

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

KAREEM LOUIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

1:16-cv-00048

1:11-cr-00023

Attorneys:

Anthony R. Kiture, Esq.

David White, Esq., AUSA

REPORT AND RECOMMENDATION

THIS MATTER is before the Court upon the Order (ECF No. 276) of Chief Judge Wilma A. Lewis in Criminal No. 11-00023 referring Petitioner Kareem Louis's Motion to Vacate and Correct Sentence under 28 U.S.C. § 2255¹ (ECF No. 259) and Respondent United States of America's Motion of the United States to Stay Proceedings (ECF No. 260) to the undersigned for a report and recommendation. For the reasons that follow, the undersigned recommends that Petitioner Louis's motion be denied pursuant to *Beckles* and Respondent's motion be denied as moot.

¹ All citations to the United States Code are to the electronic version that appears in Lexis.

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I. Background

On December 14, 2012, a jury found Kareem Louis (Louis) guilty of various offenses including carjacking, use of a firearm during a crime of violence, robbery, possession of stolen property, assault, and unauthorized possession of firearms. *See* Jury Verdict, ECF No. 169. On September 24, 2013, Louis was sentenced to serve 264 months in prison. His sentence was calculated in part based on his crimes of conviction and in part because the Court determined that Louis was a career offender. His four previous convictions resulted in a criminal history score of seven and a criminal history category of four, and he was sentenced accordingly. *See* Sentencing Transcript, ECF No. 245 at 10-11, 49-51, September 24, 2013. The Third Circuit Court of Appeals affirmed the judgment and sentence on December 8, 2014. *See United States v. Louis*, No. 13-4064 (3d Cir. Dec. 8, 2014).

On June 26, 2015, the Supreme Court issued its opinion in *Johnson v. United States*, 135 S. Ct. 2551 (2015), holding that the residual clause in the definition of violent felony in the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), is unconstitutionally vague and therefore invalid. On April 18, 2016, the Supreme Court issued its opinion in *Welch v. United States*, 136 S. Ct. 1257 (2016), holding that *Johnson* applies retroactively on collateral review. On June 24, 2016, Louis filed the instant motion requesting that the Court vacate his sentence and schedule a hearing to re-sentence him in accordance with *Johnson*. Specifically, he asked to be “re-sentenced without application of the career offender provision.” (ECF No. 259). On June 26, 2016, the United States Attorney filed a motion

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requesting a stay of proceedings pending the United States Supreme Court decision in *Beckles v. United States*, 137 S. Ct. 886 (2017). On March 6, 2017, the Supreme Court issued that decision.

II. Legal Principals

"Motions pursuant to 28 U.S.C. § 2255 are the presumptive means by which federal prisoners can challenge their convictions or sentences that are allegedly in violation of the Constitution." *Okereke v. United States*, 307 F.3d 117, 120 (3d Cir. 2002) (citing *Davis v. United States*, 417 U.S. 333, 343 (1974)). The Rules Governing Section 2255 Proceedings require the district court to review a § 2255 motion and "dismiss the motion" if it "plainly appears from the motion . . . that the moving party is not entitled to relief." U.S.C. Sec. 2255 Proc R 4.

III. Discussion

Following the decisions in *Johnson* and *Welch*, noted above, the Supreme Court considered the residual clause of § 4B1.2 of the advisory Sentencing Guidelines and found that this clause is not unconstitutionally vague. *Beckles v. United States*, 137 S. Ct. 886, 890 (2017). The Court explained that in contrast to ACCA's residual clause, which, when applicable, required sentencing courts to increase a defendant's term of imprisonment, the advisory Guidelines "do not fix the permissible range of sentences" but "merely guide the exercise of a court's discretion in choosing an appropriate sentence within the statutory range." *Id.* at 892. Thus, the court declined to apply its reasoning in *Johnson* to the advisory

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Guidelines, stating plainly that the “residual clause in § 4B1.2(a)(2) [] is not void for vagueness.” *Id.* The Supreme Court noted that their decision was exclusive to the advisory Sentencing Guidelines—that they were making no statement as to whether *Johnson* applies to pre-*Booker* sentences that were pronounced under the mandatory Guidelines. *See Beckles*, 137 S. Ct. at 903 n. 4 (Sotomayor, J., concurring in judgment).²

Simply put, a prisoner sentenced under the ACCA may, in certain circumstances, be eligible for relief under *Johnson*. A prisoner sentenced under the advisory Sentencing Guidelines is not eligible for relief under *Johnson*.

The Supreme Court’s decision in *Beckles* applies here because Louis was sentenced in 2013, approximately eight years after the Supreme Court rendered the Guidelines advisory. Accordingly, the Court may not apply *Johnson* to re-sentence Louis.

IV. Conclusion

For the foregoing reasons, **IT IS HEREBY RECOMMENDED** that Kareem Louis’s Motion to Vacate and Correct Sentence under 28 U.S.C. § 2255 (ECF No. 259) be **DENIED** without an evidentiary hearing.³ It is further **RECOMMENDED** that a certificate of

² Before *Booker*, the Sentencing Guidelines were mandatory. Since *Booker*, the Sentencing Guidelines are advisory. *See United States v. Booker*, 543 U.S. 220 (2005) (sentencing guidelines made effectively advisory by severance of statutory provisions concerning mandatory applicability). The Supreme Court’s decision in *Beckles* applies to defendants who were sentenced post-*Booker* under the advisory guidelines.

³ The question of whether to order an evidentiary hearing when considering a motion to vacate a sentence under § 2255 “is committed to the sound discretion of the district court.” *Government of Virgin Islands v. Forte*, 865 F.2d 59, 62 (3d Cir.1989). A § 2255 evidentiary hearing “is unnecessary when the ‘files and records of the case conclusively show that the prisoner is entitled to no relief.’” *United States v. Padilla-Castro*, 426 F. App’x 60, 63 (3d Cir.2011) (quoting 28 U.S.C. § 2255(b)). Here, the record in this case conclusively shows that Louis is not entitled to relief.

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appealability be **DENIED**.⁴ It is also **RECOMMENDED** that the United States of America's Motion of the United States to Stay Proceedings (ECF No. 260) be **DENIED** as moot.

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3.

ENTER:

Dated: May 4, 2018

/s/ George W. Cannon, Jr.
GEORGE W. CANNON, JR.
MAGISTRATE JUDGE

⁴When a district court issues a final order on a § 2255 motion, it must make a determination whether it will permit a certificate of appealability. 3d Cir. L.A.R. 22.2; Fed. R. App. P. 22(b)(1). A district court will issue a certificate of appealability only upon a finding of a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Here, the record fails to show a violation of Louis's constitutional rights. Accordingly, a certificate of appealability should be denied.