

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BENNIE C. WILLIAMS,

Petitioner,

v.

CASE NO. 05-3256-RDR

EDWARD J. GALLEGOS,

Respondent.

O R D E R

This matter is before the court on a petition for habeas corpus filed pursuant to 28 U.S.C. 2241.

Petitioner was convicted in the United States District Court for the Northern District of Florida in 1995. He is incarcerated in the United States Penitentiary, Leavenworth, Kansas, and he alleges that his sentence is unconstitutional in light of recent decisions of the United States Supreme Court.

In his response to the court's order to show cause entered on July 26, 2005, petitioner contends that his sentence is unlawful and has subjected him to a miscarriage of justice in violation of his constitutional rights.

The court has considered petitioner's argument and concludes the petition must be dismissed. It is settled in the Tenth Circuit that the cases upon which the petitioner relies have not

been applied retroactively to cases on collateral review, such as this action for habeas corpus relief. See United States v. Price, 400 F.3d 844, 849 (10th Cir. 2005)(holding Blakely v. Washington, 542 U.S. 296 (2004), does not apply retroactively to convictions that were final when that case was decided on June 24, 2004) and United States v. Bellamy, 411 F.3d 1182 (10th Cir. 2005)(holding that United States v. Booker, 125 S. Ct. 738 (2005) does not apply retroactively to convictions that were final at the time it was decided on January 12, 2005). Therefore, petitioner's 1995 conviction is not subject to review in habeas corpus under the decisions he cites, and this matter must be dismissed.

IT IS THEREFORE ORDERED this matter is dismissed and all relief is denied.

IT IS FURTHER ORDERED petitioner's motion for an order to show cause (Doc. 4) is denied.

A copy of this order shall be transmitted to the petitioner.

IT IS SO ORDERED.

DATED: This 22nd day of August, 2005, at Topeka, Kansas.

S/ Richard D. Rogers
RICHARD D. ROGERS
United States District Judge