

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Gregory Lynn Sitz,)	
)	Cr. No. 0:15-3083-MBS
Petitioner,)	
)	
vs.)	
)	ORDER
L.R. Thomas,)	
)	
Respondent.)	
)	

Petitioner Gregory Lynn Sitz is a prisoner in custody of the Bureau of Prisons who currently is housed at FPC-Edgefield in Edgefield, South Carolina. On September 10, 2015, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, asserting that he is being detained illegally. Petitioner alleges that prior convictions used to sentence him in the Eastern District of Texas as an armed career criminal do not qualify as crimes of violence under 18 U.S.C. 924(c). In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for a Report and Recommendation.

The Magistrate Judge reviewed the petition pursuant to the Rules Governing § 2254 Cases, 28 U.S.C. § 2254; the Antiterrorism and Effective Death Penalty Act of 1995, and other legal precedents. The Magistrate Judge determined that Petitioner's remedy is to bring an action pursuant to 28 U.S.C. § 2255. Accordingly, the Magistrate Judge issued a Report and Recommendation on October 22, 2015, recommending that the § 2241 petition be dismissed without prejudice. In a footnote, the Magistrate Judge noted the possible application of Johnson v. United States, 135 S. Ct. 2551 (2015), but observing that, since Johnson had not been determined to be retroactive to cases on collateral review, addressing the merits of a Johnson claim under § 2241 would be premature.

Since the issuance of the Magistrate Judge's Report and Recommendation, the United States has determined that Johnson is retroactively applicable to cases on collateral review. See Welch v. United States, 136 S. Ct. 1257 (2016). Petitioner is therefore directed to inform the court no later than July 15, 2016, whether he has sought from the Court of Appeals for the Fifth Circuit authorization to file a successive habeas application pursuant to Johnson, and whether he has filed for relief under § 2255 in the sentencing court.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

July 1, 2016.