

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Shea v. United States

No. 17-1899, United States Court of Appeals for the First Circuit (September 28, 2020)

SUMMARY

The First Circuit held that a § 2255 motion challenging the pre-Booker mandatory Sentencing Guidelines’ residual clause (U.S.S.G. § 4B1.2(a)(2)) as unconstitutionally vague is timely under 28 U.S.C. § 2255(f)(3) because *Johnson v. United States** (2015) dictates that the rule against vague laws that fix sentences applies to the mandatory Guidelines when no departure is available. The court reversed the district court's dismissal and remanded for consideration of whether the petitioner’s sentence was actually fixed by the residual clause, aligning with the government’s concession on a related § 924(c) claim. The dissent argued that *Johnson** does not clearly extend to the pre-Booker Guidelines, and that the majority improperly created a new right not yet recognized by the Supreme Court.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Thompson; Thompson, Selya, and Barron
JURISDICTION	Federal
DECIDED	September 28, 2020
DOCKET	17-1899
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of New Hampshire's denial of a motion to vacate sentence under 28 U.S.C. § 2255.
PRECEDENTIAL VALUE	published
PARTIES	Anthony M. Shea v. United States of America

TOPICS

- sentencing
- habeas corpus
- due process
- criminal procedure
- constitutional law

PRACTICE AREAS

- Criminal Law
- Habeas Corpus
- Sentencing

QUESTIONS PRESENTED

1. Whether *Johnson v. United States* recognized a new right that applies to the pre-Booker mandatory Sentencing Guidelines' residual clause, such that § 2255(f)(3) reopens the one-year limitations period for a Johnson-based challenge to a career offender enhancement.

HOLDINGS

1. Johnson dictates that the pre-Booker mandatory Guidelines' residual clause is unconstitutionally vague when no departure was available, and therefore Shea's petition is timely under § 2255(f)(3) because he asserts the same right newly recognized in Johnson.

KEY QUOTATIONS

“In Johnson v. United States, 576 U.S. 591, 597 (2015), the Supreme Court held that a jumble of words in a federal law could not be used to fix a defendant's sentence, a rule that applies retroactively.” (at 6)

“These principles apply not only to statutes defining elements of crimes, but also to statutes fixing sentences.” (at 16)

“Invoking so shapeless a provision to condemn someone to prison for 15 years to life does not comport with the Constitution's guarantee of due process.” (at 17)

“Because they were binding on judges, the Court has consistently held that the Guidelines have the force and effect of laws.” (at 24)

“We conclude that in a case where no departure was available, the residual clause in the mandatory Career Offender Guideline was, beyond reasonable debate, a law regulating private conduct by fixing permissible sentences that did not provide notice and avoid arbitrary enforcement by clearly specifying the range of penalties available.” (at 38)

FACTUAL BACKGROUND

Anthony M. Shea was convicted in 1995 of armed attempted bank robbery, using a firearm during a crime of violence, and interstate vehicle theft. He was sentenced to 567 months under the mandatory Sentencing Guidelines. The court applied a career offender enhancement under § 4B1.1 based on prior convictions for federal armed bank robbery and Massachusetts assault and battery on a police officer, which qualified under the residual clause of § 4B1.2(a)(2). After *Johnson v. United States* held the ACCA's residual clause unconstitutionally vague, Shea moved to vacate his sentence under § 2255, arguing that the similar residual clause in the pre-Booker mandatory Guidelines was also void for vagueness. The district court denied the motion as untimely.

PROCEDURAL HISTORY

The district court dismissed Shea's § 2255 motion as untimely, holding that § 2255(f)(3) did not reopen the limitations period because Johnson's rule did not necessarily dictate the invalidity of the pre-Booker Guidelines' residual clause. The court granted a certificate of appealability on the timeliness issue.

DISPOSITION

REMAND INSTRUCTIONS

On remand, the district court should consider the merits of Shea's challenge to his career offender designation, including whether his prior convictions qualified under the force clause or enumerated offenses, and whether the residual clause actually enhanced his sentence. The court should also consider any other bars to relief not forfeited.

CASES CITED

- Johnson v. United States, 576 U.S. 591 (2015)
- Welch v. United States, 136 S. Ct. 1257 (2016)
- Beckles v. United States, 137 S. Ct. 886 (2017)
- United States v. Booker, 543 U.S. 220 (2005)
- Alleyne v. United States, 570 U.S. 99 (2013)
- Stringer v. Black, 503 U.S. 222 (1992)
- United States v. Davis, 139 S. Ct. 2319 (2019)
- United States v. Frates, 896 F.3d 93 (1st Cir. 2018)
- Moore v. United States, 871 F.3d 72 (1st Cir. 2017)
- Cross v. United States, 892 F.3d 288 (7th Cir. 2018)
- Nunez v. United States, 954 F.3d 465 (2d Cir. 2020)
- United States v. London, 937 F.3d 502 (5th Cir. 2019)
- United States v. Blackstone, 903 F.3d 1020 (9th Cir. 2018)
- Russo v. United States, 902 F.3d 880 (8th Cir. 2018)
- United States v. Green, 898 F.3d 315 (3d Cir. 2018)
- United States v. Greer, 881 F.3d 1241 (10th Cir. 2018)
- United States v. Brown, 868 F.3d 297 (4th Cir. 2017)
- Raybon v. United States, 867 F.3d 625 (6th Cir. 2017)
- United States v. Shea, 159 F.3d 37 (1st Cir. 1998)
- United States v. Shea, 150 F.3d 44 (1st Cir. 1998)
- United States v. Fernandez, 121 F.3d 777 (1st Cir. 1997)
- United States v. McVicar, 907 F.2d 1 (1st Cir. 1990)
- United States v. Faust, 853 F.3d 39 (1st Cir. 2017)
- United States v. Rose, 896 F.3d 104 (1st Cir. 2018)
- Dimott v. United States, 881 F.3d 232 (1st Cir. 2018)

CITED IN

- Shea v. United States, Shea v. United States, 976 F.3d 63, 71 (1st Cir. 2020)

