

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOEY RONNELL LEWIS,	}	
Petitioner,	}	
	}	
vs.	}	Case No. 5:11-cr-40059-RDR
	}	
UNITED STATES OF AMERICA,	}	
Respondent.	}	
	}	

AGREED ORDER GRANTING MOTION TO VACATE

On July 16, 2014, the parties filed a Joint Motion to Vacate, pursuant to 28 U.S.C. § 2255, in light of the Tenth Circuit's published decision in *United States v. Brooks*, 751 F.3d 1204 (10th Cir. 2014). The parties ask that this Court vacate Mr. Lewis's sentence in Case No. 5:11-cr-40059-RDR because he was incorrectly sentenced as an Armed Career Criminal. The underlying offense conduct involved the possession of a firearm by an Armed Career Criminal, in violation of 18 U.S.C. § 922(g)(1) & (e)(1). In light of *Brooks*, which held that certain Kansas convictions do not qualify as felony convictions for purposes of federal law, the parties assert that Mr. Lewis is not an Armed Career Criminal under 18 U.S.C. § 924(e)(1), and instead should have been sentenced under 18 U.S.C. § 924(a)(2). The government has waived any potential procedural hurdles to relief.

Here, in light of the Tenth Circuit's decision in *Brooks*, Mr. Lewis did not have the three requisite prior violent felony convictions at the time he possessed the firearm in

this case in order to enhance his sentence under § 924(e). This is so because his underlying Kansas conviction for Fleeing and Eluding Police did not carry a statutory maximum sentence of more than one year. Because Mr. Lewis is not an Armed Career Criminal, he is entitled to relief under 28 U.S.C. §2255. The sentence imposed in Case No. 5:11-cr-40059-RDR must be vacated, and Mr. Lewis must be resentenced.

This Court thus VACATES the sentence in Case No. 5:11-cr-40059-RDR, and a resentencing hearing will be scheduled shortly.

IT IS SO ORDERED.

Dated this 17th day of July, 2014, at Topeka, Kansas.

s/Richard D. Rogers
HON. RICHARD D. ROGERS
United States District Judge