

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:15-cv-00283-MOC

ERIC CREIGHTON SAMPSON,)
)
 Petitioner,)
)
 Vs.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

THIS MATTER is before the court on respondent’s Motion to Dismiss. After conducting a preliminary review of such motion, the court allowed petitioner time within which to file a Reply, and petitioner has timely filed his Reply (#10). Petitioner is represented by counsel. Such Reply, however, contains a Motion to Amend or Supplement

FINDINGS AND CONCLUSIONS

I. Background

Following a jury trial, petitioner was convicted of conspiracy to possess within intent to distribute powder and crack cocaine within 1,000 feet of a protected area, in violation of 21 U.S.C. §§ 841(a)(1), 846, and 860. While the presentence report reflected that petitioner qualified as a career offender based on two prior convictions for assault on a female in state court, application of the career offender guideline resulted in an adjusted offense level of 37, which was below the otherwise applicable adjusted offense level of 45. PSR at ¶¶ 28 & 29. That offense level was reduced to 43, resulting in an applicable Sentencing Guideline of life imprisonment. The sentencing court imposed life imprisonment and the Court of Appeals affirmed such Judgment on

direct review. United States v. Sampson, 140 F.3d 585 (4th Cir. 1998). Petitioner filed a first Motion to Vacate under 28 U.S.C. § 2255 on April 5, 1999. Sampson v. United States, 3:99cv127 (W.D.N.C. 1999). This court dismissed that petition with prejudice on July 21, 2001. Id., Order (#21).

On June 15, 2015, based on a petition from petitioner's counsel, a state-court judge granted petitioner's Motion for Appropriate Relief, vacating one of the two prior convictions for assault on a female. Two weeks later, counsel filed petitioner's second Motion to Vacate, which is now before the court.

II. Claims Asserted in the Second Petition

In his petition, petitioner argues that his sentence should be vacated and he should now be resentenced because one-of-the-two convictions supporting his sentence as a career offender was vacated by the North Carolina General Court of Justice on or about June 15, 2015, and thereafter dismissed by the State of North Carolina. (Contention 1). In his Reply,¹ petitioner moves to supplement his original motion to add two additional, alternative grounds for relief (which the court has consecutively numbered):

- (2) his state convictions for assault on a female as "crimes of violence" are no longer crimes of violence pursuant to United States v. Vinson, No. 14-4078, --- F.3d ---, 2015 WL 6686001 (4th Cir. Nov. 3, 2015); and

¹ Counsel for petitioner is reminded that with the exception of dispositive motions contained in response to a complaint or petition, the Local Civil Rules prohibit inclusion of motions in responsive and reply briefs as there is no method for tracking such motions.

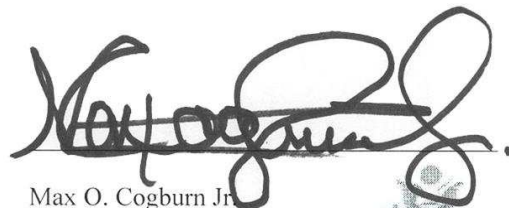
- (3) that, to the extent the court finds either of his claims non-cognizable under 28 U.S.C. § 2255, the court construe the claims as applications for habeas relief pursuant to 28 U.S.C. § 2241.

The court will allow the addition/amendment of the petition and instruct the respondent to answer or otherwise respond to the petition as amended. As a matter of housekeeping, the respondent's Motion to Dismiss will be denied without prejudice as moot and the petitioner's Reply to the Motion to Dismiss will be terminated to avoid having to later piece arguments together. Respondent will be allowed 30 days within which to respond to the Amended Petition and petitioner shall have 14 days to file his Reply through counsel.

ORDER

IT IS, THEREFORE, ORDERED that petitioner's Motion to Supplement or Amend (#10) is ALLOWED, the petition is amended as herein provided, respondent's Motion to Dismiss (#7) is denied without prejudice as moot, the respondent is instructed to file an Amended Answer or Other Response to the Amended Petition within 30 days, and petitioner shall file his Reply within 14 days of the government filing its Amended Answer or Other Response.

Signed: January 8, 2016

A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr.", written over a horizontal line. The signature is stylized and cursive.

Max O. Cogburn Jr.
United States District Judge