

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

NO. 4:12CR00128 JLH

DANIEL WAYNE PERRY

DEFENDANT

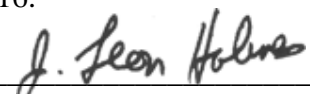
**ORDER**

Daniel Wayne Perry has filed a motion to vacate and correct his sentence pursuant to 28 U.S.C. § 2255. The issue is whether *Johnson v. United States*, 576 U.S. \_\_\_, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015), which declared unconstitutionally vague the residual clause of the definition of a violent felony in the Armed Career Criminal Act, applies retroactively to an identical provision in the United States Sentencing Guidelines. This Court has previously held that *Johnson* does not apply retroactively to a case in which the defendant was sentenced under the residual clause of the career offender guideline. *United States v. John Keith McCaughan*, No. 4:09CR00219-JLH, Document #36. In that case, however, the Court granted a certificate of appealability.

Perry's motion to appoint counsel is GRANTED. Document #31. The Court hereby appoints Assistant Federal Public Defender Kim Driggers, who is representing John Keith McCaughan in his appeal to the Eighth Circuit.

The motion to vacate and correct sentence is denied for the reasons stated by the Court in the opinion denying John Keith McCaughan's section 2255 petition. The Court grants to Daniel Wayne Perry a certificate of appealability on the issue of whether *Johnson* applies retroactively to a defendant who was sentenced as a career offender under the guidelines but not under the Armed Career Criminal Act.

IT IS SO ORDERED this 30th day of June, 2016.

  
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J. LEON HOLMES  
UNITED STATES DISTRICT JUDGE