

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 27, 2017

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HENRY ANTHONY EVANS,

Defendant - Appellant.

No. 16-1171
(D.C. Nos. 1:16-CV-00131-JLK &
1:11-CR-00104-JLK-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **LUCERO, HOLMES, and MORITZ**, Circuit Judges.

Henry Evans, a federal prisoner, filed a pro se 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. He argued that he was sentenced as a career offender under the residual clause of U.S. Sentencing Guidelines § 4B1.2(a)(2), and that the residual clause is unconstitutionally vague because it uses essentially the same language as the language in the Armed Career Criminal Act, 18 U.S.C.

§ 924(e)(2)(b), which was held to be unconstitutionally vague in *Johnson v. United*

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

States, 135 S. Ct. 2551, 2557, 2563 (2015). The district court summarily denied the § 2255 motion but granted a certificate of appealability (COA).

The Supreme Court has now held that the U.S. Sentencing Guidelines, including the residual clause of § 4B1.2, are not subject to constitutional vagueness challenges under the Due Process Clause. *Beckles v. United States*, __ S. Ct. __, No. 15-8544, 2017 WL 855781 (Mar. 6, 2017). Accordingly, the judgment of the district court is affirmed.

Entered for the Court

Nancy L. Moritz
Circuit Judge