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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN JOSEPH DONAHUE, IV,

Defendants.

Case No. 3:14-cr-00024-MMD-WGC

ORDER


Petitioner John Joseph Donahue filed a motion (“Motion”) under 28 U.S.C. § 2255 seeking to vacate his sentence and for his case to be set for *de novo* sentencing based on the application of *Johnson v. United States*, 135 S.Ct. 2551 (2015), in which the Supreme Court invalidated the residual clause in the Armed Career Criminal Act of 1984 (ACC”). (ECF Nos. 59, 60.) Against Donahue’s objection, the Court granted the government’s motion to stay the briefing schedule on Donohue’s Motion pending the Supreme Court’s decision in *Beckles v. United States*, 137 S.Ct. 886 (2017). (ECF No. 65.) Before the Court is the government’s motion to lift stay. (ECF No. 66.) Donohue has filed a motion to notice voluntary dismissal of his Motion (“Dismissal Motion”). (ECF No. 69.) The government opposes, asking the Court to reject Donohue’s Dismissal Motion and to instead deny the Motion. (ECF No. 70.) Donohue has replied. (ECF No. 71.)

The government argues that the Court should resolve the Motion on its merits and deny the Motion as barred by *Beckles* and Donohue’s waiver of the collateral attack provision of his plea agreement. However, the Court is not convinced that the Motion should be addressed on the merits under the unique circumstances presented by

1 *Johnson's* profound impact. In the context of this case, the Federal Rules of Civil
2 Procedure may be applied because "they are not inconsistent with any statutory
3 provisions or these rules [governing section 2255 proceedings]." Rules Governing Section
4 2255 Proceedings R. 12. The Court will therefore permit Donohue to voluntarily dismiss
5 his Motion.

6 Petitioner's motion to notice voluntary dismiss of his motion to vacate (ECF No.
7 69) is granted. Petition's motion to vacate (ECF Nos. 59, 60) is deemed voluntarily
8 dismissed. The government's motion to life stay (ECF No. 66) is denied as moot.

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10 DATED THIS 25th day of May 2017.

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15 MIRANDA M. DU
16 UNITED STATES DISTRICT JUDGE
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