

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

United States of America,

Plaintiff,

v.

**Case No. 06-20040-01-JWL
16-2432-JWL**

Aaron Maurice Pettes,

Defendant.

MEMORANDUM & ORDER

On June 20, 2016, defendant Aaron Maurice Pettes filed a § 2255(f)(3) petition in which he seeks relief based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). Specifically, Mr. Pettes asserts that the residual clause contained in § 4B1.2(a)'s definition of "crime of violence" is unconstitutionally vague under *Johnson* and, accordingly, that his underlying felony convictions no longer qualify as "crimes of violence" for purposes of the career offender guideline. In September 2016, the court stayed all proceedings relating to Mr. Pettes' petition pending the Supreme Court's decision in *Beckles*. In that order, the court indicated that it would lift the stay upon issuance of the *Beckles* decision and it directed the government to file a response to Mr. Pettes' petition within 30 days of the *Beckles* opinion. On March 7, 2017, one day after the Supreme Court issued its opinion in *Beckles*, the court lifted the stay in this case and vacated its prior order directing the government to file a response to Mr. Pettes' petition. The court stated that it would determine how to proceed with respect to Mr. Pettes' petition after the time for rehearing passed in the *Beckles* case.

In the meantime, on March 20, 2017, Mr. Pettes filed a motion for voluntary dismissal of his petition and he asks this court to dismiss his § 2255(f)(3) petition without prejudice. Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides that a plaintiff may unilaterally dismiss an action at any time before the opposing party has filed an answer or motion for summary judgment. Rule 41 applies to Section 2255 proceedings. *See* Rule 12 of the Rules Governing Section 2255 Proceedings. Because the government has not yet filed a response to Mr. Pettes' petition, he is entitled to withdraw it without prejudice. *See* Fed. R. Civ. P. 41(a)(1)(B).

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. Pettes' motion for voluntary dismissal (doc. 89) of his § 2255(f)(3) petition is **granted** and his petition to vacate, set aside or correct his sentence pursuant to § 2255(f)(3) (doc. 68) is **dismissed without prejudice.**

IT IS SO ORDERED.

Dated this 22nd day of March, 2017, at Kansas City, Kansas.

s/ John W. Lungstrum

John W. Lungstrum
United States District Judge