

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted August 23, 2018

Decided October 4, 2018

Before

WILLIAM J. BAUER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 18-1325

DANIEL P. CANNON,
Petitioner-Appellant,

Appeal from the United States District
Court for the Southern District of Indiana,
Indianapolis Division.

v.

No. 1:16-cv-01541-SEB-DML

UNITED STATES OF AMERICA,
Respondent-Appellee.

Sarah Evans Barker,
Judge.

ORDER

Daniel Cannon has filed a notice of appeal from the denial of a Rule 60(b) motion in his closed postconviction action under 28 U.S.C. § 2255. We construe the notice as a request for a certificate of appealability. We have reviewed the final order of the district court, the record on appeal, and the supplemental authority letter that Cannon sent us. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED. Cannon's motion to proceed in forma pauperis is DENIED.

showing cause “why this action should not be dismissed as untimely and lacking merit under *Beckles*.” Dkt. 9.

The petitioner filed an amended § 2255 motion on May 26, 2017, contending that *Beckles* has no application to his case and that he should be “re-sentence[d] without the career offender enhancement improperly imposed pursuant to the Sentencing Guideline provision under U.S.S.G. § 4B1.2(a).” Dkt. 10, p. 3.

B. Analysis

Pursuant to 28 U.S.C. § 2244(b)(3), the Seventh Circuit authorized this Court to consider the petitioner’s claim that his sentence is unconstitutional under *Johnson* which held that the residual clause of the Armed Career Criminal Act (“ACCA”) is unconstitutionally vague. The petitioner was sentenced as a career offender under United States Sentencing Guideline § 4B1.2(a)(2) and argues that because the residual clause of the ACCA is unconstitutionally vague, it follows that the identical residual clause in the career offender provision of the Sentencing Guidelines is also unconstitutionally vague.

The United States Supreme Court, however, held otherwise in *Beckles v. United States*, 137 S.Ct. 886 (2017), concluding that the Sentencing Guidelines are not subject to vagueness challenges under the Due Process Clause. In other words, the holding of *Johnson* does *not* apply to cases, like the petitioner’s, challenging guideline calculations.

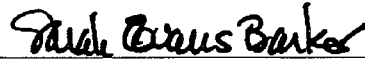
For these reasons, the petitioner’s motion to vacate, set aside or correct sentence is **dismissed with prejudice**. Judgment consistent with this Entry shall now issue and **a copy of this Entry shall be docketed in No. 1:04-cr-0201-SEB-DKL-3.**

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing § 2255 proceedings, and 28 U.S.C. § 2253(c), the court finds that the petitioner has failed to show

that reasonable jurists would find “it debatable whether the petition states a valid claim of the denial of a constitutional right.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court therefore **denies** a certificate of appealability.

IT IS SO ORDERED.

Date: 11/14/2017



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Distribution:

DANIEL P. CANNON
04287-028
TERRE HAUTE - FCI
TERRE HAUTE FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 33
TERRE HAUTE, IN 47808

Sara J. Varner
INDIANA FEDERAL COMMUNITY DEFENDERS
sara.varner@fd.org

James Robert Wood
UNITED STATES ATTORNEY'S OFFICE
bob.wood@usdoj.gov

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