

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DONALD B. TALLEY,)	
)	
Movant,)	
)	Case No. 16-03266-CV-S-RK
v.)	Crim. No. 05-03114-01-CR-S-RK
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

Before the Court is the Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (doc. 1) filed by Movant Donald B. Talley pro se on June 28, 2016. Movant asks the Court to vacate his sentence based on the Supreme Court’s decision in *Johnson v. United States*, 135 S. Ct. 2251 (2015). Pursuant to the Court’s Standing Order (doc. 2), the Federal Public Defender was appointed to represent Movant. On September 30, 2016, on Movant’s request, the Court stayed the action, pending the Supreme Court’s resolution of the questions presented in *Beckles v. United States*, 137 S. Ct. 886 (2017). On March 6, 2017, the Supreme Court issued its opinion in *Beckles*. Thereafter, on April 17, 2017, the Government filed Suggestions in Opposition (doc. 9), moving for an order: (1) lifting the stay; (2) denying on the merits the 28 U.S.C. § 2255 Motion; and (3) denying Movant a certificate of appealability. To date, Movant has not filed any reply suggestions.

First, the Supreme Court has resolved the questions presented in *Beckles*. 137 S. Ct. at 895 (holding that “the advisory Sentencing Guidelines are not subject to a vagueness challenge under the Due Process Clause and that § 4B1.2(a)’s residual clause is not void for vagueness”). Accordingly, the stay of this action will be lifted.

Next, the Court finds the *Beckles* decision provides no basis for relief to Movant. In his Motion to Stay, Movant asserted that he “was not sentenced under the Armed Career Criminal Act but, rather, challenges his sentence which was based on the United States Sentencing Guidelines.” (Doc. 4 at 1.) Movant further conceded that “if *Beckles* holds that *Johnson* is not retroactively applicable to guidelines cases on collateral review, [then his] case would necessarily be terminated.” (*Id.* at 2.) *Beckles* has so held, and as a result, the Court agrees with the Government’s contention that the 28 U.S.C. § 2255 Motion should be denied. In addition,

because Movant has made no substantial showing of the denial of a constitutional right, the Court will not issue a certificate of appealability.

It is therefore **ORDERED** that:

1. The September 30, 2016 stay of proceedings is lifted;
2. The Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (doc. 1) is **DENIED**; and
3. Movant is **DENIED** a certificate of appealability.

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: July 27, 2017