

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

WILLIAM DONNELL TARVER III

v.

Case No. 8:16-cv-1923-T-24 AEP

UNITED STATES OF AMERICA

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**ORDER**

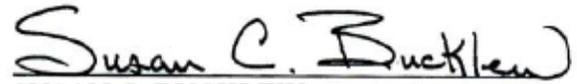
This cause comes before the Court on Petitioner's Request for a Certificate of Appealability ("COA") regarding this Court's Order (Doc. No. 2) denying his § 2255 motion. (Doc. No. 6). As explained below, the motion for a COA is **DENIED**.

A prisoner seeking a motion to vacate has no absolute entitlement to appeal a district court's denial of his motion. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a COA. Id. "A [COA] may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." Id. at § 2253(c)(2). To make such a showing, Petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further,'" Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n. 4 (1983)).

Petitioner has not made the requisite showing in these circumstances. Specifically, he seeks a COA in order to appeal this Court's conclusion that he cannot seek relief under Johnson v. United States, 135 S.Ct. 2551 (2015), given that he was sentenced as a career offender under § 4B1.1 of the United States Sentencing Guidelines. However, Johnson does not apply to the advisory Guidelines, and as such, provides Petitioner no relief. U.S. v. Matchett, 802 F.3d 1185, 1193-96 (11th Cir. 2015), reh'g en banc denied 2016 WL 4757211 (11th Cir. Sept. 13, 2016).

Accordingly, it is ORDERED AND ADJUDGED that Petitioner's request for a COA (Doc. No. 6) is **DENIED**.

**DONE AND ORDERED** at Tampa, Florida, this 12<sup>th</sup> day of October, 2016.

Handwritten signature of Susan C. Bucklew in black ink.

SUSAN C. BUCKLEW

United States District Judge

Copies to:  
All Parties and Counsel of Record