

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FILED

AUG 01 2016

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
CAPE GIRARDEAU

MEMORANDUM AND ORDER

Before the Court is movant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 [Doc. #1] and his motion to hold this case in abeyance while he seeks permission from the Eighth Circuit to file a second or successive petition [Doc. #2].¹

On May 25, 2011, movant pled guilty to being a felon in possession of a firearm. The Presentence Investigation Report (“PSR”) applied an enhanced base offense level of 24 on the basis that movant had two felony convictions for either a crime of violence or a controlled substance offense. U.S.S.G. § 2K2.1(a)(2). On September 7, 2011, movant was sentenced to 84 months’ imprisonment. Movant did not file a direct appeal.

On April 13, 2015, movant filed a motion for a reduction in sentence. *See Martin v. United States*, 4:15CV630 SNLJ (E.D.Mo. 2015). Before making a substantive ruling on the motion, the Court asked movant to indicate whether he wished it to be treated as a petition brought pursuant to 28 U.S.C. § 2255. Movant indicated that he wished the motion to be considered under 18 U.S.C. § 3583, or as a reduction in sentence. The Court considered his

¹The Court has reviewed the Eighth Circuit's docket and found no evidence that Mr. Martin has applied for permission to file a second or successive petition in that Court.

request for relief, but denied the request on May 12, 2015. His request was not considered a habeas petition, pursuant to 28 U.S.C. § 2255.

As petitioner has not brought a prior habeas action in this District, the Court will deny the request to stay this action pending permission from the Eighth Circuit to file a second or successive habeas corpus application.

However, to the extent movant is seeking a stay pursuant to the Supreme Court granting certiorari in *Beckles v. United States*, No. 15-8544, the Court will grant the motion for stay.²

Accordingly,

IT IS HEREBY ORDERED that movant's request to stay this action pending permission from the Eighth Circuit to file a successive action [Doc. #2] is **DENIED as no evidence exists that he has made such a request in the Eighth Circuit and there is no prior habeas in this Court.**

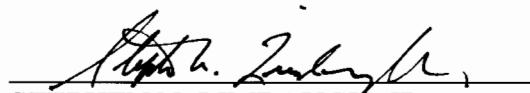
IT IS FURTHER ORDERED that movant's motion to stay this action pending the United States Supreme Court's decision in *Beckles v. United States*, 15-8544, 2016 WL 1029080, [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that movant must give notice to the Court within twenty-eight (28) days of the Supreme Court's decision in *Beckles v. United States*.

²In *Beckles*, the Supreme Court will be reviewing whether *Johnson*'s constitutional holding applies to the residual clause in the U.S.S.G. § 4B1.2(a)(2), and if the answer is yes, whether this holding can be applied retroactively on collaterally review. Movant was sentenced under U.S.S.G. § 2K2.1, and his base offense level was found to be a 24 because he had committed the offense for which he was charged subsequent to sustaining at least two felony convictions of either “a crime of violence” or a controlled substance offense. “Crime of violence,” as it applies to movant, is defined in U.S.S.G. § 4B1.2(a), which will be under direct review in *Beckles*.

IT IS FURTHER ORDERED that the Clerk is directed to administratively close this case.

Dated this 1st day of August, 2016



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE