

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY CLARK,

Defendant.  
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ORDER

15-cv-544-bbc

06-cr-126-bbc

Defendant Timothy Clark has filed a timely motion under Fed. R. Civ. P. 59(e) for reconsideration of his motion for post conviction relief under 28 U.S.C. § 2255, dkt. #284, which was denied on September 14, 2015. The motion for reconsideration will be denied as well, because defendant has failed to show that it is necessary to correct any manifest error of law or fact underlying the initial decision, that he wishes to present newly discovered or previously unavailable evidence, that granting the motion is necessary to prevent manifest injustice or that there has been a change in the controlling law. Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, 11 Federal Practice & Procedure-Civil § 2810.1 (2012). Instead, he restates the claim he made in his initial motion, which is that he is entitled to relief from his sentence under Johnson v. United States, 135 S. Ct. 2551 (2015).

I explained in the order denying defendant's § 2255 motion, dkt. #285, why the decision in Johnson did not relate to defendant's claim: Johnson was directed to the residual

clause in 18 U.S.C. § 924(e)(2)(B) and defendant was not sentenced under a similar residual clause, such as the one in U.S.S.G. § 4B1.2(a). Rather, he was sentenced as a career offender because he had two prior felony drug convictions (manufacture and delivery of a controlled substance, Cook County, Illinois case no. 89CR17619 and manufacture and delivery of less than 15 grams of cocaine, Cook County, Illinois case no. 01-CR 1393101). Neither the Supreme Court nor the Court of Appeals for the Seventh Circuit has ever suggested that it is unconstitutional to sentence a defendant as a career offender under § 4B1.1 if he has been convicted twice previously of felony drug charges.

#### ORDER

IT IS ORDERED that defendant Timothy Clark's motion under Fed. R. Civ. P. 59(e) for alteration or amendment of the order entered herein on September 14, 2015 is DENIED.

Entered this 2d day of October, 2015.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge