

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

QUINCY DESHAWN BROWN

PETITIONER

vs.

Civil Case No. 2:09CV00141 HLJ

T. C. OUTLAW, Warden,
FCI, Forrest City, Arkansas

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge James M. Moody. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at

the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Now before the court is a petition for writ of habeas corpus under 28 U.S.C. § 2241 by Quincy Deshawn Brown, an inmate of the Federal Correctional Institution (FCI) in Forrest City, Arkansas. Respondent states Petitioner entered a guilty plea in the United States District Court for the Southern District of Texas on July 21, 2004, to the charge of being a felon in possession of a firearm, and he received a sentence of 120 months imprisonment.

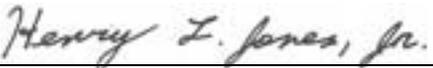
The Fifth Circuit Court of Appeals vacated the sentence and at resentencing Petitioner received a sentence of 92 months imprisonment. Respondent's Exhibits 1 & 2.

Petitioner argues he was convicted of a non-violent offense and he has completed a residential drug abuse treatment program, which makes him eligible for a reduction in his sentence under 18 U.S.C. § 3621(e). He contends he is being denied this reduction because the Bureau of Prisons (BOP) issued a regulation making inmates ineligible for early release if they were incarcerated for an offense that involved the possession, use, or carrying of a firearm. He argues the regulation is unconstitutional because the BOP did not promulgate it in accordance with the requirements of the Administrative Procedures Act (APA).

Petitioner's argument is foreclosed by Gatewood v. Outlaw, 560 F.3d 843 (8th Cir.), cert. denied, 130 S.Ct. 490 (2009), in which the court rejected a challenge to the regulation on this basis. Although given the opportunity, Petitioner has not presented any argument as to why his case is distinguishable from Gatewood.

IT IS THEREFORE ORDERED that this petition be, and it is hereby, dismissed with prejudice. The relief prayed for is denied.

SO ORDERED this 18th day of February, 2010.



United States Magistrate Judge