

Answers to Complaints

5:14-cv-00396-WTH-PRL Moody
v. Warden, FCC Coleman - Low

HABEAS

U.S. District Court

Middle District of Florida

Notice of Electronic Filing

The following transaction was entered by Downing, Jeffrey on 12/10/2014 at 2:04 PM EST and filed on 12/10/2014

Case Name: Moody v. Warden, FCC Coleman - Low
Case Number: 5:14-cv-00396-WTH-PRL
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**RESPONSE to [1] Petition for writ of habeas corpus by Warden, FCC Coleman - Low.
(Downing, Jeffrey)**

5:14-cv-00396-WTH-PRL Notice has been electronically mailed to:

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5:14-cv-00396-WTH-PRL Notice has been delivered by other means to:

Mickey Lee Moody
09427-002
COLEMAN LOW
FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 1031
COLEMAN, FL 33521

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dd82ec1104bc61eef49ff0f48eac993e4e563a9dd92d917541ff16f30c1dc0c]]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

MICKEY LEE MOODY,

Petitioner,

v.

Case No. 5:14-cv-396-Oc-10PRL

WARDEN, FCC COLEMAN – LOW,

Respondent.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to this Court's July 11, 2014 Order, Doc. 2, the Warden responds to Mickey Lee Moody's petition for habeas corpus relief, Doc. 1. For the reasons set forth below, the Warden agrees that Moody, a federal inmate at FCC Coleman-Low, is entitled to be resentenced.

On September 8, 2005, Moody was charged in a one-count indictment in the Middle District of Alabama with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Moody pled guilty and on September 7, 2006, was sentenced to 15 years' imprisonment after the district court determined that he was an Armed Career Criminal under 18 U.S.C. 924(e). The district court's determination was based upon three predicates: (1) burglary of a dwelling (Alabama 1981) (PSR ¶ 32)¹; (2) burglary third-degree (Alabama 1982) (PSR ¶ 33); and (3) conspiracy to violate the Controlled Substance Act and smuggling

¹ A copy of Moody's Presentence Investigation Report will be filed under seal.

marijuana into the United States (USDC Alabama 1994) (PSR ¶ 39). At sentencing, on direct appeal and in his § 2255 petition, Moody challenged the use of the Alabama third-degree burglary conviction as a “violent felony” ACCA predicate.

In *Bryant v. Warden*, 738 F.3d 1253 (11th Cir. 2013) the Eleventh Circuit Court of Appeals set out five requirements that a petitioner must satisfy in order to seek relief with a § 2241 petition under the savings clause. Specifically, the petitioner must establish that: (1) throughout the petitioner's sentencing, direct appeal, and first § 2255 proceeding, Eleventh Circuit precedent had specifically and squarely foreclosed the claim raised in the § 2241 petition; (2) after the petitioner's first § 2255 proceeding, the Supreme Court overturned that binding precedent; (3) that Supreme Court decision applies retroactively on collateral review; (4) as a result of that Supreme Court decision applying retroactively, the petitioner's current sentence exceeds the statutory maximum; and (5) the savings clause of § 2255(e) reaches his claim. *Id.* at 1374.

Applying *Descamps v. United States*, — U.S. —, 133 S.Ct. 2276 (2013), the Eleventh Circuit in *United States v Howard*, 742 F.3d 1334, 1349 (11th Cir. 2014) overturned binding precedent in this circuit, to hold that Alabama's third-degree burglary convictions do not qualify as predicate burglary convictions for purposes of application of the Armed Career Criminal Act. Thus, Moody is entitled to relief under the savings clause.

Consistent with the remedy applied in *Bryant*, this Court should grant Moody's section 2241 relief and enter an order stating that Moody's "sentence for his § 922(g) conviction is hereby reduced to the 10-year statutory maximum penalty in § 924(a)." See *Bryant*, 738 F.3d at 1291. Accordingly, the Warden respectfully requests that this Court grant the petition, vacate Moody's sentence, and impose a sentence of 10 years' imprisonment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that on the same day a copy of the document and notice of electronic filing was furnished by United States mail to the following non-CM/ECF participant:

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