

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-00302-RJC
(3:06-cr-00190-RJC-1)

JUSAMUEL RODRIGUEZ MCCREARY,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)
_____)

ORDER

THIS MATTER is before the Court on consideration of Respondent’s motion to stay the disposition of Petitioner’s § 2255 Motion to Vacate. (Doc. No. 4: Motion to Stay). Petitioner does not oppose the motion.

In his § 2255 Motion to Vacate, Petitioner challenges his designation as a career offender under § 4B1.2 of the U.S. Sentencing Guidelines Manual, and he relies on the Supreme Court’s decision in United States v. Johnson, 135 S. Ct. 2551 (2015), in which the Court struck down the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), after concluding that it violated due process because it was unconstitutionally vague.

In the motion to stay, Respondent cites the case of Beckles v. United States, No. 15-8544, which is pending before the Supreme Court in which the Court will consider whether the Johnson Court’s conclusion regarding the residual clause of the ACCA should apply to the residual clause of the career offender guideline, and if so, whether Johnson should apply retroactively on collateral review. The Court is also considering the issue of whether possession of a sawed-off shotgun is a crime of violence under the Guidelines.

Respondent also cites as a reason to stay this proceeding the case of United States v. Ali, No. 15-4433 (4th Cir.) which is pending before the Fourth Circuit and addresses whether the offense of robbery under the Hobbs Act still qualifies as a “crime of violence” following the Johnson decision.

Because resolution of the issues involved in the Beckles and Ali cases may have a bearing on the disposition of the issues in Petitioner’s case, the Court will grant Respondent’s motion.

IT IS, THEREFORE, ORDERED that Respondent’s motion to stay is **GRANTED**, (Doc. No. 4), and Respondent shall have 60-days from the date the cases of Beckles v. United States and United States v. Ali are decided to file a response to Petitioner’s § 2255 Motion to Vacate.

SO ORDERED.

Signed: December 19, 2016



Robert J. Conrad, Jr.
United States District Judge

