

Petitioner seeks to challenge a five-level enhancement applied to his sentence received from the Eastern District of Virginia following his conviction for Receipt of Child Pornography. Petitioner's challenge is based on a recent amendment to the Sentencing Guidelines, Amendment 801. Petitioner objects to the Report and Recommendation asserting that challenges to a sentence rather than the underlying conviction are not categorically barred under 28 U.S.C. § 2241. Further, Petitioner contends the erroneous application of the Sentencing Guidelines is a fundamental sentencing defect which can be remedied under 28 U.S.C. § 2241.

This Court is bound by the precedent of the Fifth Circuit Court of Appeals and the Supreme Court. In the Fifth Circuit, it is clear that a petitioner may not challenge in a § 2241 petition a sentence he received as a result of his conviction rather than the conviction itself. *Reyes-Requena v. United States*, 243 F.3d 893, 894 (5th Cir. 2001); *Kinder v. Purdy*, 222 F.3d 209, 213-14 (5th Cir. 2000). Recently, in *Logan v. Warden Fed. Correctional Complex Beaumont*, 644 F. App'x 280 (5th Cir. 2016), the Fifth Circuit reviewed the denial of a § 2241 petition brought pursuant to the savings clause in which the petitioner asserted, as asserted in this petition, that he was erroneously sentenced. The Fifth Circuit held that “[i]n the absence of an *en banc* decision by this court or an intervening Supreme Court decision overruling circuit precedent holding that a § 2241 petition cannot be used to challenge solely the validity of a federal sentence, this court is bound by its own precedent.” *Id.* at 81; *see also Oxner v. Roy*, 616 F. App'x 190, 191 (5th Cir. 2015) (affirming denial of § 2241 petition claiming the sentencing court erroneously determined prior conviction was violent felony pursuant to the Armed Career Criminal Act). As Petitioner challenges the validity of his sentence, his claim does not meet the criteria required to support a claim under the savings clause of 28 U.S.C.

§ 2255. See *Padilla v. United States*, 416 F.3d 424 (5th Cir. 2005); *Reyes-Requena*, 243 F.3d. at 894. Thus, this petition should be dismissed.

ORDER

Accordingly, Petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So ORDERED and SIGNED this 13th day of July, 2017.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE