

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

KEON D. PENDLETON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 16-cv-00136-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner Keon D. Pendleton's amended motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. 8).

On November 9, 2006, the petitioner entered a guilty plea to one count of conspiracy to distribute 50 grams or more of crack cocaine. He was sentence on March 6, 2007, to the custody of the Bureau of Prisons for 262 months, 10 years of supervised release, and a fine of \$100.00. *See United States v. Pendleton*, 06-cr-40029-JPG.

The petitioner filed a *pro se* § 2255 motion (Doc. 1) on February 5, 2016. The Court appointed him counsel, and on November 8, 2016, counsel filed an amended § 2255 motion (Doc. 8). In the amended motion, the petitioner raises the following claim:

- The petitioner's due process rights were violated by application of the residual clause of the career offender guideline, U.S.S.G. § 4B1.2(a)(2), to find his prior 2005 conviction for aggravated battery was a "crime of violence" supporting career offender status. *See United States v. Hurlburt*, No. 14-3611 & 15-1686, 2016 WL 4506717, *7 (7th Cir. Aug. 29, 2016) (*en banc*; holding on direct appeal that application of career offender residual clause was due process violation because it was unconstitutionally vague).

Pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court has performed a preliminary review of the amended § 2255 motion and has determined that it is not plain from the motion and the record of the prior

proceedings that the petitioner is not entitled to relief. Accordingly, the Court **ORDERS** the Government to file a response to the petitioner's amended § 2255 motion (Doc. 8) within **SIXTY DAYS** of the date this order is entered. The Government shall, as part of its response, attach all relevant portions of the record in the underlying criminal case. The petitioner shall have **THIRTY DAYS** from the filing of the Government's response to file a reply.

IT IS SO ORDERED.

DATED: 11/7/2016

s/J. Phil Gilbert

J. PHIL GILBERT
DISTRICT JUDGE