

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
(at London)

DONAVEON LIGHTBOURN,)	
)	
Petitioner,)	Civil Action No. 6:18-CV-208-CHB
)	
v.)	
)	
WARDEN, USP MCCREARY,)	MEMORANDUM OPINION
)	AND ORDER
Respondent.)	
)	

*** **

Donaveon Lightbourn is an inmate at the United States Penitentiary – McCreary in Pine Knot, Kentucky. Proceeding without an attorney, Lightbourn recently filed another petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. [R. 1]. For the reasons set forth below, the Court will deny Lightbourn’s latest petition.

In 2008, a federal jury in Miami, Florida found Lightbourn guilty of being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). At sentencing, the trial court determined that Lightbourn was subject to an enhanced sentence pursuant to the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), because he had at least three prior convictions for a violent felony or serious drug offense. Ultimately, the trial court sentenced Lightbourn to 293 months in prison. *See United States v. Lightbourn*, No. 1:08-cr-20367 (S.D. Fla. 2008).

Lightbourn filed a direct appeal, but the United States Court of Appeals for the Eleventh Circuit affirmed his conviction and sentence. *See United States v. Lightbourn*, 357 F. App’x 259 (11th Cir. 2009). Lightbourn subsequently moved the trial court to vacate his conviction pursuant to 28 U.S.C. § 2255, but his efforts were unsuccessful. *See Lightbourn v. United States*, No. 0:11-

cv-61089 (S.D. Fla. 2011). Lightbourn later filed a § 2241 petition with the United States District Court for the Middle District of Florida, but that court denied his petition. *See Lightbourn v. Warden*, No. 5:15-cv-416 (M.D. Fla. 2015). Finally, Lightbourn recently filed a § 2241 petition with this Court, but his petition failed to establish viable grounds for relief and, therefore, the Court denied the petition. *See Lightbourn v. Ormond*, No. 6:18-cv-161-CHB at R. 5 (E.D. Ky. June 22, 2018).

Lightbourn has now filed another § 2241 petition with this Court, and he challenges the validity of his sentence. [R. 1]. Lightbourn argues that, in light of recent Supreme Court cases, including but not limited to *Descamps v. United States*, 133 S. Ct. 2276 (2013), and *Mathis v. United States*, 136 S. Ct. 2243 (2016), his prior Florida convictions for battery upon a law enforcement officer no longer qualify as “violent felonies” for purposes of an ACCA enhancement. Lightbourn also argues that at least one of his prior drug convictions did not constitute a valid predicate offense for purposes of an ACCA enhancement because he pled *nolo contendere* to that charge.

Lightbourn’s § 2241 petition, however, constitutes yet another impermissible collateral attack on his underlying sentence. While a federal prisoner may challenge the legality of his sentence in a § 2255 motion, he generally may not do so in a § 2241 petition. *See United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001) (explaining the distinction between a § 2255 motion and a § 2241 petition). After all, a § 2241 petition is usually only a vehicle for challenges to actions taken by prison officials that affect the way the prisoner’s sentence is being carried out, such as computing sentence credits or determining parole eligibility. *See Terrell v. United States*, 564 F.3d 442, 447 (6th Cir. 2009). Simply put, Lightbourn cannot use a § 2241 petition as a way of challenging his underlying sentence.

To be sure, there is a limited exception under which federal prisoners have been permitted to challenge the validity of their sentences in a § 2241 petition. However, the United States Court of Appeals for the Sixth Circuit has explained that a prisoner can only proceed in this manner if he can show, among other things, that “a subsequent, retroactive change in statutory interpretation by the Supreme Court reveals that a previous conviction is not a predicate offense for a career-offender enhancement.” *Hill v. Masters*, 836 F.3d 591, 600 (6th Cir. 2016).

Here, even if the Court assumes that Lightbourn’s prior Florida convictions for battery upon a law enforcement officer no longer qualify as “violent felonies” in light of new Supreme Court case law, the trial court determined that Lightbourn also had three different cocaine-related convictions that qualified as predicate offenses for purposes of an ACCA enhancement. *See Lightbourn v. Ormond*, No. 6:18-cv-161-CHB at R. 5 at 2 (E.D. Ky. June 22, 2018); *see also United States v. Lightbourn*, No. 1:08-cr-20367 at R. 83 at 10-11 (S.D. Fla. 2008) (discussing these convictions). Although Lightbourn puts forth arguments about at least one of these convictions, he has not identified a subsequent, retroactive change in statutory interpretation by the Supreme Court that reveals that even one of these previous drug convictions fails to qualify as a predicate offense for purposes of the ACCA. Thus, Lightbourn’s § 2241 petition is simply unavailing.

Accordingly, it is **ORDERED** that:

1. Lightbourn’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 [**R. 1**] is **DENIED**.
2. The currently pending Motion for Order for Respondent to Show Cause [**R. 3**] is **DENIED AS MOOT**.
3. This action is **DISMISSED** and **STRICKEN** from the Court’s docket.
4. A corresponding Judgment will be entered this date.

This the 16th day of August, 2018.



Claria Horn Boom

CLARIA HORN BOOM,
UNITED STATES DISTRICT COURT JUDGE
EASTERN AND WESTERN DISTRICTS OF
KENTUCKY