

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

JASON S. THORNE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Case No. 16-cv-00469-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner Jason S. Thorne's Motion (Doc. 14) to Supplement his Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 1). This matter was dismissed with prejudice on May 18, 2017 and as such, the Court finds this motion moot.

The Court notes that Mr. Thorne's supplement, if timely, would have added a claim that his sentence should be vacated or reduced since he only played a minor role in the conspiracy in which he was charged. Amendment 794 set out new guidelines for the determination of whether a defendant should be granted a minor role reduction. However, Amendment 794 has not been held retroactive and as long as a defendant's sentence is within the sentencing range provided by the statute of the offense, sentencing guideline calculation errors are nonconstitutional and are not reviewable in § 2255 proceedings. *United States v. Wisch*, 275 F.3d 620, 625 (7th Cir. 2001) (citing *Scott v. United States*, 997 F.2d 340 (7th Cir. 1993)). Therefore, even if this supplement was timely, Mr. Thorne's additional claim could not be granted.

This matter having been previously dismissed, petitioner Jason S. Thorne's Motion (Doc. 14) to Supplement is **MOOT**.

IT IS SO ORDERED.

DATED: 5/31/2017

s/J. Phil Gilbert

J. PHIL GILBERT
U.S. DISTRICT JUDGE