

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

BILLY JOE DUGARD,)	
)	
Petitioner,)	
)	
vs.)	No. 4:16-cv-00109-TWP-DML
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Entry Granting Motion to Withdraw Counsel and Directing Further Proceedings

Counsel for the petitioner has moved to withdraw her appearance on the petitioner’s behalf. That motion [dkt. 8] is **granted** and the appearance of Sara J. Varner, Indiana Federal Community Defenders, shall be **withdrawn** as counsel for the petitioner.

On June 26, 2015, the United States Supreme Court held that the residual clause of the Armed Career Criminal Act (“ACCA”) was unconstitutional based on vagueness. *Johnson v. United States*, 135 S.Ct. 2551 (2015). *Johnson* was determined to announce a new substantive rule of constitutional law that applied retroactively to ACCA defendants. *Welch v. United States*, 136 S.Ct. 1257 (2016).

Throughout this case, it has been presented that the petitioner’s entitlement to relief depends on the retroactive application of *Johnson* to the Sentencing Guidelines, rather than the ACCA. In *Beckles v. United States*, No. 15-8544, ___ U.S. ___, 2017 WL 855781 (U.S. March 6, 2017), the Supreme Court held that the Sentencing Guidelines are not subject to vagueness challenges under the Due Process Clause, meaning that the *Johnson* doctrine does *not* apply to guidelines cases.

The *pro se* petitioner shall have **through April 28, 2017**, in which to either a) voluntarily dismiss this action or b) file a brief in support of his motion for relief pursuant to 28 U.S.C. § 2255 and thereby **show cause** why this action should not be dismissed as untimely and lacking merit under *Beckles*. If the petitioner files a brief in support, the United States shall have **twenty-eight (28) days** in which to respond.

The clerk shall update the docket to add the petitioner's address to the docket, as indicated in the distribution list on this Entry.

IT IS SO ORDERED.

Date: 3/22/2017



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

Electronically Registered Counsel

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