

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-445-RJC
(3:05-cr-14-RJC-1)**

ANTONIO STOWE MCDANIEL,)
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Plaintiff,)
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vs.)
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UNITED STATES OF AMERICA,)
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Defendant.)
_____)

ORDER

THIS MATTER is before the Court on Petitioner’s Unopposed Response to Show Cause Order and Motion for Abeyance, (Doc. No. 9).

Petitioner filed a Section 2255 Motion to Vacate Sentence through counsel in the instant case, raising a claim pursuant to Johnson v. United States, 576 U.S. 591 (2015). (Doc. No. 1). The parties requested that this case be stayed pending the Fourth Circuit Court of Appeal’s resolution of United States v. Ali, Case No. 15-4433 and another § 2255 case filed by Petitioner, 3:16-cv-371-GCM. The Court granted the stay until the Fourth Circuit’s issuance of the mandate in Ali or this Court’s resolution of case number 3:16-cv-371-GCM, whichever occurs first. (Doc. No. 7).

Case number 3:16-cv-371-GCM has now been resolved in this Court. However, an appeal was filed in the Fourth Circuit, United States v. McDaniel, 20-7579, which has now been stayed pending the United States Supreme Court’s decision in Borden v. United States, 19-5410.

On January 29, 2021, the Court ordered the parties to show cause why the stay should not be lifted in light of the resolution of case number 3:16-cv-371-GCM in this Court. (Doc. No. 8).

Counsel for Petitioner has now filed the instant Response and Motion for Abeyance,

arguing that the pending appeal requires the Fourth Circuit to determine the same issue as the one presented in the instant case, and that Petitioner believes that he will have additional grounds to vacate his sentence in this case if the Fourth Circuit vacates the conviction at issue in the appeal. (Doc. No. 9). Counsel for Petitioner further notes that Borden, which is at issue in Petitioner's pending appeal, will likely be relevant to the instant case. Counsel for the Government does not oppose Petitioner's Response or the Motion for Abeyance. (Doc. No. 9 at 3).

The Court finds that a stay of these proceedings is in the interest of justice and judicial economy. The Government will be required to file an answer, motion, or other response to the § 2255 Motion to Vacate within 21 days after the Fourth Circuit's decision is issued in McDaniel, 20-7579.

IT IS, THEREFORE, ORDERED that:

1. Petitioner's Unopposed Response to Show Cause Order and Motion for Abeyance, (Doc. No. 9), is **GRANTED**.
2. This case is held in abeyance pending the Fourth Circuit's issuance of a decision in United States v. McDaniel, 20-7579. The Government shall have **twenty-one (21) days** following the Fourth Circuit's issuance of its decision in McDaniel to file an answer, motion, or other response to the § 2255 Motion to Vacate.

Signed: February 16, 2021



Robert J. Conrad, Jr.
United States District Judge

