

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ISAAC C. GARNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 16-cv-406-JPG

Criminal No 08-cr-30210-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner Isaac C. Garner's motion to voluntarily dismiss without prejudice his amended sealed motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. 15). Garner concedes that his § 2255 motion has no merit in light of the Supreme Court's recent decision in *Beckles v. United States*, 137 S. Ct. 886 (2017). The Government has responded to the motion asking for a ruling on the merits in light of the fact that the § 2255 motion has been fully briefed (Doc. 16).

Garner's motion is filed under Federal Rule of Civil Procedure 41(a)(2). Rule 41(a)(2) provides that only the Court may dismiss an action after an adverse party has filed an answer or motion for summary judgment and in the absence of a stipulation of dismissal of an entire case signed by all the parties.

All parties being in agreement that Garner's § 2255 motion has no merit after *Beckles*, the Court finds that granting Garner's motion for voluntary dismissal is the most efficient way to bring this matter to a close without unnecessarily expending judicial resources. Accordingly, the Court:

- **GRANTS** Garner's motion for voluntary dismissal (Doc. 15);
- **DISMISSES** Garner's amended petition (Doc. 4) **without prejudice**;
- **DENIES** Garner's motion for bond (Doc. 5); and

- **DIRECTS** the Clerk of Court to enter judgment accordingly.

The Court notes that whether this § 2255 motion “counts” as a first motion for the purposes of the certification requirement for second or successive petitions under 28 U.S.C. § 2255(h) is a matter to be determined if and when Garner ever files a subsequent § 2255 motion.

IT IS SO ORDERED.

DATED: April 19, 2017

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE