

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JAMES P. HARRIS,	}	
Petitioner,	}	
	}	
vs.	}	Case No. 5:12-cr-40024-JAR
	}	No. 14-cv-4067-JAR
UNITED STATES OF AMERICA,	}	
Respondent.	}	
	}	

AGREED ORDER GRANTING MOTION TO VACATE

On July 18, 2014, the parties filed a Joint Motion to Vacate, pursuant to 28 U.S.C. § 2255, in light of the Tenth Circuit's decision in *United States v. Brooks*, 751 F.3d 1204 (10th Cir. 2014). The parties ask that this Court vacate Mr. Harris's conviction and sentence in Case No. 5:12-cr-40024-JAR because he is actually innocent of the offense of conviction. The underlying offense conduct involved the possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(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. Harris was not prohibited from possessing a firearm under § 922(g)(1). The government has waived any potential procedural hurdles to relief.

Here, in light of the Tenth Circuit's decision in *Brooks*, although the Petitioner possessed a firearm, at the time of his possession, he was not a felon for purposes of § 922(g)(1). This is so because his underlying Kansas conviction for Fleeing and Eluding

did not carry a statutory maximum sentence of more than one year. Because the Petitioner is actually innocent of the conviction in Case No. 5:12-cr-40024-JAR, the Petitioner is entitled to relief under 28 U.S.C. §2255 and the conviction and sentence must be vacated.

This Court thus VACATES the conviction and sentence in Case No. 5:12-cr-40024-JAR. Because the conviction is vacated, Mr. Harris's supervised release is TERMINATED IMMEDIATELY.

IT IS SO ORDERED.

Dated this 22nd day of July, 2014, at Kansas City, Kansas.

s/ Julie A. Robinson
HON. JULIE A. ROBINSON
United States District Judge