

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

EDWARD JOE MARQUEZ, JR., #12126-078 §

VS.

§

CIVIL ACTION NO. 4:16cv631

CRIMINAL NO. 4:05CR00082-001

UNITED STATES OF AMERICA

§

ORDER OF DISMISSAL

Petitioner Edward Joe Marquez, Jr., a prisoner confined at F.C.I. Ft. Worth, brings this motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The motion was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation (Dkt #10) concluding that the motion should be denied. Marquez has filed a response, which is construed as objections (Dkt #12).

Marquez is seeking relief based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). He was not, however, convicted of the offense of felon in possession of a firearm and as an armed career criminal; thus, Magistrate Judge Nowak correctly found that *Johnson* does not apply to him. To the extent that he is seeking relief based on an extension of *Johnson* to the sentencing guidelines, the Fifth Circuit has rejected such arguments and found that it is bound by its own precedent unless and until that precedent is altered by a decision of the Supreme Court. *In re Harris*, No. 16-40938, slip op. at 1 n.1 (5th Cir. Aug. 16, 2016) (citing *Wicker v. McCotter*, 798 F.2d 155, 157-58 (5th Cir. 1986)). Marquez's response does not address Magistrate Judge Nowak's findings and conclusions; instead, he asks the Court to amend the judgment in his criminal case. The objections are nonresponsive.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having

made a *de novo* review of the objections raised by Marquez to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Marquez's objections are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that Marquez's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All other motions not previously ruled on are hereby **DENIED**.

**SIGNED this 24th day of January, 2017.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE