

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
at WINCHESTER

GARY FLEMING,	)	
	)	
<i>Petitioner,</i>	)	
	)	Case No. 4:16-cv-49
v.	)	
	)	Judge Mattice
UNITED STATES OF AMERICA,	)	
	)	
<i>Respondent.</i>	)	

**MEMORANDUM OPINION**

Before the Court is Petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Doc. 1) and the Government's Motion to Deny and Dismiss with Prejudice Petitioner's § 2255 Motion (Doc. 4).

In his § 2255 motion, Petitioner challenges his classification as a career offender under § 4B1.1 of the United States Sentencing Guidelines in light of *Johnson v. United States*, 135 S. Ct. 2551, 2563 (2015), which held that the residual clause of the identically-worded Armed Career Criminal Act, 28 U.S.C. § 924(e), is unconstitutionally vague in violation of the Due Process Clause. However, the United States Supreme Court since has ruled in *Beckles v. United States*, 137 S. Ct. 886 (2017), that the United States Sentencing Guidelines are not amenable to the vagueness challenge that was successful in *Johnson*, foreclosing Petitioner's argument.

Accordingly, the Government's Motion to Deny Petitioner's § 2255 Motion as Meritless and to Dismiss it with Prejudice (Doc. 4) will be **GRANTED**. Petitioner's § 2255 Motion (Doc. 1) will be **DENIED** and this action will be **DISMISSED WITH**

**PREJUDICE.** The Government's Motion for Extension of Time to File a Response (Doc. 2) and Motion to Defer Ruling Pending *Beckles* (Doc. 3) will be **DENIED AS MOOT.**

The Court further will **CERTIFY** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this Court will **DENY** Petitioner leave to proceed *in forma pauperis* on appeal. *See* Fed. R. App. P. 24. Finally, Petitioner having failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability **SHALL NOT ISSUE.** 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

**AN APPROPRIATE JUDGMENT ORDER WILL ENTER.**

/s/ Harry S. Mattice, Jr.  
HARRY S. MATTICE, JR.  
UNITED STATES DISTRICT JUDGE