

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

KENNETH CLARK,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)

Case No. 13-cv-1026

ORDER & OPINION

This matter is before the Court on Petitioner’s Motion to Vacate Conviction and Sentence under 28 U.S.C. § 2255. (Doc. 1). Pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court must “promptly examine” the Motion and determine whether it is proper to order Respondent to file a response to it.

In January 2010, Petitioner was convicted by a jury in this Court of possession of 50 grams or more of cocaine base with intent to distribute in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). (09-cr-10067). His sentence was enhanced pursuant to §841(b)(1)(A) as a result of a prior state conviction for possession of cocaine. On direct appeal, Petitioner’s conviction was affirmed. *United States v. Clark*, 657 F.3d 578 (7th Cir. 2011). In his § 2255 Motion, Petitioner alleges that his prior Illinois conviction for possession of cocaine was not a “felony drug offense” and so his sentence should not have been enhanced by it pursuant to § 841(b)(1)(A), and that his trial and appellate counsel provided ineffective assistance by failing to raise this issue at sentencing or on direct appeal. Reviewing these claims, the Court

cannot say that it “plainly appears...that the moving party is not entitled to relief,” and so will require a Response from the government. Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts.

IT IS THEREFORE ORDERED:

1. The Clerk SHALL serve a copy of the Motion (Doc. 1) by certified mail upon Respondent pursuant to Rule 3(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts.
2. Respondent SHALL file an answer, motion, or other responsive pleading within 56 days after service of this Order. Respondent should address any facts which would establish whether Petitioner’s claims are untimely or procedurally barred. In addition, Respondent should address the merits of Petitioner’s constitutional claims and otherwise fully comply with Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts.
3. Petitioner MAY file a reply to Respondent’s response within 28 days of being served with the response.
4. Petitioner SHALL serve upon the United States Attorney’s office a copy of every further pleading or other document submitted for consideration by the Court.

Entered this 18th day of January, 2013.

s/ Joe B. McDade

JOE BILLY McDADE
United States Senior District Judge