

Appendix

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AUG 22 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BOOKER TERRY SIMMONS,

Defendant-Appellant.

No. 17-56178

D.C. Nos. 2:16-cv-04152-TJH
2:98-cr-00613-LGB-1

Central District of California,
Los Angeles

ORDER

Before: SCHROEDER and PAEZ, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 4) is denied.

See 28 U.S.C. § 2253(c)(2); *United States v. Blackstone*, 903 F.3d 1020, 1027-28

(9th Cir. 2018), *cert. denied*, 139 S. Ct. 2762 (2019).

Any pending motions are denied as moot.

DENIED.

United States District Court
Central District of California
Western Division

BOOKER TERRY SIMMONS,
Petitioner,

V.

UNITED STATES OF AMERICA,
Respondent.

CV 16-04152 TJH
CR 98-00613 LGB

Order

JS-6

The Court has considered Petitioner Booker Terry Simmons's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, as well as Respondent's motion to dismiss, together with the moving and opposing papers.

Petitioner challenged his sentence, contending that *Johnson v. United States*, 135 S. Ct. 2551 (2015), applied to the identically-worded “residual clause” in the career offender definition of a “crime of violence” in U.S.S.G. § 4B1.2(a)(2). On March 6, 2017, the Supreme Court issued its decision in *Beckles v. United States*, 137 S. Ct. 886 (2017), holding that the advisory Sentencing Guidelines are not subject to a due process vagueness challenge. 137 S. Ct. at 895. The Court held that unlike the Armed Career Criminal Act, which was subject to the Court’s decision in *Johnson*, the advisory

1 Guidelines “merely guide the exercise of a court’s discretion in choosing an appropriate
2 sentence within the statutory range.” *Beckles*, 137 S. Ct. at 892. Indeed, on this basis,
3 the Supreme Court held that § 4B1.2(a)(2) specifically was not void for vagueness.
4 *Beckles*, 137 S. Ct. at 895. As a result, Petitioner’s motion is foreclosed by *Beckles*.

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6 Accordingly,

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8 **It is Ordered** that the motion to vacate, set aside, or correct his sentence under
9 28 U.S.C. § 2255 be, and hereby is, **Denied**.

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11 **It is Further Ordered** that Respondent’s motion to dismiss be, and hereby is,
12 **Denied** as moot.

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14 Date: July 31, 2017

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16 **Terry J. Hatter, Jr.**
17 **Senior United States District Judge**

18 CC:BOP
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