JOHN TURNAGE,

v.

ORDER

LOUIS WILLIAMS, II,

Respondent.

Petitioner,

Pro se petitioner John Turnage filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 challenging his sentence. Dkt. 3. He argued that in light of *Mathis v. United States*, 136 S. Ct. 2243 (2016), the sentencing court erroneously found that his prior Minnesota conviction of second-degree assault qualified as a crime of violence under the U.S. Sentencing Guidelines § 4B1.1. I denied the petition and dismissed the case after concluding that Turnage plainly could not demonstrate that there was any error in his sentencing, because a Minnesota conviction for second-degree assault still qualifies as a violent crime under the *Mathis* approach. Dkt. 4. Turnage now moves to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). Dkt. 6.

To prevail on a motion for reconsideration under Rule 59, a petitioner must present newly discovered material evidence or establish a manifest error of law or fact. *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000). Here, Turnage contends that I erred in denying his petition because I failed to recognize *United States v. Headbird*, 832 F.3d 844 (8th Cir. 2016), as controlling precedent. A failure to recognize controlling precedent is a manifest error of law, it's true. *See Oto*, 224 F.3d at 606. But *Headbird* is not controlling precedent. This court is bound to follow the precedent of the Seventh Circuit. Although courts within the Seventh

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Circuit "carefully and respectfully consider the opinions of our sister circuits, we are not bound by them." *United States v. Clark*, 538 F.3d 803, 812 (7th Cir. 2008) (quoting *United States v. Williams*, 184 F.3d 666, 671 (7th Cir. 1999)). *Headbird* was decided by the Eighth Circuit, so it is merely persuasive authority, and I am not bound to follow it.

Even if failure to recognize persuasive authority were a manifest error, *Headbird* supports my conclusion that Turnage has not identified an error in his sentencing. In Headbird, the Eighth Circuit held that a Minnesota second-degree assault conviction "is a violent felony" under the Armed Career Criminal Act's force clause. 832 F.3d at 847. The ACCA's force clause is identical to the Guidelines' force clause, so under *Headbird*'s reasoning, Turnage's conviction for second-degree assault qualifies as a violent crime. Turnage argues that *Headbird* held that second-degree assault in Minnesota "does not qualify as a predicate offense." Dkt. 6, at 2. Turnage misreads *Headbird*. The Eighth Circuit held that a *juvenile adjudication* under Minnesota's second-degree assault statute does not qualify as a predicate offense, because "Minnesota's definition of 'dangerous weapon' is broader than the ACCA's requirement that a juvenile adjudication 'involv[e] the use or carrying of a firearm, knife, or destructive device." 832 F.3d at 849 (quoting 18 U.S.C. § 924(e)(2)(B)). This holding does not apply to Turnage's case because he was convicted of second-degree assault as an adult, not a juvenile. And unlike the ACCA, § 4B1.2 of the Guidelines allows only adult convictions to qualify as a predicate offense. See § 4B1.2(a) & cmt. 1; United States v. Otero, 495 F.3d 393, 401 (7th Cir. 2007). So the ACCA's requirement for juvenile adjudications could not have entered into the sentencing court's analysis in Turnage's case.

I stand on my previous analysis. Therefore, I will deny Turnage's motion.

ORDER

IT IS ORDERED that petitioner John Turnage's motion to alter or amend the judgment, Dkt. 6, is DENIED.

Entered June 13, 2017.

BY THE COURT:

/s/

JAMES D. PETERSON District Judge