

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TELLIS T. WILLIAMS,)
Petitioner-Appellant,)
v.)
UNITED STATES OF AMERICA,)
Respondent-Appellee.)

FILED
Mar 30, 2018
DEBORAH S. HUNT, Clerk

O R D E R

Tellis T. Williams, a federal prisoner proceeding pro se, appeals the district court's order denying his motion to vacate his sentence, filed pursuant to 28 U.S.C. § 2255. This court construes Williams's notice of appeal as an application for a certificate of appealability. *See* Fed. R. App. P. 22(b)(2).

In 2009, Williams pleaded guilty to armed bank robbery, in violation of 18 U.S.C. § 2113(d), and the district court sentenced him as a career offender to 168 months of imprisonment. The district court found that Williams qualified as a career offender under USSG § 4B1.1 because his crime of conviction qualified as a crime of violence and he had two prior convictions for aggravated burglary, which also qualified as crimes of violence. We affirmed Williams's conviction and sentence. *See United States v. Williams*, 527 F. App'x 457, 458 (6th Cir. 2013). Williams filed a § 2255 motion, which the district court denied on the merits.

In June 2016, Williams filed a second § 2255 motion, arguing that he should not have been sentenced as a career offender because, in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), his prior aggravated burglary convictions no longer qualified as crimes of violence. In a supplemental motion, Williams also argued that his conviction for armed bank robbery no longer

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qualified as a crime of violence. The district court stayed the case because Williams had filed in this court a motion for authorization to file a second or successive § 2255 motion. This court granted Williams's motion, concluding that he "made a *prima facie* showing that his claim contains an issue based on *Johnson*." *In re Williams*, No. 16-5815, slip op. at 3 (6th Cir. Dec. 22, 2016) (order). It granted authorization to file a second or successive § 2255 motion and transferred the case to the district court with instructions to hold the case in abeyance pending the outcome of *Beckles v. United States*, 137 S. Ct. 886 (2017). *In re Williams*, No. 16-5815, slip op. at 3.

Following the Supreme Court's decision in *Beckles*, in which the Supreme Court held that *Johnson*'s reasoning did not apply to the advisory United States Sentencing Guidelines, *see Beckles*, 137 S. Ct. at 892, 897, Williams filed a supplemental pleading in which he argued that his aggravated burglary convictions should not have been deemed crimes of violence "[e]ven before '*Johnson*,' '*Mathis*,'¹ or '*Beckles*' were decided by the Supreme Court . . . because they capture conduct beyond the generic form of the offense." The district court denied Williams's § 2255 motion, concluding that his claim was meritless in light of *Beckles*.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

As discussed previously, this court granted Williams authorization to raise a claim based on *Johnson*, but the Supreme Court has since held that *Johnson*'s reasoning does not apply to the advisory Sentencing Guidelines and that the former residual clause of the career-offender guideline, section 4B1.2(a)(2), is not void for vagueness. *Beckles*, 137 S. Ct. at 892, 897. Because Williams is challenging an enhancement that he received under the advisory Sentencing

¹ *Mathis v. United States*, 136 S. Ct. 2243 (2016).

Guidelines, reasonable jurists could not debate the district court's conclusion that he is not entitled to relief based on *Johnson*.

Accordingly, this court **DENIES** Williams's application for a certificate of appealability.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TELLIS T. WILLIAMS,

Petitioner,

v.

Criminal Case Number 09-00090
Civil Case Number 16-01336
Honorable David M. Lawson

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING MOTION TO VACATE SENTENCE

On June 10, 2016, petitioner Tellis Williams filed a motion to vacate his sentence under 28 U.S.C. § 2255. Williams pleaded guilty to one count of armed bank robbery in violation of 18 U.S.C. § 2113(a) and (d). On December 7, 2009, he was sentenced as a career offender to 168 months in prison. The Career Offender Guideline, U.S.S.G. § 4B1.1, provides for an increased offense level based on prior convictions of a “crime of violence,” defined under the Career Offender Guideline, U.S.S.G. § 4B1.2(a) (the so-called “residual clause” of the career offender guideline). Two of the convictions on which the Court relied in assessing his Career Offender status were for aggravated burglary, and the Court found that those convictions qualified under the residual clause as “crimes of violence.”

