

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-16114
Non-Argument Calendar

D.C. Docket Nos. 5:16-cv-00363-WTH-PRL; 5:99-cr-00048-WTH-PRL-1

MICHAEL LAWRENCE ROBINSON,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(May 10, 2019)

Before JILL PRYOR, BRANCH and JULIE CARNES, Circuit Judges.

PER CURIAM:

Michael Robinson appeals the district court's denial of his 28 U.S.C. § 2255 motion to vacate. The district court granted Robinson a certificate of appealability on whether, in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), he was denied his constitutional right to due process when he was sentenced as a career offender under the residual clause of U.S.S.G. § 4B1.2(a)(2). After careful review, we affirm.

I.

Robinson was convicted of possession with intent to distribute cocaine base and carrying a firearm during and in relation to a drug trafficking offense. The presentence investigation report (“PSR”), which the district court adopted at sentencing, classified Robinson as a career offender under U.S.S.G. § 4B1.1. The career offender enhancement resulted in a total offense level of 29, which was the same offense level the PSR calculated in the absence of the career offender enhancement. With a criminal history category of VI, Robinson's guidelines range was 151 to 188 months' imprisonment, plus a mandatory consecutive sentence of 60 months' imprisonment for the firearm offense.

At the time of his sentencing, before the United States Supreme Court's decision in *United States v. Booker*, the Sentencing Guidelines were mandatory—the district court was required to sentence Robinson within the range in the adopted PSR. 543 U.S. 220 (2005) (holding that the guidelines, when considered to be

mandatory, violated defendants' Sixth Amendment right to a jury trial and effectively rendering the guidelines advisory in all later cases). The district court sentenced Robinson to a total of 228 months' imprisonment.

After the Supreme Court decided *Johnson*, Robinson moved under § 2255 to vacate his sentence. He argued that *Johnson*, which invalidated the so-called residual clause in the Armed Career Criminal Act as unconstitutionally vague in violation of due process, *Johnson*, 135 S. Ct. at 2557, also rendered invalid the residual clause of the pre-*Booker* mandatory career offender guideline, U.S.S.G. § 4B1.2(a)(2) (2001). The district court denied Robinson's motion with prejudice, concluding that although Robinson's PSR classified him as a career offender, his guidelines range was the same whether the enhancement applied or not; thus, *Johnson* could have no effect on his sentence.

Robinson moved for reconsideration and to stay proceedings pending the Supreme Court's resolution of *Beckles v. United States*, in which the Court was set to decide whether the post-*Booker* advisory guidelines were subject to a due process vagueness challenge. *See Beckles v. United States*, 136 S. Ct. 2510 (2016) (granting certiorari). In his motion, Robinson conceded that his challenge to the mandatory career offender guideline was foreclosed by this Court's decision in *In re Griffin*, 823 F.3d 1350 (11th Cir. 2016), which held that the pre-*Booker* guidelines were not subject to a vagueness challenge. *Id.* at 1354-56. But,

Robinson argued, *Beckles* could affect the validity of *Griffin* and could bear on the constitutionality of the mandatory career offender guideline. He also argued that even though he may not have been sentenced under the career offender guideline, his career offender designation affected his ability to seek and receive a sentence reduction pursuant to retroactive amendments to the Sentencing Guidelines and that he therefore stood to benefit from a favorable decision in *Beckles*.

The district court denied Robinson's motion but granted him a certificate of appealability. Robinson appealed. The Supreme Court in *Beckles* then decided that the advisory guidelines are not subject to a due process vagueness challenge. *Beckles v. United States*, 137 S. Ct. 886, 890 (2017).

II.

On appeal, Robinson argues that the mandatory career offender guideline is void for vagueness under *Johnson*'s reasoning.¹ He argues that *Griffin* is not an impediment to relief for two reasons: first, *Griffin* is not binding outside of the second or successive § 2255 motion context in which it was decided; and second, *Beckles* abrogated it. We cannot agree.

As Robinson acknowledged in the district court, *Griffin* forecloses his challenge to the mandatory career offender enhancement. *See United States v.*

¹ "In a [s]ection 2255 proceeding, we review legal issues *de novo* and factual findings under a clear error standard." *United States v. Walker*, 198 F.3d 811, 813 (11th Cir. 1999).

Archer, 531 F.3d 1347, 1352 (11th Cir. 2008) (explaining that a prior panel precedent binds subsequent panels unless and until it is overruled or undermined to the point of abrogation by this Court sitting en banc or by the Supreme Court). Although Robinson argues on appeal that *Griffin* is not binding in the context of a first § 2255 motion, this Court has rejected the argument that published orders deciding requests for authorization to file a second or successive § 2255 motion, like *Griffin*, do not bind panels outside the second or successive context. *See United States v. St. Hubert*, 909 F.3d 335, 346 (11th Cir. 2018).

Moreover, the Supreme Court’s decision in *Beckles* did not abrogate *Griffin* because *Beckles* did not decide or squarely address whether due process vagueness principles apply to the mandatory guidelines. For a Supreme Court decision to overcome the prior panel precedent rule, it must be “squarely on point” and “actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel.” *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009). *Beckles* touched on the distinction between the mandatory and advisory guidelines when it held that the advisory guidelines were not subject to a vagueness challenge. *See Beckles*, 137 S. Ct. at 894. But the Supreme Court did not make any decision as to the mandatory guidelines and vagueness principles, instead “leav[ing] open the question” of whether the pre-*Booker* guidelines could be subject to a vagueness challenge. *Id.* at 903 n.4 (Sotomayor, J., concurring in

judgment). Because *Beckles* is not “squarely on point” and does not directly conflict with *Griffin*, we remain bound by *Griffin*.

III.

Griffin forecloses Robinson’s challenge to the mandatory career offender guideline. Although we acknowledge that the government has advanced several other arguments in support of the district court’s judgment, we need not consider them here. We affirm the district court’s denial of Robinson’s § 2255 motion to vacate.

AFFIRMED.