

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

WILLIE JEROME SANDERS,

Petitioner,

v.

Case No: 6:16-cv-915-Orl-31TBS  
(6:12-cr-53-Orl-31TBS)

UNITED STATES OF AMERICA,

Respondent.

\_\_\_\_\_ /

**ORDER**

This cause is before the Court on Petitioner’s Unopposed Motion to Lift Stay and Adopt and Preserve Arguments (Doc. 29). Petitioner currently has pending an Amended Motion to Vacate, Set Aside, or Correct Sentence (“Amended Motion to Vacate,” Doc. 17), which he filed pursuant to 28 U.S.C. § 2255.

Petitioner challenged “his sentence imposed pursuant to the Armed Career Criminal Act (ACCA) based on *Johnson v. United States*, 135 S. Ct. 2551 (2015).” (Doc. 29 at 1). Petitioner subsequently filed an Unopposed Motion to Stay 28 U.S.C. § 2255 Proceedings (Doc. 26), which the Court granted. (Doc. 27). The case was stayed pending a ruling from the Eleventh Circuit Court of Appeals in *United States of America v. Derwin Darryl Fritts*, Appeal No. 15-15699-CC. As noted by Petitioner, the “pivotal issue in this case—whether Florida robbery remains a ‘violent felony’ in the wake of

*Johnson*—was before the Eleventh Circuit in *United States v. Fritts*, appeal number 15-15669.” (Doc. 29 at 1).

In the present motion, Petitioner states that the “Eleventh Circuit has now affirmed the sentence in *Fritts*, holding that Florida robbery is a ‘violent felony.’ See *United States v. Fritts*, \_\_\_ F.3d \_\_\_, 2016 WL 6599553 (Nov. 8, 2016).” (*Id.*). As a result, Petitioner requests that the stay be lifted; that the Amended Motion to Vacate be denied; that he be allowed to adopt the arguments set forth in the defendant’s briefs in *Fritts*; and that the Court issue a certificate of appealability. The Government does not object to Petitioner’s request to lift the stay and adopt the arguments set forth in *Fritts*, but it opposes Petitioner’s request for a certificate of appealability. (Doc. 29 at 3). The Court finds that the instant motion should be granted in part and denied in part as set forth below.

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Petitioner’s Unopposed Motion to Lift Stay and Adopt and Present Arguments (Doc. 29) is **GRANTED** in part and **DENIED** in part. The stay previously entered in this case is lifted. Petitioner is allowed to adopt the arguments set forth in the defendant’s briefs in *Fritts*.

The Court denies Petitioner’s request for a certificate of appealability. This Court should grant an application for certificate of appealability only if the Petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Petitioner has failed to make a substantial showing of the denial of a constitutional right.

2. The Amended Motion to Vacate, Set Aside, or Correct Sentence (Doc. 17) is **DENIED**.

3. This case is **DISMISSED with prejudice**.

4. The Clerk of the Court is directed to enter judgment in favor of Respondent and to close this case. A copy of this Order and the judgment shall also be filed in criminal case number 6:12-cr-53-Orl-31TBS.

5. The Clerk of the Court is directed to terminate any related section 2255 motion filed in criminal case number 6:12-cr-53-Orl-31TBS.

**DONE and ORDERED** in Orlando, Florida on December 15, 2016.



  
GREGORY A. PRESNELL  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record  
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