

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

SHERMAN DIVISION

BARRY CORBET GIBSON, #28455-177	§	
VS.	§	CIVIL ACTION NO. 4:17cv181
UNITED STATES OF AMERICA	§	CRIMINAL NO. 4:15CR00201-001

ORDER OF DISMISSAL

Movant Barry Corbet Gibson, a prisoner confined at F.C.C. Forrest City Medium, 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 #5) concluding that the motion should be denied. Gibson has filed objections (Dkt #9).

Gibson is in custody pursuant to a conviction for the offense of bank robbery, in violation of 18 U.S.C. § 2113(a). On May 23, 2016, after a plea of guilty, he was sentenced to 151 months of imprisonment. Gibson did not appeal the conviction. On January 10, 2017, an amended judgment was entered to correct a clerical error in the original judgment.

Gibson is challenging the sentence imposed in his case. He focuses on the United States Sentencing Guidelines. Based on his criminal history, he qualified as a career offender under United States Sentencing Guidelines § 4B1.1. PSR ¶ 23. He argues that he should not have been sentenced as a career offender in light of the United States Supreme Court's ruling in *Johnson v. United States*, 135 S. Ct. 2551(2015). *Johnson* concerns the application of a criminal statute, as opposed to the Sentencing Guidelines. The Supreme Court recently declined to extend the reasoning in *Johnson*

to the Sentencing Guidelines. *Beckles v. United States*, 137 S. Ct. 886, 895 (2017). The present motion lacks merit in light of *Beckles*.

In his objections, Gibson again argues that he should not have been sentenced as a career offender under the Sentencing Guidelines. He once again cites *Johnson* and related cases. Since *Beckles* was decided, the Fifth Circuit has repeatedly rejected cases by inmates trying to extend *Johnson* to the Sentencing Guidelines. *United States v. Holley*, \_\_\_ F. App'x \_\_\_, 2017 WL 1683104, at \*1 (5th Cir. May 2, 2017); *United States v. Garces*, \_\_\_ F. App'x \_\_\_, 2017 WL 1382069, at \*1 (5th Cir. Apr. 18, 2017); *United States v. Martinez*, \_\_\_ F. App'x \_\_\_, 2017 WL 1063450, at \*1 (5th Cir. Mar. 20, 2017). Gibson's objections lack merit.

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 Gibson to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Gibson'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 Gibson'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 20th day of June, 2017.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE