APPENDIX

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APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

No. 18-3639

ROBERT A. MANGINE,

Petitioner-Appellant,

v.

SHANNON D. WITHERS,

Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Illinois.
No. 3:18-cv-01030 —
Nancy J. Rosenstengel, *Chief Judge*.

ARGUED APRIL 14, 2022 — DECIDED JULY 6, 2022

Before SYKES, *Chief Judge*, and HAMILTON and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Robert Mangine is serving a 35-year sentence for federal drug and firearm offenses. He sought post-conviction relief under 28 U.S.C. § 2241, contending that the sentencing court mischaracterized him as a career offender and that the error in turn has resulted in his

ineligibility for a discretionary sentence reduction he would like to pursue under 18 U.S.C. § 3582(c)(2). The district court denied relief, concluding that such ineligibility does not amount to a miscarriage of justice—thereby precluding Mangine from satisfying the conditions for pursuing post-conviction relief under § 2241. We affirm.

I

A

A 2001 jury trial in the Northern District of Iowa ended with Mangine being convicted of possessing a firearm as a felon (18 U.S.C. §§ 922(g)(1), 924(a)(2)); conspiring to distribute methamphetamine (21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846, 860); possessing with intent to distribute methamphetamine (21 U.S.C. § 841(a)(1), (b)(1)(C)); and carrying a firearm in connection with a drug trafficking crime (18 U.S.C. § 924(c)(1)(A)).

The district court in Iowa sentenced Mangine by applying the then-mandatory Guidelines and finding he qualified as a career offender under U.S.S.G. § 4B1.1(a) based on two prior crimes of violence—convictions for second degree burglary in both Iowa and Florida. The career-offender designation did not raise Mangine's total offense level of 39 but did increase his criminal history category from V to VI. The criminal history elevation had no impact on Mangine's ultimate Guidelines range, however. That range was 420 months to life—360 months on the drug and felon-in-possession offenses followed by a 60-month mandatory consecutive sentence for the § 924(c) conviction. The district court sentenced Mangine to 420 months (35 years).

Mangine appealed but did not challenge his sentence. The Eighth Circuit affirmed his convictions. See *United States v. Mangine*, 302 F.3d 819 (8th Cir. 2002). He subsequently brought post-conviction motions under §§ 2255 and 2241 challenging his career offender designation. None proved successful.

B

In July 2015 the Northern District of Iowa, on its own motion, considered whether to grant Mangine a sentence reduction under 18 U.S.C. § 3582(c)(2) because of Amendment 782 to the Guidelines, which retroactively reduced by two levels the offense level for most drug-trafficking crimes. See *United States v. Guerrero*, 946 F.3d 983, 985 (7th Cir. 2020). Application of Amendment 782 would have reduced Mangine's offense level from 39 to 37. But because his criminal history category remained VI, Amendment 782 did not change his Guidelines range as originally calculated for the drug and felon-in-possession convictions. At offense level 37 and criminal history category VI, the range remained 360 months to life for those offenses. In the end, then, the district court did not reduce Mangine's sentence based on Amendment 782. See U.S.S.G. § 1B1.10(a)(2)(B) (specifying that "a reduction … is not authorized under 18 U.S.C. § 3582(c)(2) if … [a]n amendment … does not have the effect of lowering the defendant's applicable guideline range").

All remained quiet for two years. But in April 2018, Mangine filed a new § 2241 petition in the Southern District of Illinois, arguing this time around that *Mathis v. United States*, 136 S. Ct. 2243 (2016), made clear that he never should have been designated as a career offender. Mangine was right on the substance:

Mathis held that Iowa's burglary statute—which supported one of Mangine's predicate crimes of violence—is not a "violent felony" within the meaning of the Armed Career Criminal Act. See 18 U.S.C. § 924(e). It follows, Mangine correctly observed, that this same offense was not a crime of violence for the purposes of the career offender enhancement. See *United States v. Taylor*, 630 F.3d 629, 633 n.2 (7th Cir. 2010) ("As we have done in prior cases, we refer to cases dealing with the ACCA and the career offender guideline provision interchangeably."). And, with only one predicate felony conviction, Mangine no longer qualified as a career offender.

From there the question became whether Mangine, as a procedural matter, could find a vehicle to pursue a sentencing reduction. The time for direct appeal had long since passed. And § 2255 remained unavailable because Mangine could not satisfy the exceptions authorizing a second or successive motion. See 28 U.S.C. § 2255(h). Realizing this, Mangine turned again to § 2241 by pointing to *Mathis* and submitting that he no longer qualified as a career offender.

C

The district court denied Mangine's petition, concluding that he could not pursue relief under § 2241 without being able to show that withholding that opportunity would result in a miscarriage of justice. The district court saw no such injustice because, with or without the career offender designation, Mangine's Guidelines range for the narcotics and felon-in-possession offenses would have remained 360 months to life. That reality left Mangine unable to demonstrate he received a sentence beyond that authorized by law.

Mangine now appeals.

II

A

"As a general rule, a federal prisoner wishing to collaterally attack his conviction or sentence must do so under § 2255 in the district of conviction." *Chazen v. Marske*, 938 F.3d 851, 856 (7th Cir. 2019). Indeed, "[i]n the great majority of cases," § 2255 is "the exclusive postconviction remedy for a federal prisoner." *Purkey v. United States*, 964 F.3d 603, 611 (7th Cir. 2020). But if § 2255 is "inadequate or ineffective to test the legality of [a prisoner's] detention," relief may be granted under 28 U.S.C. § 2241, the general habeas corpus statute, in the district of incarceration. 28 U.S.C. § 2255(e).

By its terms, § 2255 limits second or successive motions to claims of newly discovered evidence sufficient to establish innocence and new, retroactive rules of constitutional law. See *id.* § 2255(h). Intervening Supreme Court statutory interpretation decisions that lead a prisoner to "discover[] that he is in prison for something that the law does not criminalize" are outside the ambit of § 2255(h). *Purkey*, 964 F.3d at 615. And this is where § 2241 enters the picture—through the so-called savings clause in § 2255(e).

We have adopted a three-part test to determine whether a prisoner can proceed under the § 2255(e) savings clause for statutory interpretation claims:

> (1) the claim relies on a statutory interpretation case, not a constitutional case and thus could not have been invoked by a successive § 2255 motion; (2) the petitioner could not have invoked the

> decision in his first § 2255 motion and the decision applies retroactively; and (3) the error is grave enough to be deemed a miscarriage of justice.

Beason v. Marske, 926 F.3d 932, 935 (7th Cir. 2019). Those familiar with our precedent will recognize these criteria as the *Davenport* factors. See *In re Davenport*, 147 F.3d 605, 610–11 (7th Cir. 1998).

To be sure, this approach is not without controversy. Indeed, the Supreme Court has agreed to hear a case next fall to resolve a circuit split on the availability of § 2255(e) savings clause relief for statutory interpretation claims. See *Jones v. Hendrix*, 8 F.4th 683 (8th Cir. 2021), *cert. granted*, No. 21-857, 2022 WL 1528372 (U.S. May 16, 2022). But we need not hold this appeal pending the Court's decision in *Jones*. Nor must we resolve the difficult choice of law question that often arises in resolving savings clause cases. See *Chazen*, 851 F.3d at 864–86 (Barrett, J., concurring). Under our *Davenport* framework, Mangine cannot prevail.

B

Mangine cannot clear *Davenport*'s third prong because he cannot show that his ineligibility for discretionary § 3582(c)(2) relief constitutes a miscarriage of justice. Our case law has not fully fleshed out what constitutes a miscarriage of justice in the context of our *Davenport* savings clause framework. But we do have a few guideposts that provide sufficient direction for resolving Mangine's appeal.

"We start, of course, with the statutory text" of the savings clause. *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006). Congress has made clear that post-conviction relief through the savings clause is available only to a prisoner "test[ing] the legality of his detention." 28 U.S.C. § 2255(e).

Our case law also provides guidance. Take, for example, our decision in *Narvaez v. United States*, 674 F.3d 621 (7th Cir. 2011), where we surveyed Supreme Court decisions and our own precedent setting forth the contours of the miscarriage of justice standard. See *id.* at 627–30. We held that Luis Narvaez suffered a miscarriage of justice when the court wrongly designated him a career offender under the then-mandatory Guidelines. The impact of the error was clear: the misclassification "illegally increased [his] sentence approximately five years beyond that authorized by the sentencing scheme" and therefore went to the "fundamental legality of his sentence" and "constitute[d] a miscarriage of justice." *Id.* at 630.

But an error in a career offender designation does not automatically amount to miscarriage of justice in the context of the savings clause. Consider, for instance, a circumstance where, as we saw in *Millis v. Segal*, the only consequence of an error was that the defendant "received a career offender sentence only in name, not effect," and so "he suffered no miscarriage of justice from that designation" under a mandatory Guidelines system. 5 F.4th 830, 835 (7th Cir. 2021). The district court there imposed a sentence well below the career offender range and indeed at the bottom of the range that would have applied without regard to the designation. We saw no miscarriage of justice because the errant designation had no impact on the

actual sentence. See *id.* at 836–37. Any contrary conclusion, we emphasized, would amount to an elevation of form over substance. See *id.* at 837.

We have similarly determined that a misclassification as a career offender does not constitute a miscarriage of justice for purposes of *Davenport* under an advisory Guidelines system, even if the error affected a defendant's Guidelines range. This is because the district court still had to "make an independent determination of whether a guideline sentence would comport with the sentencing standard set forth in 18 U.S.C. § 3553(a)." *Hawkins v. United States*, 706 F.3d 820, 823, *supplemented on denial of reh'g*, 724 F.3d 915 (7th Cir. 2013). And an error that results only in "a sentence that is well below the ceiling imposed by Congress whether directly or by delegation to the Sentencing Commission" cannot "be considered a 'miscarriage of justice' that can be collaterally attacked, just because the judge committed a mistake en route to imposing it." *Id.* at 824–25.

We have a hard time seeing a Guidelines error at sentencing that did not manifest itself in an unlawful sentence as amounting to a miscarriage of justice for purposes of the third prong of our *Davenport* test. As we put the point in *Hawkins*, a miscarriage of justice occurs upon a showing of a statutory error resulting in "the judge impos[ing] a sentence that he had no authority to impose … since the consequence for the defendant in such a case is 'actual prejudice'—an 'injurious effect' on the judgment." 724 F.3d at 917.

Mangine does not meet this standard. It is undisputed that his designation as a career offender is not what drove his sentence on the narcotics and felon-in-possession convictions. With or without the designation, his Guidelines range for those offenses would have been 360 months to life. Mangine, in short, did not receive "far greater punishment than that usually meted out for an otherwise similarly situated individual who had committed the same offense." *Narvaez*, 674 F.3d at 629. We cannot say he suffered a miscarriage of justice.

Mangine begs to differ. To his credit, he acknowledges that the erroneous career offender designation may not have affected his original sentence. But he sees the error as affecting him today by rendering him ineligible for discretionary sentence relief under 18 U.S.C. § 3582(c)(2). Relief is available under § 3582(c)(2) "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o)." If there has been such a reduction in the Guidelines range, "the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2).

By his own account, Mangine's path to a sentence reduction under § 3582 involves two steps: a court must first relieve him of the career offender designation and then, in separate proceedings, afford sentencing relief. But even if he prevails at step one, he may well fail at step two. See 18 U.S.C. § 3582(c)(2)

(specifying that "the court *may* reduce the term of imprisonment" if the Guidelines range has been subsequently lowered) (emphasis added); see also *United States v. Hall*, 600 F.3d 872, 875 (7th Cir. 2010) ("The district court has substantial discretion in adjudicating sentence-reduction motions under § 3582(c)(2).").

Being excluded from this two-step path to relief—dependent as it is on predictions about the exercise of judicial discretion—is not a miscarriage of justice. Mangine is challenging his sentence as unlawful not in the sense that "it must be nullified, but only that, were he correct in calling it a miscarriage of justice, it would have to be reconsidered." *Hawkins*, 706 F.3d at 825. Much as we recognized in *Hawkins* that "[i]f we ordered resentencing, the judge could reimpose the identical sentence," *id*., here, the sentencing court could determine that the § 3553(a) factors militated against § 3582(c)(2) relief.

In the end, we see Mangine's two-step path to sentencing relief as too indirect to call the district court's denial of his § 2241 petition or his present circumstances a miscarriage of justice. To put the observation in statutory terms, Mangine is not claiming that the imposed 360-month sentence for his crimes is unlawful. So he is not "test[ing] the legality of his detention," 28 U.S.C. § 2255(e), and did not suffer a miscarriage of justice through his misclassification as a career offender.

The Sixth Circuit's decision in *Hill v. Masters*, 836 F.3d 591 (6th Cir. 2016), which Mangine directs our attention to, is not to the contrary. In *Hill*, the Sixth Circuit concluded that § 2255(e) savings clause relief

was available for a prisoner who was miscategorized as a career offender. This misclassification had two consequences. *First*, the misclassification changed his sentencing range at a time when the Guidelines were mandatory. See *id.* at 599 ("[H]ad the career-offender enhancement been properly considered … the sentencing court would have been required to impose a sentence within a lesser range."). *Second*, this misclassification also "wrongly render[ed]" the defendant "ineligible" for § 3582(c)(2) relief. *Id.*

It was the combination of these two consequences of the wrongful designation, the Sixth Circuit emphasized, that comprised the miscarriage of justice. See *id.* *Hill* never indicates that ineligibility for discretionary sentencing relief by itself would have been enough to allow for § 2241 relief.

Mangine's situation is different. Yes, the Supreme Court's decision in *Mathis* shows that he should not have been classified as a career offender. But that misclassification did not result in his Guidelines range being miscalculated at the time of his sentencing. Had that happened, Mangine would have suffered a miscarriage of justice under our case law. See *Narvaez*, 674 F.3d at 627. But ineligibility for a discretionary § 3582(c)(2) sentence reduction alone is insufficient to invoke the protections of the savings clause.

For these reasons, we AFFIRM.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

ROBERT ANGELO MANGINE,	)	
No. 08244-029,	)	
Petitioner,	)	**Case No. 18-cv-1030-DRH**
vs.	)	
WILLIAM TRUE,	)	
Respondent.	)	

MEMORANDUM AND ORDER

HERNDON, District Judge:

Petitioner Robert Angelo Mangine filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (Doc. 1), claiming that his sentence was improperly enhanced under the career-offender provisions of the United States Sentencing Guidelines (USSG), based on a prior Iowa second-degree burglary conviction. He relies on *Mathis v. United States*, 136 S. Ct. 2243 (2016). Now before the Court is Respondent's Motion to Dismiss. (Doc. 15). Petitioner responded to the motion at Doc. 18.

Relevant Facts and Procedural History

After a jury trial, Mangine was convicted in the Northern District of Iowa of possession of a firearm as a felon (Count 2), two counts of drug distribution (Counts 4 and 5), and carrying a firearm in relation to a drug trafficking offense (Count 3). In September

2001, he was sentenced to a total of 420 months imprisonment. The sentence consists of concurrent sentences on the drug and felon in possession counts totaling 360 months (Counts 2, 4, & 5), followed by a consecutive 60-month sentence on the possession of a firearm in furtherance of a drug trafficking offense (Count 3). *United States v. Mangine*, Case No. 00-cr-2005-LRR, Doc. 153 (N.D. Iowa, September 18, 2001).

At sentencing, the court observed that the conspiracy to distribute conviction (Count 4) had a sentencing range of ten years up to life. (Doc. 14-1, p. 1, in *Mangine v. United States*, Case No. 15-cv-189-DRH-CJP).[1] Count 3 carried a mandatory consecutive five-year sentence. The court found that Mangine's prior convictions (Florida burglary and Iowa burglary) qualified him to be sentenced as a career offender, for an offense level of 37 and criminal history category of VI, yielding a range of 360 months to life. *Id*. at p. 4; (see also Doc. 16-1, pp. 3–8, 14, in Case No. 15-cv-189-DRH-CJP (sealed PSI Report ¶¶ 55–83 and 93–94)); USSG § 4B1.1. Mangine's sentence became final before the Sentencing Guidelines were held to be only advisory in *U.S. v. Booker*, 543 U.S. 220 (2005).

Mangine filed a direct appeal, but did not raise a challenge in that proceeding regarding the application of § 4B1.1, or any other sentencing issue. The Eighth Circuit Court of Appeals affirmed the convictions.

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[1] *Mangine v. United States*, Case No. 15-cv-189-DRH-CJP (S.D. Ill.) is an earlier habeas action brought in this Court under § 2241. In that case, the Government filed a portion of the sentencing hearing transcript (Doc. 14-1) and a lengthy excerpt from Mangine's Presentence Investigation Report (Doc. 16-1), which is a sealed document in this Court's docket.

United States v. Mangine, 302 F.3d 819 (8th Cir. 2002). Mangine did not file a petition for certiorari.

In 2014, Mangine filed a motion pursuant to 28 U.S.C. § 2255, arguing that in light of *Descamps v. United States*, 570 U.S. 254 (2013), his Florida burglary conviction was improperly categorized as a crime of violence for purposes of the § 4B1.1 enhancement. *Mangine v. United States*, Case No. C14-2025-LRR (N.D. Iowa). The § 2255 motion was dismissed as untimely. Notably, in the order denying the § 2255 motion, the sentencing court observed that:

> [R]egardless of whether the court found the movant to be a career offender under USSG § 4B1.1, the movant still faced a sentencing guidelines range of 360 months to life. Stated differently, the application of the other guideline provisions resulted in a total offense level of 39 and a criminal history of V, which results in a sentencing guidelines range of 360 months to life. And, the court arrived [at] a total sentence of 420 months imprisonment because the movant's conviction under 18 U.S.C. § 924(c)(1)(A) required the court to impose a consecutive sentence of 60 months imprisonment to the sentence of 360 months imprisonment imposed on count 4.

(Doc. 2, p. 2, n.1, in Case No. C14-2025-LRR (N.D. Iowa June 17, 2014)).

In February 2015, Mangine filed a § 2241 petition in this Court, again challenging the use of his Florida burglary conviction as a predicate offense to enhance his sentence as a career offender. *Mangine v. United*

States, Case No. 15-cv-189-DRH-CHP. This Court dismissed the petition, finding that *Descamps* did not announce a new rule of statutory interpretation, but instead reaffirmed the analysis set forth in *Taylor v. United States*, 495 U.S. 575 (1990). As such, the arguments that the Florida burglary statute under which Mangine was convicted was broader than generic burglary, and that the sentencing court erred in its application of the "modified categorical approach," were available for him to have raised in a timely-filed § 2255 motion. (Doc. 19 in Case No. 15-cv-189-DRH-CHP).

In 2016, Mangine sought authorization to file a second/successive § 2255 motion from the Eighth Circuit Court of Appeals; his request was denied on October 23, 2017. (Doc. 13 in Case No. C14-2025-LRR (N.D. Iowa)).

Mangine filed the instant Petition on April 30, 2018.

Grounds for Habeas Relief

Mangine argues that his Iowa second-degree burglary conviction does not qualify as a predicate "violent felony" under the career-offender enhancement section of the USSG, in light of the retroactive application of *Mathis v. United States*, 136 S. Ct. 2243, 2251 (2016). *Mathis* held that Iowa's second-degree burglary statute was broader than "generic burglary," so Mathis' conviction under the Iowa statute could not be used as a predicate offense for an enhanced sentence under the Armed Career Criminal Act ("ACCA").

Mangine asserts that the Iowa burglary was still considered a "crime of violence" in the Eighth Circuit during the time he could have filed a timely collateral attack. (Doc. 1, p. 11). He contends that without the career-offender enhancement, his sentencing range would have been 324–405 months, rather than 360-to-life. Because he was sentenced pre-*Booker* under the mandatory application of the Guidelines, Mangine claims that he is entitled to be re-sentenced in light of the lower, now advisory, Guideline range. (Doc. 1, pp. 11–14).

Motion to Dismiss

Respondent argues that the Petition fails to bring Mangine's claim within the savings clause of 28 U.S.C. § 2255(e), because he cannot establish that his sentence exceeded the term of incarceration permitted by law, thus no miscarriage of justice occurred. (Doc. 15, pp. 4–10). Respondent further contends that Mangine's argument that Amendment 782 to the USSG allows this Court to reduce his offense level from 39 to 37 cannot be brought in a § 2241 petition, but must be presented to the trial court via a motion for sentence reduction under § 3582. (Doc. 15, pp. 10–12).

Applicable Legal Standards

Generally, petitions for writ of habeas corpus under 28 U.S.C. § 2241 may not be used to raise claims of legal error in conviction or sentencing, but are limited to challenges regarding the execution of a sentence. *See Valona v. United States*, 138 F.3d 693, 694 (7th Cir. 1998).

Aside from the direct appeal process, a prisoner who has been convicted in federal court is generally limited to challenging his conviction and sentence by bringing a motion pursuant to 28 U.S.C. § 2255 in the court which sentenced him. A § 2255 motion is ordinarily the "exclusive means for a federal prisoner to attack his conviction." *Kramer v. Olson*, 347 F.3d 214, 217 (7th Cir. 2003). And, a prisoner is generally limited to only *one* challenge of his conviction and sentence under § 2255. A prisoner may not file a "second or successive" § 2255 motion unless a panel of the appropriate court of appeals certifies that such motion contains either 1) newly discovered evidence "sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense," or 2) "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2255(h).

However, it is possible, under very limited circumstances, for a prisoner to challenge his federal conviction or sentence under § 2241. 28 U.S.C. § 2255(e) contains a "savings clause" which authorizes a federal prisoner to file a § 2241 petition where the remedy under § 2255 is "inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e). *See United States v. Prevatte*, 300 F.3d 792, 798–99 (7th Cir. 2002). The Seventh Circuit construed the savings clause in *In re Davenport*, 147 F.3d 605, 611 (7th Cir. 1998): "A procedure for postconviction relief can be fairly termed inadequate when it is so configured as to deny a convicted defendant *any* opportunity for judicial rectification of so fundamental

a defect in his conviction as having been imprisoned for a nonexistent offense."

The Seventh Circuit has explained that, in order to fit within the savings clause following *Davenport*, a petitioner must meet three conditions. First, he must show that he relies on a new statutory interpretation case rather than a constitutional case. Secondly, he must show that he relies on a decision that he could not have invoked in his first § 2255 motion *and* that case must apply retroactively. Lastly, he must demonstrate that there has been a "fundamental defect" in his conviction or sentence that is grave enough to be deemed a miscarriage of justice. *Brown v. Caraway*, 719 F.3d 583, 586 (7th Cir. 2013). *See also Brown v. Rios*, 696 F3d 638, 640 (7th Cir. 2012).

Analysis

Respondent does not dispute that *Mathis* is a statutory-interpretation case, retroactively applicable on collateral review, and assumes for the purposes of his motion to dismiss that Mangine could not have invoked *Mathis* in his first § 2255 motion. (Doc. 15, p. 6). Rather, Respondent argues that Mangine cannot meet the third *Davenport* factor — a showing that a fundamental defect in his sentence was grave enough to amount to a miscarriage of justice.

The record in Mangine's case reveals that his sentence was not improperly lengthened as a result of the career-offender calculation of his sentencing range under USSG § 41.1.

In preparing the PSI Report, the probation officer grouped Counts 4 and 5 (the drug distribution convictions) together. She calculated Mangine's base offense level under USSG § 2D1.1 and § 2D1.2(a)(1) as

35 based on the drug quantity and the fact that distribution occurred near a school, then added 4 points pursuant to USSG § 3B1.1(a) for his role as leader/organizer, for an adjusted offense level of 39. (Doc. 16-1, pp. 3–5, in Case No. 15-cv-189-DRH-CJP (sealed PSI Report ¶¶ 55–61)). This level of 39 exceeded the offense level of 28 for Count 2 (felon in possession of firearms). (Doc. 16-1, pp. 5–6, in Case No. 15-cv-189-DRH-CJP (sealed PSI Report ¶¶ 62–76)).

The report then calculated Mangine's career-offender level under USSG § 4B1.1. (Doc. 16-1, pp. 6–7, in Case No. 15-cv-189-DRH-CJP (sealed PSI Report ¶¶ 77–80)). Starting with the instant controlled substance convictions (Counts 4 and 5), the report noted that Count 4 had a maximum penalty of life imprisonment, while the maximum for Count 5 was 20 years. (Doc. 16-1, p. 7, in Case No. 15-cv-189-DRH-CJP (sealed PSI Report ¶ 78)). Pursuant to the table at § 4B1.1, the life imprisonment offense directed an offense level of 37 for career-offender purposes. However, since the non-career-offender offense level for these same counts (4 & 5) under USSG § 2D1 and § 3B1.1(a) had already been calculated at 39, that higher level "also becomes his offense level as a career offender pursuant to the instructions in U.S.S.G. § 4B1.1." *Id*. Therefore, Mangine's offense level as a career offender was raised from 37 to 39, by virtue of the calculation of a 39 offense level under the drug offense section of the USSG, which did not take into consideration Mangine's prior convictions. Respondent is correct in observing that Mangine's offense level of 39 was driven by USSG Chapter 2,

rather than by the career offender provision at § 4B1.1. (Doc. 15, p. 6).

Turning to the criminal history calculation, the report placed Mangine in Criminal History Category V based on his prior arrest record. (Doc. 16-1, p. 14, in Case No. 15-cv-189-DRH-CJP (sealed PSI Report ¶ 93)). However, under USSG § 4B1.1, his status as a career offender required him to be placed in Criminal History Category VI. (Doc. 16-1, p. 14, in Case No. 15-cv-189-DRH-CJP (sealed PSI Report ¶ 94)). The sentencing table (USSG Ch. 5 Pt. A) yielded a guideline range of 360-life for offense level 39, for both Criminal History Category V and Category VI.[2] In other words, Mangine faced the same 360-life sentencing range, whether or not he was categorized as a career offender. The sentencing court recognized this fact in its comment appended to the order denying Mangine's § 2255 motion: "[R]egardless of whether the court found the movant to be a career offender under USSG §4B1.1, the movant still faced a sentencing guidelines range of 360 months to life." (Doc. 2, p. 2, n.1, in *Mangine v. United States*, Case No. C14-2025-LRR (N.D. Iowa).

Because Mangine was subject to a sentence ranging from 360 months to life, without regard to any error that might have occurred in categorizing him as a career offender under USSG § 4B1.1, he cannot demonstrate that his sentence was the result of a wrongly-applied career-offender enhancement. Nor

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[2] Further, the same 360-life range would be applicable if, as the sentencing court noted in the transcript, Mangine's offense level had been 37 with a Criminal History Category of VI. USSG Ch. 5 Pt. A; (Doc. 14-1, p. 4, in Case No. 15-cv-189-DRH-CJP).

can he show that his sentence "exceed[ed] that [which is] permitted by law," or that the sentence "constitutes a miscarriage of justice." *See Narvaez v. United States*, 674 F.3d 621, 623 (7th Cir. 2011). His total sentence of 420 months (consisting of a bottom-of-the-range 360 months for Count 4, plus the mandatory-consecutive 60-month sentence for Count 3) was well within the Guideline range of 360 months to life.

Mangine is not entitled to relief under the umbrella of § 2241, because he fails to meet the third condition to bring his case within the savings clause of § 2255(e). There was no "fundamental defect" in his sentence, and no miscarriage of justice occurred. *See Brown v. Caraway*, 719 F.3d 583, 586 (7th Cir. 2013); *In re Davenport*, 147 F.3d 605, 611 (7th Cir. 1998).

Having reached this conclusion, it is not necessary to discuss Mangine's arguments regarding the factors to be applied if he were to be resentenced, or the possible application of any amendments to the Guidelines. (Doc. 1, pp. 12–15; Doc. 18, pp. 2–3, 7–9; see also Doc. 15, pp. 10–12).

Disposition

For the foregoing reasons, Respondent's Motion to Dismiss (Doc. 15) is **GRANTED**.

Mangine's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (Doc. 1) is **DENIED**. This action is **DISMISSED WITH PREJUDICE**.

The Clerk of Court shall enter judgment in favor of Respondent.

If Petitioner wishes to appeal the dismissal of this action, his notice of appeal must be filed with this Court within 60 days of the entry of judgment. FED.

R. APP. P. 4(a)(1(A). A motion for leave to appeal *in forma pauperis* ("IFP") must set forth the issues Petitioner plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Petitioner does choose to appeal and is allowed to proceed IFP, he will be liable for a portion of the $505.00 appellate filing fee (the amount to be determined based on his prison trust fund account records for the past six months) irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725–26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858–59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 60-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended. Other motions, including a Rule 60 motion for relief from a final judgment, do not toll the deadline for an appeal.

It is not necessary for Petitioner to obtain a certificate of appealability from this disposition of his § 2241 petition. *Walker v. O'Brien*, 216 F.3d 626, 638 (7th Cir. 2000).

IT IS SO ORDERED.

David R Herndon

Judge Herndon
2018.10.27
07:36:04 -05'00'

United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

ROBERT ANGELO MANGINE, No. 08244-029, Petitioner, vs. WILLIAM TRUE, Respondent.	)))))))	**Case No. 18-cv-1030-DRH**

MEMORANDUM AND ORDER

HERNDON, District Judge:

This matter is before the Court on Petitioner Mangine's Motion to Vacate Judgment (Doc. 21), filed on November 15, 2018. He challenges this Court's October 29, 2018, order granting Respondent's motion to dismiss the action (Doc. 19).

Applicable Legal Standards

Petitioner invokes both Federal Rule of Civil Procedure 59 and Rule 60(b) as the basis for relief. (Doc. 21, p. 1). Different standards and timetables govern Rule 59(e) and Rule 60(b) motions. Rule 59(e) permits a court to amend a judgment only if the movant demonstrates a manifest error of law or fact or presents newly discovered evidence that was not previously available. *See*, *e.g.*, *Sigsworth v. City of Aurora*, 487 F.3d 506, 511–12 (7th Cir. 2007); *Harrington v. City of Chicago*, 433 F.3d 542 (7th Cir.

2006) (citing *Bordelon v. Chicago Sch. Reform Bd. of Trs.*, 233 F.3d 524, 529 (7th Cir. 2000)). A Rule 59(e) motion must be filed within 28 days of the challenged order; this strict time limit cannot be extended. *See* FED. R. CIV. P. 6(b)(2); 59(e).

Rule 60(b) permits a court to relieve a party from an order or judgment based on such grounds as mistake, surprise or excusable neglect by the movant; fraud or misconduct by the opposing party; a judgment that is void or has been discharged; or newly discovered evidence that could not have been discovered within the 28-day deadline for filing a Rule 59(b) motion. However, the reasons offered by a movant for setting aside a judgment under Rule 60(b) must be something that could not have been employed to obtain a reversal by direct appeal. *See*, *e.g.*, *Bell v. Eastman Kodak Co.*, 214 F.3d 798, 801 (7th Cir. 2000); *Parke-Chapley Constr. Co. v. Cherrington*, 865 F.2d 907, 915 (7th Cir. 1989) ("an appeal or motion for new trial, rather than a FRCP 60(b) motion, is the proper avenue to redress mistakes of law committed by the trial judge, as distinguished from clerical mistakes caused by inadvertence"); *Swam v. U.S.*, 327 F.2d 431, 433 (7th Cir.), *cert. denied*, 379 U.S. 852 (1964) (a belief that the Court was mistaken as a matter of law in dismissing the original petition does "not constitute the kind of mistake or inadvertence that comes within the ambit of rule 60(b)."). A motion under Rule 60(b)(1) asserting mistake, inadvertence, surprise or excusable neglect may be filed within one year after entry of judgment. FED. R. CIV. P. 60(c)(1).

Discussion

In Petitioner's case, his motion was filed within 28 days of the entry of judgment, thus Rule 59(e) applies. As grounds for vacating the judgment, Petitioner asserts that "it was error for the district court to find no 'miscarriage of justice' by speculating that Petitioner would receive the same sentence as a pre-*Booker* career offender *contra* authority in this and other Circuits." (Doc. 21, p. 4). This characterization of the Court's order completely misses the mark.

This Court did not "speculate" that Petitioner, if he were resentenced today without the career-offender enhancement, would receive the same sentence he got in 2001. Instead, the Court examined the original calculations under the sentencing guidelines that were in force at the time of Petitioner's conviction, which demonstrated that even if the career-offender-enhanced guidelines (pursuant to USSG § 4B1.1) were ignored, Petitioner faced the identical sentencing range (360 months to life) based solely on his drug distribution convictions (Chapter 2 of the USSG). (Doc. 19, pp. 7–9). In fact, as Petitioner acknowledges in his motion, his total offense level of 39 was based on the non-career-offender calculation. (Doc. 21, p. 5; Doc. 19, p. 7). The mandatory-consecutive 60 months for Petitioner's firearm offense applied, regardless of the trial court's decision on the sentence to be imposed on the drug convictions.

Petitioner falsely claims in a footnote that "Today, *as the Court acknowledged*, without the career offender enhancement, his sentencing range would be '324–405 months.'" (Doc. 21, p. 7, n.**, quoting Doc. 19, p. 4, Page ID #93) (emphasis added). The Court

did *not* "acknowledge" that a range of 324–405 months would have been applicable, either today or at the time Petitioner was originally sentenced. Instead, the Court was summarizing *Petitioner's* assertions set forth in the original Petition. The Court's statement was, "He [Petitioner] contends that without the career-offender enhancement, his sentencing range would have been 324–405 months, rather than 360-life." (Doc. 19, p. 4). As was obvious in the Court's reasoning set forth in the order, the Court never accepted Petitioner's argument on this point. Petitioner is warned to refrain from mischaracterizing the Court's statements in the future, lest he incur sanctions.

Because Petitioner's guideline sentencing range was calculated at 360 months to life, without regard to the career-offender provisions, and because Petitioner was sentenced to the minimum under that range (360 months, plus the additional mandatory-consecutive 60), his Petition failed to demonstrate any miscarriage of justice in his sentencing. (Doc. 19, pp. 8–9). *Mathis v. United States*, 136 S. Ct. 2243 (2016), does not provide Petitioner with any grounds for habeas corpus relief, and he is not entitled to have his sentence vacated in this § 2241 proceeding. That is why the Court did not further discuss Petitioner's arguments on how he might be resentenced, or whether later amendments to the sentencing guidelines might apply in a resentencing proceeding. (*See* Doc. 21, pp. 5–6).

Petitioner's arguments and cited authorities do not reveal any error of law or fact in this Court's denial of his Petition for habeas relief. Therefore, he fails to set forth any grounds under Rule 59(e) to vacate the

judgment. Nor has he stated any grounds for relief within the scope of Rule 60(b). The motion to vacate judgment shall accordingly be denied.

Request to Proceed *In Forma Pauperis* on Appeal

Petitioner requests that if this Court denies his motion, he should be granted "a certified 'good faith' appeal, under *in forma pauperis* status." (Doc. 21, p. 1). This request is premature. Petitioner has not yet filed his Notice of Appeal in this matter, which is entirely proper since the pendency of the instant motion suspended his deadline for filing the Notice. The denial of the instant motion restarts the time frame in which the Notice of Appeal must be filed, as set forth below. Further, Petitioner must submit a proper motion if he wishes to proceed *in forma pauperis* ("IFP") on appeal. If he files a motion for leave to appeal IFP, that motion must set forth the issues Petitioner plans to present on appeal, as well as demonstrate his indigency.

Disposition

Upon review of the record, the Court remains persuaded that its ruling granting Respondent's motion to dismiss the Petition (Doc. 19) was correct. Therefore, the Motion to Vacate Judgment (Doc. 21) is **DENIED**.

If Petitioner wishes to appeal the dismissal of this action, his notice of appeal must be filed with this court within 60 days of the date of this order. FED. R. APP. P. 4(a)(4). A motion for leave to appeal *in forma pauperis* ("IFP") must set forth the issues Petitioner plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Petitioner does choose to appeal and is

allowed to proceed IFP, he will be liable for a portion of the $505.00 appellate filing fee (the amount to be determined based on his prison trust fund account records for the past six months) irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725–26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858–59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

It is not necessary for Petitioner to obtain a certificate of appealability in an appeal from this Petition brought under § 2241. *Walker v. O'Brien*, 216 F.3d 626, 638 (7th Cir. 2000).

IT IS SO ORDERED.

APPENDIX D

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

September 7, 2022

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 18-3639

ROBERT A. MANGINE, *Petitioner-Appellant* *v.*	Appeal from the United States District Court for the Southern District of Illinois. No. 3:18-cv-01030
SHANNON D. WITHERS, *Respondent-Appellee.*	Nancy J. Rosenstengel, *Chief Judge.*

ORDER

Petitioner-appellant filed a petition for rehearing and rehearing en banc on August 22, 2022. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing and rehearing en banc is therefore **DENIED**.

APPENDIX E

28 U.S.C. § 2255
Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a

new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ROBERT ANGELO MANGINE, Defendant.	No. CR00-2005-LRR **ORDER REGARDING MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2)**

This matter comes before the court on its own motion under 18 U.S.C. § 3582(c)(2).[1]

The United States Sentencing Commission recently revised the United States Sentencing Guidelines ("USSG") applicable to drug trafficking offenses by changing how the base offense levels in the drug

[1] In light of the record, the court concludes that it need not appoint counsel or conduct a hearing. *See United States v. Harris*, 568 F.3d 666, 669 (8th Cir. 2009) (concluding that there is no right to assistance of counsel when pursuing relief under 18 U.S.C. § 3582(c) and finding that a judge need not hold a hearing on a motion pursuant to 18 U.S.C. § 3582(c)); *see also United States v. Burrell*, 622 F.3d 961, 966 (8th Cir. 2010) (clarifying that "[a]ll that is required is enough explanation of the court's reasoning to allow for meaningful appellate review"); Fed. R. Crim. P. 43(b)(4) (stating that a defendant's presence is not required in a proceeding that involves the reduction of a sentence under 18 U.S.C. § 3582(c)).

quantity tables incorporate the statutory mandatory minimum penalties for such offenses. Specifically, Amendment 782 (subject to subsection (e)(1)) generally reduces by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in USSG §2D1.1 and made parallel changes to USSG §2D1.11. Because Amendment 782 (subject to subsection (e)(1)) alters the threshold amounts in the drug quantity tables in USSG §2D1.1 and USSG §2D1.11, many, but not all, drug quantities will have a base offense level that is two levels lower than before Amendment 782 (subject to subsection (e)(1)).