In his motion, the petitioner argues that, because the Sixth Circuit has held that the residual clause in the relevant section of The Sentencing Guideline Manual is unconstitutionally vague, he is entitled to resentencing under the lower guidelines that would apply if his base offense level were not enhanced otherwise. In an amended motion to vacate, the petitioner expanded on his challenge to the Career Offender Guideline, and he asserts that he did not, by filing an amended motion, intend to abandon any issues raised in the original motion. However, the only issue presented by both the

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original and amended motions is the challenge to the scoring of the burglary convictions under the Career Offender provision. In light of the Supreme Court's recent ruling in *Beckles v. United States*, --- U.S. ---, 137 S. Ct. 886, 890 (2017), that challenge is without merit.

A federal prisoner challenging his sentence under section 2255 must show that the sentence "was imposed in violation of the Constitution or laws of the United States," the sentencing court lacked jurisdiction, the sentence exceeds the maximum penalty allowed by law, or the conviction "is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). "A prisoner seeking relief under 28 U.S.C. § 2255 must allege either: '(1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid.'" *Short v. United States*, 471 F.3d 686, 691 (6th Cir. 2006) (quoting *Mallett v. United States*, 334 F.3d 491, 496-97 (6th Cir. 2003)).

"[I]n *Johnson v. United States*, 576 U.S. ---, 135 S. Ct. 2551 (2015), [the Supreme Court held] that the identically worded residual clause in the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. § 924(e)(2)(B), was unconstitutionally vague." *Beckles v. United States*, --- U.S. ---, 137 S. Ct. 886, 890 (2017). Following that decision, in *United States v. Pawlak*, 822 F.3d 902, 903 (6th Cir. 2016), the Sixth Circuit concluded that the Court's reasoning in *Johnson* "compels the same result for [the] identical 'residual clause' in the U.S. Sentencing Guidelines," and held that the residual clause of the Career Offender guideline also was unconstitutionally vague. However, on March 6, 2017, the Supreme Court reversed that decision, holding that "[b]ecause the advisory Sentencing Guidelines are not subject to a due process vagueness challenge, § 4B1.2(a)'s residual clause is not void for vagueness." *Beckles*, 137 S. Ct. at 897.

The challenge to the residual clause of the Career Offender guideline that the petitioner raises in his motion and amended motion squarely was rejected by the Supreme Court in its decision in *Beckles*, and the petitioner's motion and amended motion do not assert any other grounds for relief. The petitioner has failed to establish that he is being held under an unlawful sentence, and his motions therefore will be denied.

Accordingly, it is **ORDERED** that the petitioner's motion and amended motion to vacate sentence [dkt. #1, 6] are **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge
Sitting by Special Designation

Dated: May 10, 2017

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TELLIS T. WILLIAMS,

Petitioner,

v.

Criminal Case Number 09-00090
Civil Case Number 16-01336
Honorable David M. Lawson

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

The petitioner filed a motion and an amended motion to vacate sentence under 28 U.S.C. § 2255. On May 10, 2017, the Court entered an order denying those motions, because the Supreme Court has held that the petitioner's vagueness challenge to his sentencing enhancement under the authority of *Johnson v. United States*, --- U.S. ---, 135 S. Ct. 2551 (2015), *Welch v. United States*, --- U.S. ---, 136 S. Ct. 1257 (2016), and *United States v. Pawlak*, 822 F.3d 902, 903 (6th Cir. 2016), is without merit. *Beckles v. United States*, --- U.S. ---, 137 S. Ct. 886, 897 (2017) ("Because the advisory Sentencing Guidelines are not subject to a due process vagueness challenge, § 4B1.2(a)'s residual clause is not void for vagueness.").

Pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings, which was amended as of December 1, 2009:

The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

Rule 11, Rules Governing Section 2255 Proceedings.

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A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, “a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

The Court finds that reasonable jurists could not debate the Court’s conclusion that the petitioner is not entitled to resentencing, because the Supreme Court’s decision in *Beckles* squarely rejected the vagueness challenge to the residual clause of the Career Offender Guideline that the petitioner raised in his motion and amended motion. The Court therefore will deny a certificate of appealability.

Accordingly, it is **ORDERED** that a certificate of appealability is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge
Sitting by Special Designation

Dated: May 10, 2017

**Additional material
from this filing is
available in the
Clerk's Office.**