

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
vs.)	Case No: 4:15CV1745 HEA
)	
JERRY D. HOWES,)	
)	
Respondent.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Petitioner’s Motion filed pursuant to 28 U.S.C. §2255 [Doc. No.1]. The United States has responded in its Response to Defendant’s Motion to Correct Sentence [Doc. No. 3]. For the reasons set forth below, the Motion is denied.

Discussion

Petitioner has filed his Motion to Vacate or Correct his sentence and merely alleges that the court has authority, pursuant to 28 USC 2255, to vacate, set aside, amend or correct Federal Sentence. The clear essence of his claim is in regard to whether his sentence is being properly executed with regard to whether it is in fact concurrent and how any jail time is being credited in that regard.

The District Court is permitted to vacate, set aside, or correct the sentence where a petitioner claims “the right to be released” and only after alleging

that the sentence was “imposed in violation of the Constitution or laws of the United States.” There is no language in Section 2255, or case law interpreting Section 2255, which provides that the District Court is empowered to “amend” an otherwise lawful sentence.

There is no assertion here that Petitioner has a right to be released. There is no assertion that his sentence was “imposed in violation of the Constitution” or was otherwise illegal. In addition, he has posited no suggestion, theory or argument that the court lacked jurisdiction over him or that the sentence exceeded the statutory maximum. The sole allegation here goes to the manner of execution of the sentence. The manner of execution of sentence is not within the purview of a Section 2255 action.

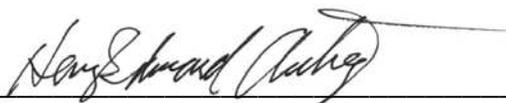
CONCLUSION

Based upon the foregoing review and analysis, Petitioner has failed to establish a basis for relief.

Accordingly,

IT IS HEREBY ORDERED that the Motion [Doc. No.1] is denied.

Dated this 12th day of March, 2019.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE