

APPENDICES

Appendix A:

Opinion of the United States Court of Appeals for the Fourth Circuit,
United States, v. Allen, No. 17-6514 (4th Cir. Apr. 2, 2018). 1a

Appendix B:

Order Denying Motion for Relief Under 28 U.S.C. § 2255,
United States v. Allen, D.S.C. Cr. No. 9:96-986-9 (PMD)
(D.S.C. Mar. 6, 2017), ECF No. 681. 3a

Order Denying Motion for Reconsideration,
United States v. Allen, D.S.C. Cr. No. 9:96-986-9 (PMD)
(D.S.C. Mar. 6, 2017), ECF No. 685. 4a

Appendix C:

Order of the Court of Appeals for the Fourth Circuit,
granting authorization pursuant to 28 U.S.C. § 2244 to file second or
successive § 2255 motion,
In re Allen, No. 16-9435 (4th Cir. June 27, 2016), ECF No. 8-2. 5a

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6514

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GARY MICHAEL ALLEN, a/k/a Philly,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Patrick Michael Duffy, Senior District Judge. (9:96-cr-00986-PMD-9; 9:16-cv-02086-PMD)

Submitted: March 29, 2018

Decided: April 2, 2018

Before AGEE and DIAZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Cody James Groeber, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, South Carolina, for Appellant. Emily Evans Limehouse, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gary Michael Allen seeks to appeal the district court's orders denying relief on Allen's 28 U.S.C. § 2255 (2012) motion and denying his Fed. R. Civ. P. 59(e) motion to alter or amend judgment. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Allen has not made the requisite showing. Accordingly, we deny Allen's motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

Gary Michael Allen,)	
)	Case No.: 9:96-cr-986-PMD-9
Petitioner,)	
)	<u>ORDER</u>
v.)	
)	
United States of America,)	
)	
Respondent.)	
_____)	

Gary Michael Allen moves to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 (ECF No. 665). The Court previously stayed this matter pending the Supreme Court's decision in *Beckles v. United States*, 616 F. App'x 415 (11th Cir. 2015), *cert. granted*, 2016 WL 1029080 (U.S. June 27, 2016) (No. 15-8544). Now that the Supreme Court has issued an opinion in *Beckles*, *see* No. 15-8544, 2017 WL 855781 (U.S. Mar. 6, 2017), the stay is lifted.

The central premise of Allen's § 2255 motion is that U.S.S.G § 4B1.2(a)(2)'s residual clause is void for vagueness. *Cf. Johnson v. United States*, 135 S. Ct. 2551, 2563 (2015). The Supreme Court squarely rejected that argument in *Beckles*. 2017 WL 855781, at *___. Consequently, Allen's § 2255 motion lacks merit.

For the foregoing reasons, it is **ORDERED** that Allen's § 2255 motion is **DENIED**.¹

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

March 6, 2017
Charleston, South Carolina

1. A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that the merits of his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484, (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). Allen has not satisfied that standard. Accordingly, the Court declines to issue a certificate of appealability. *See* R. 11(a), § 2255 Rules.

DENIED

April 11, 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**


PATRICK MICHAEL DUFFY
United States District Judge

GARY MICHAEL ALLEN,)	Criminal No.	9:96-986-PMD-9
Petitioner)	Civil Action No.	9:16-2086-PMD
)		
)		
v.)		
)	Motion for Reconsideration	
)		
UNITED STATES OF AMERICA)		
Respondent)		
)		
)		

Petitioner, through his counsel Assistant Federal Public Defender, Cody J. Groeber, hereby addresses the Order of this Court, docket entry 681, and asks this Court to reconsider its order to dismiss Petitioner's §2255 petition.

Petitioner filed this petition on June 22, 2016, claiming relief under *Johnson v. United States*, 135 S. Ct. 2551 (2015). Petitioner also filed a motion to be released on bond. Docket entry #674. Because the Petitioner was labeled a Career Offender, the Government filed a request for a stay, citing the need to wait for *Beckles v. United States*, 616 F. App'x 415 (11th Cir. 2015), cert. granted, 2016 WL 1029080 (U.S. June 27, 2016) (No. 15-8544) to be decided by the Supreme Court. Docket entry #675.

The Court, in an Order on September 7, 2016, granted the Government's request for a stay and Petitioner's request for bond. Docket #676. The Government filed a Supplemental motion to Stay or in the Alternative Motion to Dismiss on January 3, 2017. The Petitioner responded with a

FILED: June 27, 2016

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-9435
(9:96-cr-00986-SB-9)

In re: GARY MICHAEL ALLEN, a/k/a Philly,

Movant.

O R D E R

Through counsel, Gary Michael Allen has filed a motion pursuant to 28 U.S.C. §§ 2244(b), 2255(h) (2012) for authorization to file a second or successive 28 U.S.C. § 2255 (2012) motion. Allen has made a prima facie showing that the new rule of constitutional law announced in Johnson v. United States, 135 S. Ct. 2551 (2015), and held to apply retroactively to cases on collateral review by Welch v. United States, 136 S. Ct. 1257 (2016), may apply to his case. See In re Hubbard, __ F.3d __, No. 15-276, 2016 WL 3181417 (4th Cir. June 8, 2016). We grant authorization for Allen to file a second or successive § 2255 motion, thus permitting consideration of the motion by the district court in the first instance. The one-year limitations period of 28 U.S.C. § 2255(f)(3) for filing a § 2255

motion raising a claim relying on the Supreme Court's decision in Johnson expires on June 26, 2016.

Entered at the direction of the panel: Judge King, Judge Shedd, and Judge Wynn.

For the Court

/s/ Patricia S. Connor, Clerk