

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GARY BARHAM, SR.,	*	
Petitioner,	*	
v.	*	Crim. Action No.: RDB- 14-0224
UNITED STATES OF AMERICA,	*	Civil Action No.: RDB- 16-2476
Respondent.	*	

* * * * *

MEMORANDUM OPINION

On September 15, 2014, Petitioner Barham (“Petitioner” or “Barham”) pled guilty to Conspiracy to Distribute and Possess with Intent to Distribute 100 grams or more of Heroin, in violation of 21 U.S.C § 846. (ECF No. 88.) During Petitioner’s sentencing hearing, this Court determined that Petitioner was a career offender under U.S.S.G § 4B1.1 and he was sentenced to a term of one hundred and thirty two (132) months imprisonment, pursuant to a Rule 11(c)(1)(C) plea agreement. Currently pending before this Court is Petitioner’s Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 pursuant to the United States Supreme Court’s opinion in *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015) (ECF No. 194). For the following reasons, Petitioner’s Motion to Vacate (ECF No. 194) is DENIED.¹

¹ Also currently pending is Petitioner’s Motion to Hold this Court’s ruling in abeyance (ECF No. 198) until the United States Supreme Court’s decision in *Beckles v. United States*, __ U.S. __, 137 S. Ct. 886 (2017). Because the Supreme Court has now ruled in *Beckles*, this Motion (ECF No. 198) is MOOT.

BACKGROUND

On September 15, 2014, Petitioner Barham (“Petitioner” or “Barham”) pled guilty to Conspiracy to Distribute and Possess with Intent to Distribute 100 grams or more of Heroin, in violation of 21 U.S.C. § 846. (ECF No. 88.) During Petitioner’s sentencing hearing on November 17, 2014, this Court determined that Petitioner was a career offender under United States Sentencing Guideline (“U.S.S.G.”) § 4B1.1 and he was sentenced to a term of one hundred and thirty two (132) months imprisonment, pursuant to a Rule 11(c)(1)(C) plea agreement. (ECF Nos. 126, 127.) Less than a year after Petitioner was sentenced, the United States Supreme Court in *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551 (2015) struck down the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(ii), as unconstitutionally vague. Subsequently, Petitioner filed a *pro se* Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255, arguing that because the “Career Offender” provision in the Sentencing Guidelines includes the identical residual clause as that struck down in *Johnson*, it is also void for vagueness. (ECF No. 194.) In 2017, however, the Supreme Court held in *Beckles v. United States*, ___ U.S. ___, 137 S. Ct. 886 (2017) that the advisory guidelines are not subject to *Johnson* challenges.

ANALYSIS

Petitioner’s only claim in his Motion to Vacate is that under *Johnson*, the residual clause that this Court applied while sentencing Petitioner is void for vagueness. Therefore, he asserts that this Court would have to determine whether Petitioner’s prior controlled substance convictions qualify as crimes of violence under the remaining “enumerated offenses” clause or “force” clause of U.S.S.G. § 4B1.2(a). In light of *Beckles v. United States*, ___

