

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

STONEY LESTER, :  
 :  
 Petitioner, :  
 : No. 5:02-cr-37 (CAR)  
v. :  
 :  
 UNITED STATES OF AMERICA, :  
 :  
 Respondent. :  
 :  
 :  
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ORDER ON RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court is the United States Magistrate Judge's Recommendation to grant the Government's Motion to Dismiss and dismiss Petitioner's Motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner has filed an Objection to the Recommendation wherein he restates his original arguments and contentions which have been thoroughly and completely addressed in the Recommendation. This Court has fully considered the record in this case and made a *de novo* determination of the portions of the Recommendation to which Petitioner objects. Having done so, the Court finds Petitioner's Objection unpersuasive and agrees with the Recommendation to dismiss the petition. As explained in the Recommendation, because *Johnson v. United*

*States*<sup>1</sup> does not apply to the Sentencing Guidelines when they were mandatory, it does not constitute a new rule of constitutional law as applied to Petitioner. Moreover, *Johnson* has not been made retroactively applicable to collateral challenges to the career offender guideline enhancement.

Accordingly, the Magistrate Judge's Recommendation [Doc. 167] **regarding the Motion to Dismiss** is **HEREBY ADOPTED AND MADE THE ORDER OF THE COURT**. The Government's Motion to Dismiss [Doc. 163] is **GRANTED**, and Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 [Doc. 151] is **DISMISSED**.

The **Recommendation to deny a certificate of appealability**, however, is **NOT ADOPTED**. Under 28 U.S.C. § 2253(c)(1), an appeal cannot be taken from a final order in a habeas proceeding unless a certificate of appealability is issued. To obtain a COA, a movant must make a "substantial showing of a denial of a constitutional right."<sup>2</sup> The decision to issue a certificate of appealability requires "an overview of the claims in the habeas petition and a general assessment of their merits."<sup>3</sup> The movant satisfies this requirement by demonstrating that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues

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<sup>1</sup> \_\_\_ U.S. \_\_\_, 135 S. Ct. 2551 (2015).

<sup>2</sup> 28 U.S.C. § 2253(c)(2).

<sup>3</sup> *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

presented are adequate to deserve encouragement to proceed further.”<sup>4</sup>

The Court finds reasonable jurists could disagree on whether *In re Griffin*<sup>5</sup> was correctly decided and whether *Beckles v. United States*<sup>6</sup> (decided after *Griffin*) extends to the pre-*Booker*<sup>7</sup> sentencing guidelines. Thus, a certificate of appealability is **GRANTED** on whether *Johnson*<sup>8</sup> applies to the career offender provision of the pre-*Booker* Sentencing Guidelines.

It is **SO ORDERED** this 31st day of January, 2018.

S/ C. Ashley Royal  
C. ASHLEY ROYAL, SENIOR JUDGE  
UNITED STATES DISTRICT COURT

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<sup>4</sup> *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Franklin v. Hightower*, 215 F.3d 1196, 1199 (11th Cir. 2000).

<sup>5</sup> 823 F.3d 1350 (11th Cir. 2016).

<sup>6</sup> 137 S. Ct. 886 (2017).

<sup>7</sup> 543 U.S. 220 (2005).

<sup>8</sup> 135 S. Ct. 2551 (2015).