

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12245-G

QUENTERY GATES,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ORDER:

Appellant's motion for a certificate of appealability is DENIED because appellant has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

/s/ William H. Pryor Jr.
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

QUENTERY GATES,	:	CRIMINAL ACTION NO.
	:	1:02-CR-0380-2-CC
vs.	:	
	:	CIVIL ACTION NO.
UNITED STATES OF AMERICA	:	1:16-CV-2065-CC

ORDER

Pending before the Court is Defendant Quentery Gates's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 [Doc. No. 256] (the "Motion to Vacate"). In the Motion to Vacate, Defendant argues that the Court must set aside his sentence because the career offender provision of the United States Sentencing Guidelines, U.S.S.G. § 4B1.1, is unconstitutionally vague in light of the Supreme Court's decision in Johnson v. United States, --- U.S. ---, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015). The Court previously stayed this matter, at the parties' request, pending the Supreme Court's decision in Beckles v. United States. (See Doc. No. 263.) On March 6, 2017, the Supreme Court issued its decision in Beckles, holding that the advisory Guidelines are not subject to a vagueness challenge. Beckles v. United States, No. 15-8544, --- S. Ct. ---, 2017 WL 855781, at *3, 6, 9, 11 (U.S. Mar. 6, 2017). Defendant has filed a supplemental brief in support of the Motion to Vacate. (See Doc. No. 264.) By this Order, the Court hereby **LIFTS** the stay of this matter and, for the reasons stated below, **DENIES** the Motion to Vacate and **DECLINES** to issue a certificate of appealability.

While Beckles held that Johnson does not apply to the Guidelines in cases where the Defendant was sentenced under the advisory, rather than mandatory, Guidelines, Beckles leaves open the question whether Johnson applies to the former, mandatory Guidelines. However, the Eleventh Circuit previously has held that Johnson does not apply to the former, mandatory Guidelines and that the former, mandatory Guidelines thus are not subject to a vagueness challenge. In re Griffin,

823 F.3d 1350, 1354-55 (11th Cir. 2016). Consequently, Defendant appears to concede that In re Griffin, notwithstanding his disagreement with the decision, forecloses the argument he makes in support of the Motion to Vacate. (See Doc. No. 264 at 5.) The Court agrees and must deny the Motion to Vacate.

The Court likewise concludes that Defendant is not entitled to the issuance of a certificate of appealability. Under 28 U.S.C. § 2253, the Court may issue a certificate of appealability only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). In order to obtain 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.” Slack v. McDaniel, 529 U.S. 473, 475, 120 S. Ct. 1595, 146 L. Ed. 2d (2000) (citations and internal marks omitted). The conclusion that the Eleventh Circuit’s binding decision in In re Griffin forecloses Defendant’s Motion to Vacate is not debatable among jurists of reason. Defendant has not made a substantial showing of the denial of a constitutional right, and the Court therefore declines to issue a certificate of appealability.

SO ORDERED this 24th day of March, 2017.

s/ CLARENCE COOPER
CLARENCE COOPER
SENIOR UNITED STATES DISTRICT JUDGE