

No. 18-1630

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Sep 06, 2018  
DEBORAH S. HUNT, Clerk

RONALD LEE COLEMAN,

)

Petitioner-Appellant,

)

v.

)

**ORDER**

UNITED STATES OF AMERICA,

)

Respondent-Appellee,

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)

Ronald Lee Coleman, a federal prisoner proceeding pro se, appeals a district court judgment denying his motion to vacate his sentence under 28 U.S.C. § 2255. The court construes Coleman's notice of appeal as an application for a certificate of appealability ("COA"). *See Fed. R. App. P. 22(b).*

In 2014, Coleman pleaded guilty, without a written plea agreement, to conspiring to distribute an unspecified quantity of heroin, in violation of 21 U.S.C. §§ 841 and 846; and distribution of an unspecified quantity of cocaine base, in violation of 21 U.S.C. § 841. The district court sentenced Coleman as a career offender, *see USSG § 4B1.1*, to a below-guidelines sentence of 152 months of imprisonment. This court affirmed. *United States v. Coleman*, No. 14-1878 (6th Cir. June 3, 2015) (order).

In 2014, the district court denied Coleman's motion for a sentence reduction under 18 U.S.C. § 3582(c)(2) because Coleman had been sentenced as a career offender. In 2015, Coleman filed a second § 3582(c)(2) motion. The district court construed the motion as a 28 U.S.C. § 2255 motion to vacate his sentence, in which he asserted a challenge to his career-offender sentence in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). The district court

appointed counsel to supplement Coleman's § 2255 motion. In his supplement, counsel argued that Coleman no longer qualified as a career offender because one of the two prior convictions that the court relied on, i.e., his prior 18 U.S.C. § 924(c) conviction for possessing a firearm during and in relation to a drug trafficking crime, no longer qualified as a crime of violence in light of *Johnson*. Subsequently, the district court held the proceedings in abeyance pending the Supreme Court's decision in *Beckles v. United States*, 137 S. Ct. 886 (2017).

After the issuance of *Beckles*, in which the Supreme Court held that the advisory sentencing guidelines "are not subject to a vagueness challenge under the Due Process Clause" and that, as a result, the career-offender guideline's residual clause "is not void for vagueness," 137 S. Ct. at 894-95, Coleman submitted a notice to the district court acknowledging that his *Johnson*-based argument was no longer valid in light of *Beckles*. However, he argued that his career-offender sentence was still invalid because neither his prior § 924(c) conviction nor his conviction for delivering less than 50 grams of heroin under Michigan Compiled Laws § 333.7401 qualified as controlled-substance offenses. Coleman subsequently acknowledged that his claim regarding his prior conviction under section 333.7401 was no longer viable because this court had since held that a conviction under that statute qualifies as a predicate offense for the purpose of the career-offender guideline. See *United States v. House*, 872 F.3d 748, 753-54 (6th Cir.), cert. denied, 138 S. Ct. 367 (2017).

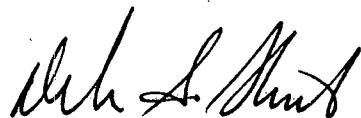
The district court denied Coleman's § 2255 motion, noting that Coleman "concedes that his guidelines-based vagueness claim is no longer viable" in light of *Beckles*. The district court also denied Coleman's motion to alter or amend the judgment and denied him a COA. Coleman appealed.

A COA 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); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When the district court's denial is based on the merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Reasonable jurists would not debate the district court's ruling that *Beckles* forecloses Coleman's argument that his prior § 924(c) conviction no longer qualifies as a crime of violence in light of *Johnson*. The holding in *Beckles* was limited to the advisory guidelines, *see Beckles*, 137 S. Ct. at 890, and Coleman was sentenced on July 8, 2014, after the decision in *United States v. Booker*, 543 U.S. 220 (2005), when the guidelines were advisory. In addition, Coleman conceded that his conviction under section 333.7401 qualifies as a predicate offense for the purpose of the career-offender guideline. *See House*, 872 F.3d at 753. Because Coleman has the requisite number of qualifying predicate offenses, reasonable jurists would not debate the district court's rejection of his challenge to his career-offense sentence.

Accordingly, Coleman's application for a COA is **DENIED**.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

## RONALD LEE COLEMAN.

**Petitioner-Appellant,**

v.

UNITED STATES OF AMERICA,

**Respondent-Appellee.**

DEBORAH S. HUNT, Clerk

Jan 04, 2019

DEBORAH S. HUNT, Clerk

## ORDER

Before: SUTTON, DONALD, and THAPAR, Circuit Judges.

Ronald L. Coleman petitions for rehearing en banc of this court's order entered on September 6, 2018, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

John S. Shad

Deborah S. Hunt, Clerk

Appendix B

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

RONALD LEE COLEMAN,

Defendant-Movant.

Case No. 1:13-cr-179-2

HON. JANET T. NEFF

ORDER

This matter is before the Court on Defendant's "Motion to Amend or Alter Judgment Pursuant to FED. R. CIV. P. 59(e) and in the Alternative Notice of Appeal and Request for C.O.A." (ECF No. 211-1).<sup>1</sup> The government has not filed a response to the motion. For the reasons that follow, Defendant's motion is properly denied.

Pursuant to Federal Rule of Civil Procedure 59(e), Defendant seeks reconsideration of this Court's April 19, 2018 Judgment denying his Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (ECF No. 206). "The purpose of Rule 59(e) is 'to allow the district court to correct its own errors, sparing the parties and appellate courts the burden of unnecessary appellate proceedings.'" *Howard v. United States*, 533 F.3d 472, 475 (6th Cir. 2008) (citation omitted). "Under Rule 59, a court may alter the judgment based on: '(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.'" *Clark v. United States*, 764 F.3d 653, 661 (6th Cir. 2014) (citation omitted).

<sup>1</sup> A Notice of Appeal was docketed and assigned Court of Appeals Case No. 18-1630.

Defendant argues that this Court “used the wrong analysis in denying Coleman’s supplemental pleading” (ECF No. 211-1 at PageID.1757). Specifically, Defendant asserts that this Court “never addressed Petitioner’s pleading in regards to Coleman’s prior offense under § 924(c), not categorically being a ‘controlled substance offense’ under § 4B1.2(b)” (*id.*).

Defendant’s Rule 59(e) motion identifies no error of law by the Court requiring post-Judgment relief. Rather, his motion merely identifies the same issue previously identified by the Court in its Opinion and Order. Specifically, as noted in this Court’s April 19, 2018 Opinion and Order:

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After *Beckles* was issued, Defendant presented a claim in addition to his *Johnson*-based claim, to wit: his argument that his prior conviction under MICH. COMP. LAWS § 333.7401 is not a controlled substance offense for career offender purposes (ECF No. 202 at PageID.1724-1728). However, Defendant has since conceded that his argument is no longer viable (Notice, ECF No. 204 at PageID.1732), and the Court therefore does not reach it.

Op. & Order, ECF No. 205 at PageID.1735. Accordingly:

**IT IS HEREBY ORDERED** that Defendant’s “Motion to Amend or Alter Judgment Pursuant to FED. R. CIV. P. 59(e)” (ECF No. 211-1) is DENIED.

**IT IS FURTHER ORDERED** that a certificate of appealability pursuant to 28 U.S.C. § 2253(c) is DENIED for the reasons previously stated (Op. & Order, ECF No. 205 at PageID.1737-1738).

Dated: June 22, 2018

/s/ Janet T. Neff

JANET T. NEFF  
United States District Judge