

UNITED STATES COURT OF APPEALS

March 13, 2017

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEFFREY SCOTT TAYLOR,

Defendant - Appellant.

No. 16-1350
(D.C. Nos. 1:16-CV-01210-JLK and
1:13-CR-00400-JLK-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ, MURPHY**, and **PHILLIPS**, Circuit Judges.

Defendant Jeffrey Taylor filed a motion under 28 U.S.C. § 2255 collaterally attacking his sentence. He argued that the calculation of his sentencing guideline range had relied on the residual clause of USSG § 4B1.2(a)(2) and that the residual clause is unconstitutionally vague because it uses essentially the same language as the language in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(b), which was held to be unconstitutionally vague in *Johnson v. United States*, 135 S.Ct. 2551 (2015). The district court denied the motion but granted a certificate of appealability. We **AFFIRM** the

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

decision below. In *Beckles v. United States*, No. 15-8544, 2017 WL 855781 (S.Ct. Mar. 6, 2017), the Supreme Court held that the unconstitutional-vagueness holding in *Johnson* does not apply to the residual clause in the sentencing guidelines. The other issues raised by the parties are moot.

Entered for the Court

Harris L Hartz
Circuit Judge