

E-FILED
Friday, 28 August, 2015 08:50:15 AM
Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

VICTON Y. BETHEL,)
)
Petitioner,)
)
v.) NO. 15-3244
)
UNITED STATES OF AMERICA,)
)
Respondent.)

OPINION

RICHARD MILLS, U.S. District Judge:

Petitioner Victon Y. Bethel has filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence [d/e 1]. In the Motion, the Petitioner purports to rely on *Johnson v. United States*, 135 S. Ct. 2551 (2015). In *Johnson*, the United States Supreme Court held that “imposing an increased sentence under the residual clause of the Armed Career Criminal Act violates the Constitution’s guarantee of due process.” *Id.* at 2563.

In *Price v. United States*, 2015 WL 4621024 (7th Cir. Aug. 10, 2015), the United States Court of Appeals for the Seventh Circuit held that

the Supreme Court in Johnson had announced a new substantive rule retroactive to cases on collateral review. See *id.* at *3.

The Court has reviewed the Petitioner's underlying criminal case. See Case No. 3:07-CR-30080. The Petitioner's sentence was not enhanced pursuant to the residual clause of the Armed Career Criminal Act. His sentence was enhanced pursuant to U.S.S.G. § 4B1.1, based on prior convictions for Attempted Unlawful Delivery of a Controlled Substance and Aggravated Battery. See *id.*, Doc. No. 19 ¶32. Accordingly, the Court concludes that Johnson has no applicability to the Petitioner's case. The Petitioner is entitled to no relief under § 2255.

An appeal may be taken if the Court issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1)(A). Because the Petitioner has not "made a substantial showing of the denial of a constitutional right," see 28 U.S.C. § 2253(c)(2), the Court declines to issue a certificate of appealability under Rule 11 of the Rules Governing Section 2255 Proceedings.

Ergo, the Motion under 28 U.S.C. § 2255 of Victon Y. Bethel to

Vacate, Set Aside or Correct Sentence [d/e 1] is DENIED.

The Court declines to issue a certificate of appealability pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings.

The Clerk will terminate this case.

ENTER: August 27, 2015

FOR THE COURT:

s/Richard Mills
Richard Mills
United States District Judge