

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-2287

Mikael B. Donnell

Movant - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Joplin
(3:16-cv-05082-BCW)

JUDGMENT

Before COLLOTON, MURPHY and SHEPHERD, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

The motion to proceed in forma pauperis is denied as moot.

October 16, 2017

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Mikael B. Donnell, Appellant v. United States of America, Appellee
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
2017 U.S. App. LEXIS 25838
No: 17-2287
December 20, 2017, Decided

Editorial Information: Prior History

Appeal from U.S. District Court for the Western District of Missouri - Joplin. (3:16-cv-05082-BCW).

Counsel

Mikael B. Donnell, Movant - Appellant, Pro se, Forrest City, AR.

For United States of America, Respondent - Appellee: Abram McGull, II, Assistant U.S. Attorney, U.S. ATTORNEY'S OFFICE, Springfield, MO.

Opinion

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

MIKAEL B. DONNELL,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 16-05082-CV-SW-BCW-P
Crim. No. 11-05007-01-CR-SW-BCW

**ORDER (1) GRANTING MOTION TO LIFT STAY, (2) DENYING MOTION TO
VACATE, SET ASIDE OR CORRECT SENTENCE, AND (3) DENYING A
CERTIFICATE OF APPEALABILITY**

Now before the Court is Movant's *pro se* motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Doc. 2. On May 18, 2016, the Court stayed this case pending the Supreme Court's decision in *Beckles v. United States*. Doc. 7. The Supreme Court has since issued its decision. 580 U.S. __ (2017). For the reasons set forth below, the Court GRANTS the Government's Motion to Lift Stay (Doc. 13); DENIES Movant's § 2255 motion (Doc. 2), and DENIES a certificate of appealability.

Background

Movant pleaded guilty to one count of conspiracy to manufacture and distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B) and 846 and was sentenced to 210 months' imprisonment. Crim. Docs. 63, 64, 89.¹

On July 14, 2016, Porter filed this motion seeking resentencing pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015). Doc. 2. In the *Johnson* decision, the Supreme Court

¹ "Crim. Doc." refers to the docket number entries in Movant's criminal case, Case No. 11-05007-01-CR-SW-BCW. "Doc." refers to the docket number entries in Movant's civil case, Case No. 16-05082-CV-SW-BCW-P. Page number citations refer to the page numbers assigned by the CM/ECF electronic docketing system.

sustained a Due Process challenge to part of the definition of a “violent felony” under the Armed Career Criminal Act. In short, *Johnson* held that a portion of the definition was unconstitutionally void for vagueness.

Movant argues that the logic of *Johnson* applies to the Sentencing Guidelines. Specifically, Movant contends that his base offense level calculation, based on U.S.S.G. §§ 4B1.1 and 4B1.2(a), is now invalid in light of *Johnson*. He argues that under that precedent, the corresponding residual clause, in U.S.S.G. § 4B1.2(a), defining a “crime of violence,” is similarly void for vagueness. Under Movant’s theory, his Sentencing Guidelines calculations utilizing the career offender provision and resulting sentence are rendered illegal.

Discussion

A district court may vacate a federal sentence if “the sentence was imposed in violation of the Constitution or laws of the United States.” 28 U.S.C. § 2255(a).

In *Beckles v. United States*, the Supreme Court decided that *Johnson*’s holding and logic do not apply to the Sentencing Guidelines, and that the Sentencing Guidelines’ definition for crime of violence is not subject to vagueness challenges under the Due Process Clause. *Beckles v. United States*, 580 U.S. __ (2017). Because neither *Johnson* nor *Beckles* affords Movant relief, Movant’s claim must be rejected.²

Certificate of Appealability

Pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings, the Court must

² Movant additionally seeks application of Amendment 782 on the ground that he is entitled to relief “upon removing the career enhancement provision.” Doc. 3 at 6. As an initial matter, the Court notes that a claim relating to Amendment 782 is more appropriately brought under 18 U.S.C. § 3582(c)(2). Regardless, as set forth above, the career enhancement provision is not impacted by any recent jurisprudence. Movant accordingly is not entitled to relief.

Movant additionally argues in his reply brief that he is entitled to relief under *Mathis v. United States*, 570 U.S. __, No. 15-6092, 2016 WL 3434400 (June 23, 2016). Doc. 14. However, like *Johnson*, the *Mathis* decision addresses the ACCA and has no impact on Movant’s motion.

issue or deny a certificate of appealability when it enters a final order adverse to Movant. A certificate of appealability may be issued “only if [Movant] has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Because Movant has made no such showing, the Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

/s/ Brian C. Wimes
BRIAN C. WIMES
UNITED STATES DISTRICT JUDGE

DATED: May 17, 2017

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