[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13018
Non-Argument Calendar

D.C. Docket Nos. 4:16-cv-00348-RH-GRJ,
4:99-cr-00062-RH-GRJ-1

ANTHONY SWATZIE,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Florida

(January 9, 2019)

Before WILLIAM PRYOR, ROSENBAUM, and FAY, Circuit Judges.

PER CURIAM:

Anthony Swatzie appeals the district court's denial of his successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, which raised a challenge to his sentence under *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2251 (2015). Because Swatzie has not met his burden to establish relief under *Johnson*, we affirm the denial of his § 2255 motion.

At his sentencing in 2000, the district court determined that Swatzie qualified for the Armed Career Criminal Act ("ACCA") sentencing enhancement based on four prior convictions for Florida burglary. The court found that these convictions were "violent felonies" within the meaning of the ACCA. It did not state under which of the ACCA's three definitions of the term "violent felony"—often referred to as the "elements clause," the "residual clause," and the "enumerated offenses" clause definitions—the convictions qualified.

Much has changed since Swatzie's sentencing. In 2015 the Supreme Court invalidated the ACCA's residual clause as unconstitutionally vague. *Johnson*, 135 S. Ct. at 2557–58. In 2016 it held that *Johnson* applied retroactively. *See Welch v. United States*, 578 U.S. ___, 136 S. Ct. 1257 (2016). We then permitted Swatzie to file a successive § 2255 motion based on *Johnson*. Later that same year, this Court held that Florida burglary categorically did not qualify as a violent felony under the ACCA. *United States v. Esprit*, 841 F.3d 1235, 1240–41 (11th Cir. 2016). So if had Swatzie been sentenced today, his convictions would not qualify

as violent felonies, and he would not have been sentenced under the ACCA. *See id.* at 1241.

Nevertheless, the district court denied Swatzie's § 2255 motion. Applying our decision in *Beeman v. United States*, 871 F.3d 1215 (11th Cir. 2017), the court concluded that Swatzie could not obtain relief on his *Johnson* claim because he had not shown that it was more likely than not that he was sentenced solely under the ACCA's residual clause. *Id.* at 1221–22. According to *Beeman*, the *Johnson* inquiry in the § 2255 context is one of "historical fact," looking to the basis for the sentence at the time of sentencing, rather than how a defendant would be sentenced today. *Id.* at 1224 n.5. And "[i]f it is just as likely that the sentencing court relied on the elements or enumerated offenses clause, solely or as an alternative basis for the enhancement, then the movant has failed to show that his enhancement was due to use of the residual clause." *See id.* at 1222. The district court found that Swatzie's ACCA enhancement was likely based on the enumerated offenses clause, not the residual clause, and so denied relief.

Swatzie concedes that, in light of *Beeman*, we are "obligated to affirm the district court's decision denying his § 2255 motion." We agree.

The district court properly found that Swatzie failed to meet his burden under *Beeman*. The record of Swatzie's sentencing is silent as to the basis for the ACCA enhancement. And the relevant law as of the date he was sentenced does

not suggest he was, in fact, sentenced as an armed career criminal "solely because of the residual clause." *Beeman*, 871 F.3d at 1224. As the district court explained, sentencing courts in this Circuit in 2000 could rely on undisputed facts in a presentence investigation report to determine that a conviction under a non-generic burglary statute—like Florida's burglary statute—still constituted the generic offense of burglary. *See United States v. Adams*, 91 F.3d 114, 115 (11th Cir. 1996); *United States v. Spell*, 44 F.3d 936, 938–39 (11th Cir. 1995). In other words, at the time of Swatzie's sentencing, if undisputed facts in the PSR showed that the offense involved entry into a "burglary or structure," the prior conviction could have qualified under the enumerated-offenses clause as the equivalent of generic burglary. That is the case here. Undisputed facts in his PSR indicated that each of Swatzie's four convictions for Florida burglary involved unlawful entry into a building or structure. So it is just as likely that the sentencing court relied on the enumerated offenses clause, instead of or in addition to the residual clause. Accordingly, Swatzie "has failed to show that his enhancement was due to use of the residual clause." See *Beeman*, 871 F.3d at 1222.

For purposes of further review, Swatzie maintains that *Beeman* was wrongly decided and that it sets an impossible standard for § 2255 movants to obtain relief under *Johnson*. He suggests, instead, that we follow the approach of the Third

Circuit. *See United States v. Peppers*, 899 F.3d 211, 222–24, 229–30 (3d Cir. 2018). We, however, are bound by *Beeman*.

AFFIRMED.