

APR 29 2016

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JULIA C. DUBLEY, CLERK  
BY:   
DEPUTY CLERK

UNITED STATES OF AMERICA

Case No. 7:03-cr-00045-1

v.

MEMORANDUM OPINION

PETER GABOUREL,  
Petitioner.

By: Hon. Michael F. Urbanski  
United States District Judge

On October 2, 2003, the court sentenced petitioner Peter Gabourel to fifteen years' incarceration and five years' supervised release. The court imposed that sentence because it considered Gabourel to be an "armed career criminal" in violation of the Armed Career Criminal Act ("ACCA") due to a prior qualifying conviction of a "crime of violence" under the ACCA's "residual clause," 18 U.S.C. § 924(e)(2)(B).

On June 26, 2015, the Supreme Court of the United States determined that the ACCA's residual clause was unconstitutionally vague and invalid under the Due Process Clause. Johnson v. United States, 135 S. Ct. 2551 (2015); see Welch v. United States, 136 S. Ct. 1257 (2016) (holding Johnson applies retroactively to cases on collateral review). In accordance with Johnson, Gabourel filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, arguing that the "crime of violence" used to enhance the sentence under the ACCA's residual clause must be disregarded. The United States has acquiesced to Gabourel's request for the court to vacate the current sentence and impose a new sentence without the ACCA enhancement.<sup>1</sup>

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<sup>1</sup> It is possible that the court could impose a term of incarceration equal to or less than the time Gabourel has served, and consequently, Gabourel could be released from incarceration immediately after a resentencing hearing.

Pursuant to Johnson and in light of the United States' acquiescence, the § 2255 motion is granted. The Probation Office will prepare an amended presentence report, and the Clerk will schedule a resentencing hearing promptly. Gabourel may participate in the resentencing hearing by video conference, if possible, or by telephone if he files a notice agreeing to such within five days. See Fed. R. Crim. P. 43(c)(1)(B).

ENTER: This 29<sup>th</sup> day of April, 2016.

*/s/ Michael F. Urbanski*  
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United States District Judge