The court is statutorily precluded from applying a federal sentencing guideline amendment retroactively unless the United States Sentencing Commission designates an amendment for retroactive application. In relevant part, 18 U.S.C. § 3582 provides:

> The court may not modify a term of imprisonment once it has been imposed except that . . . in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. [§] 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C. §] 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2); *see also Dillon v. United States*, 560 U.S. 817, 826 (2010) ("Section 3582(c)(2)'s text, together with its narrow scope, shows that Congress intended to authorize only a limited adjustment to an otherwise final sentence and not a plenary resentencing proceeding."); *United States v. Auman*, 8 F.3d 1268, 1271 (8th Cir. 1993) ("Section 3582(c)(2) is a provision that permits a district court to reduce a term of imprisonment if the sentencing range upon which the term was based is subsequently lowered by the Sentencing Commission.").

The United States Sentencing Commission promulgated USSG §1.B1.10 to implement 28 U.S.C. § 994(u) and to provide guidance to a court when considering a motion under 18 U.S.C. § 3582(c)(2). In relevant part, USSG §1B1.10 states:

> In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (d) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.

USSG §1B1.10(a)(1); *see also* USSG §1B1.10, comment. (n.1) ("Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (d) that lowers the applicable guideline range . . . ."). In addition to specifying which federal sentencing guidelines may be

retroactively applied, USSG §1B1.10 guides the court as to the amount by which a sentence may be reduced under 18 U.S.C. § 3582(c)(2). *See* USSG §1B1.10(b)(1).

On July 18, 2014, the United States Sentencing Commission unanimously voted to apply Amendment 782 (subject to subsection (e)(1)) retroactively to most drug trafficking offenses, and it set November 1, 2014 as the date that Amendment 782 (subject to subsection (e)(1)) would go into effect. Stated differently, Amendment 782 (subject to subsection (e)(1)) is included within subsection (d) of USSG §1B1.10. Consequently, under 18 U.S.C. § 3582(c)(2) and USSG §1B1.10, the court may rely on Amendment 782 (subject to subsection (e)(1)) to reduce a defendant's sentence. But, even if Amendment 782 (subject to subsection (e)(1)) is applicable, a special limiting instruction applies: "The court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later." USSG §1B1.10(e)(1); *see also* Amendment 788 (amending USSG §1B1.10).

Here, the court is unable to rely on Amendment 782 (subject to subsection (e)(1)) to reduce the defendant's sentence under 18 U.S.C. § 3582(c)(2) and USSG §1B1.10. *See generally United States v. Curry*, 584 F.3d 1102, 1104 (8th Cir. 2009) (discussing *United States v. Wyatt*, 115 F.3d 606, 608–09 (8th Cir. 1997)) (explaining requirements under USSG §1B1.10(b)). Based on a total adjusted offense level of 39 and a criminal history category of VI, the court previously determined the defendant's guideline range to be 360 months imprisonment to life. Amendment 782 (subject to subsection (e)(1)) does not have the effect

of lowering the defendant's guideline range. The defendant still faces a guideline range of 360 months imprisonment to life based on a total adjusted offense level of 37 and a criminal history category of VI. Because the applicable guideline range remains the same, the defendant is not entitled to a reduction of his sentence. *See* USSG §1B1.10(a)(2)(B) ("A reduction . . . is not authorized under 18 U.S.C. § 3582(c)(2) if . . . an amendment listed in subsection (c) does not have the effect of lowering the defendant's applicable guideline range."); USSG §1B1.10, comment. (n.1) (making clear that a reduction is not authorized under 18 U.S.C. § 3582(c)(2) if an amendment in subsection (c) is applicable to the defendant but the amendment does not have the effect of lowering the defendant's applicable guideline range); *see also United States v. Roa-Medina*, 607 F.3d 255, 260–61 (1st Cir. 2010) (holding that a sentence reduction under 18 U.S.C. § 3582(c)(2) was not available because the amendment does not have the effect of lowering the defendant's applicable guideline range); *United States v. Spells*, 322 F. App'x 171, 173 (3d Cir. 2009) (rejecting the argument that a decrease in the base offense level gave the district court authority to reduce a sentence when there was no change in the applicable sentencing range); *United States v. Lindsey*, 556 F.3d 238, 242–46 (4th Cir. 2009) (concluding that the defendant could not rely on 18 U.S.C. § 3582(c)(2) because the amendment does not have the effect of lowering the applicable guideline range); *United States v. Caraballo*, 552 F.3d 6, 10–12 (1st Cir. 2008) (holding that a defendant must establish that an amended guideline has the effect of lowering the sentencing range actually used at his or

her sentencing in order to engage the gears of 18 U.S.C. § 3582(c)(2)); *United States v. Wanton*, 525 F.3d 621, 622 (8th Cir. 2008) (summarily affirming district court's denial of relief because "[the] guideline range would not be lowered, and [the] original sentence is unaffected by the amendments"); *United States v. McFadden*, 523 F.3d 839, 840–41 (8th Cir. 2008) (concluding that, unless the applicable sentencing range changes, a reduction in the base offense level does not allow for a sentence reduction); *United States v. Gonzalez-Balderas*, 105 F.3d 981, 984 (5th Cir. 1997) (finding that, although the amendment did lower the defendant's offense level, the district court did not err when it summarily denied the defendant's motion under 18 U.S.C. § 3582(c)(2) because the amended guideline range remained the same).

In light of the foregoing, the court concludes that a reduction under 18 U.S.C. § 3582(c)(2) and USSG §1B1.10 is not justified. Accordingly, the court's own motion under 18 U.S.C. § 3582(c)(2) is denied. The clerk's office is directed to send a copy of this order to the defendant, the office of the Federal Public Defender, the office of the United States Attorney and the office of United States Probation.

IT IS SO ORDERED.

DATED this 2nd day of July, 2015.

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA