

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIAN K. BILLUPS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

15-cv-688-bbc

06-cr-213-bbc

Petitioner Brian K. Billups has filed a motion for post conviction relief, alleging that his motion is timely under 28 U.S.C. § 2255(f)(3), which allows convicted persons to move for post conviction relief within one year of the Supreme Court’s recognition of a new right that it has made retroactively applicable to cases on collateral review. Petitioner was found to be a career offender under U.S.S.G. § 1B1.1 on the basis of a previous controlled substance offense and a previous conviction for false imprisonment, which was considered at the time to be a crime of violence under § 1B1.2 (a) because it had “as an element the use, attempted use, or threatened use of physical force against the person of another.”

Petitioner believes that under the recent opinion of the Supreme Court in Johnson v. United States, 135 S. Ct. 2551 (2015), it was error for this court to classify his false imprisonment conviction as a crime of violence and that he should be resentenced. Because petitioner has previously moved unsuccessfully for post conviction relief, he cannot proceed

in this court on his new claim unless he obtains certification for his new motion by a panel of the Court of Appeals for the Seventh Circuit. 28 U.S.C. § 2255(h). He can do this by petitioning the court of appeals, 219 S. Dearborn St., Chicago, IL 60604. This court has no authority to hear his claim unless and until the court of appeals certifies his claim.

ORDER

IT IS ORDERED that petitioner Brian K. Billups's motion for post conviction relief, dkt. #48, is DENIED.

Entered this 29th day of October, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge