

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**
CASE NO. 16-23589-CIV-SEITZ
(Case No. 04-20285-CR-SEITZ)

NICKY MARTINEZ,
Movant,

v.

UNITED STATES OF AMERICA,
Respondent.

ORDER STAYING AND CLOSING CASE

THIS MATTER is before the Court on the Report of Magistrate Judge Re: Unauthorized Successive 28 U.S.C. § 2255 But Recommending Administrative Stay in Light of *Johnson v. United States* and *Beckles v. United States* [DE-9]. Movant's Motion Under 28 U.S.C. § 2255 [DE-1 & 3] challenges the constitutionality of his enhanced sentence as a career offender in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015). Because this is a successive § 2255 Motion,¹ Movant sought leave from the Eleventh Circuit to file a successive petition. In its opinion, the Eleventh Circuit questioned whether Movant had actually been sentenced as a career offender and, pursuant to *United States v. Matchett*, 802 F.3d 1185 (11th Cir. 2015), denied Petitioner's application for leave to file a successive § 2255 petition [DE-10]. The Supreme Court, however, has recently decided to grant certiorari review of *Beckles v. United States*, 616 Fed. Appx. 415 (11th Cir. 2015), to decide whether *Johnson* applies to career offenders.

While denials of successive applications are without prejudice and so Movant would not be precluded from filing a new successive application in the future, it would be subject to all

¹ Movant previously filed a § 2255 petition on January 2, 2008 (Case No. 08-20308-CV-SEITZ), which was dismissed as untimely and on the merits on October 30, 2008.

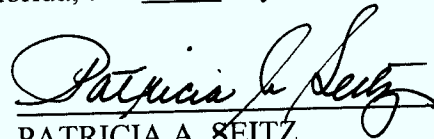
statutes of limitations and tolling provisions. Thus, even if Movant is later granted leave to file a subsequent § 2255, questions may arise about whether that motion is timely. Therefore, the Court finds it appropriate to hold the §2255 Motion in abeyance pending the Supreme Court's decision in *Beckles*. See *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (holding that a district court "has broad discretion to stay proceedings as an incident to its power to control its own docket."); *Telephone Science Corporation v. Hilton Grand Vacations Company, LLC*, 2015 WL 7444409 (M.D. Fla. Nov. 20, 2015) ("Where 'a federal appellate decision . . . is likely to have a substantial or controlling effect on the claims and issues,' a stay may be warranted.") (citing *Miccosukee Tribe of Indians v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009).

Accordingly, it is

ORDERED THAT

- (1) The Report of Magistrate Judge Re: Unauthorized Successive 28 U.S.C. § 2255 But Recommending Administrative Stay in Light of *Johnson v. United States* and *Beckles v. United States* [DE-9] is **AFFIRMED and ADOPTED in part.**
- (2) **THE CASE IS STAYED** pending the Supreme Court's review of *Beckles v. United States*.
- (3) The Clerk is directed to **ADMINISTRATIVELY CLOSE** this case. **Within 30 days of a decision in *Beckles***, Movant shall file notice with this Court and move to reopen the case and lift the stay.

DONE and ORDERED in Miami, Florida, this 17th day of October, 2016



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record