhibiting a weapon qualified as a predicate offense without reliance on the residual clause.

May 05, 2017

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

/s/ Michael E. Gans

App. B

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

No: 16-4127

Thomas Boaz

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Springfield
(6:16-cv-03242-DW)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 23, 2018

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

/s/ Michael E. Gans

App. C

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

THOMAS BOAZ,	)	
	)	
Movant,	)	Civil No. 16–CV-03242-S-DW
	)	Crim. No. 05–CR-00376-S-DW
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER

Before the Court is the Movant Thomas Boaz’s (the “Movant”) Second or Successive Motion to Correct Sentence Under 28 U.S.C. § 2255 (the “Motion”). See Doc. 1. The Government filed a response in opposition (Doc. 5), and Movant filed a reply brief (Doc. 8). Movant moves 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 post-Johnson, his following convictions no longer qualify as predicate offenses under the ACCA: (1) exhibiting a weapon other than in self-defense under Arizona law; (2) third degree burglary under Arizona law; and (3) terroristic threatening under Arkansas law. See Doc. 1, p. 6-11; Doc. 8, p. 6-14.

After reviewing the record and the parties’ arguments, the Court rejects the Movant’s arguments. The Court finds that Movant is not entitled to habeas relief for the reasons stated in the Government’s opposition brief. See Doc. 5, p. 7-12. Consequently, it is hereby ORDERED that:

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).

- (1) the Movant's Second or Successive 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: October 5, 2016

/s/ Dean Whipple
Dean Whipple
United States District Judge