

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION**

|                      |   |                         |
|----------------------|---|-------------------------|
| ANTHONY HOWARD,      | ) |                         |
|                      | ) |                         |
| Petitioner,          | ) |                         |
| v.                   | ) | No. 2:13-cv-376-JMS-WGH |
|                      | ) |                         |
| JOHN OLIVER, Warden, | ) |                         |
|                      | ) |                         |
| Respondent.          | ) |                         |

**Corrected Entry and Order Dismissing Action**

**I.**

Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). This is an appropriate case for such a disposition. This conclusion is compelled by the following facts and circumstances:

1. Anthony Howard pleaded guilty to conspiracy to possess heroin and cocaine base with the intent to distribute. The district court sentenced him to 227 months' imprisonment. *United States v. Howard*, 454 F.3d 700, 704 (7th Cir. 2006).

2. At sentencing, Howard was held accountable for the overdose death of heroin user Edwin Tallard. A challenge to the finding as part of the basis for his sentencing was rejected by the Court of Appeals. *Id.* Howard is confined in this District serving the executed portion of the sentence imposed for his offense.

3. Howard now seeks habeas corpus relief pursuant to 28 U.S.C. 2241(c)(3) based on his contention that because of the recent decision in *Alleyne v. United States*, 133 S. Ct. 2151 (2013), his sentencing "enhancement" is improper.

4. *Alleyne* overruled *Harris v. United States*, 536 U.S. 545 (2002), and found that the Sixth Amendment rights recognized in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), also apply to facts triggering a mandatory minimum sentence. This avails Howard nothing, however, because the Seventh Circuit has already determined that *Alleyne* does not apply retroactively to cases on collateral review. *Simpson v. United States*, 721 F.3d 875 (7th Cir. 2013). Moreover, the guideline calculation determined by the district court in no way implicated a statutory mandatory minimum sentence.

5. Howard's habeas petition shows on its face that he is not entitled to the relief he seeks.

## II.

Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 11/05/2013



Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

Distribution:

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