IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

C. TATE GEORGE,

HONORABLE ANNE E. THOMPSON

Petitioner,

٧.

Civil Action No. 19-9246 (AET)

UNITED STATES OF AMERICA,

Respondent.

OPINION

THOMPSON, District Judge:

- 1. On December 21, 2018, Petitioner C. George Tate filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 in the United States District Court for the Middle District of Pennsylvania. *George v. United States of America*, No. 18-cv-2412 (M.D. Pa. Dec. 21, 2018). (ECF No. 1).
- 2. The petition challenged his judgment of conviction issued in the District of New Jersey, *United States of America v. George*, No. 12-cr-204 (D.N.J. Jan. 21, 2016). He argued the methodology used at sentencing caused him to be sentenced outside of the correct guidelines; the Government's post-trial admissions "created an illegal enhancement by the Court at sentencing"; "no fact finding required by the Government for sentencing that led to multiple errors leaving Petitioner to be illegally sentenced above the appropriate Guideline-Range"; and the "Court committed harmful error(s) by miscalculating Petitioner's Sentencing Guideline Range." (ECF No. 1 at 7-8).

- 3. On April 2, 2019, the district court adopted the report and recommendation of the magistrate judge over Petitioner's objections and transferred the petition to this Court for consideration. (ECF No. 7).
- 4. Section 2241 "confers habeas jurisdiction to hear the petition of a federal prisoner who is challenging not the validity but the execution of his sentence." *Coady v. Vaughn*, 251 F.3d 480, 485 (3d Cir. 2001). Generally, a challenge to the validity of a federal conviction or sentence must be brought under 28 U.S.C. § 2255. *See Jackman v. Shartle*, 535 F. App'x 87, 88 (3d Cir. 2013) (per curiam) (citing *Okereke v. United States*, 307 F.3d 117, 120 (3d Cir. 2002)). "[Section] 2255 expressly prohibits a district court from considering a challenge to a prisoner's federal sentence under § 2241 unless the remedy under § 2255 is 'inadequate or ineffective to test the legality of his detention." *Snyder v. Dix*, 588 F. App'x 205, 206 (3d Cir. 2015) (quoting 28 U.S.C. § 2255(e)); *see also In re Dorsainvil*, 119 F.3d 245, 249 (3d Cir. 1997).
- 5. Petitioner's motion to correct, vacate, or set aside his federal sentence under 28 U.S.C. § 2255 is presently pending before the Court. *George v. United States*, No. 17-cv-2641 (D.N.J. filed April 18, 2017). As noted by the Middle District of Pennsylvania district court, the claims raised in the § 2241 petition are more appropriately considered under § 2255.
- 6. The Court will instruct the Clerk's Office to file the petition (ECF No. 1) in 17-cv-2641 as a motion to amend the current § 2255 motion. The United States will be instructed to respond to the motion. This action will be closed.

An accompanying Order will be entered.

ANNE E. THOMPSON

U.S. District Judge

¹ The Court makes no determination at this time whether Petitioner's claims are timely filed.