

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 12, 2016

Elisabeth A. Shumaker  
Clerk of Court

In re: JOHNNY HODGE,

Movant.

No. 16-8070  
(D.C. Nos. 1:09-CR-00345-NDF-1 &  
1:12-CV-00268-NDF)  
(D. Wyo.)

ORDER

Before **BRISCOE**, **GORSUCH**, and **BACHARACH**, Circuit Judges.

Movant Johnny Hodge, a federal prisoner proceeding through pro se, seeks an order authorizing him to file a second or successive 28 U.S.C. § 2255 motion in the district court so he may assert claims for relief based on *Johnson v. United States*, 135 S. Ct. 2251 (2015). See 28 U.S.C. §§ 2255(h), 2244(b)(3). Because Movant has made a prima facie showing that he satisfies the relevant conditions for authorization under § 2255(h)(2), we grant authorization.

In 2010, Movant was convicted of multiple offenses, including one or more firearms offenses. He alleges that he received sentence enhancements under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), and U.S.S.G. § 4B1.1, based on his having the requisite number of qualifying prior convictions. See 18 U.S.C. § 924(e)(1) (three prior convictions for a violent felony); U.S.S.G. § 4B1.1 (two prior convictions for a crime of violence). Both of these enhancements, he contends, arose from one or more of his prior convictions qualifying as a violent felony or crime of violence under the

identical residual clauses contained in the ACCA and § 4B1.2. Movant now seeks to file a § 2255 motion challenging these enhancements based on the Supreme Court's opinion in *Johnson*, which invalidated the residual clause in the ACCA's definition of "violent felony" as unconstitutionally vague.

To obtain authorization, Movant must make a prima facie showing that his claim meets the gatekeeping requirements of § 2255(h). *See* 28 U.S.C. § 2244(b)(3)(C). A claim may be authorized under § 2255(h)(2) if it relies on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." *Johnson* announced a new rule of constitutional law that was made retroactive to cases on collateral review in *Welch v. United States*, 136 S. Ct. 1257, 1265 (2016). Based on the information before us, we conclude that Movant has made the required showing that his proposed *Johnson*-based claims challenging sentence enhancements under the ACCA and U.S.S.G. § 4B1.1 qualify for authorization.

The motion for authorization filed in this court on June 27, 2016, is granted. Pursuant to 28 U.S.C. § 1631, we direct the Clerk to transfer the now-authorized successive § 2255 motion to the district court for the District of Wyoming. The filing date for the authorized § 2255 motion is the earlier of 1) the date the motion for authorization was filed in this court, or 2) the date the motion for authorization was delivered to prison authorities for mailing, if the district court determines Movant is entitled to the benefit of the prison mailbox rule, *see Prince v. Philpot*, 420 F.3d 1158, 1165-66 (10th Cir. 2005); Fed. R. App. P. 25(a)(2)(C). The motion for an extension of

time to file an amendment brief is denied as moot.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", with a long horizontal flourish extending to the right.

ELISABETH A. SHUMAKER, Clerk