

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

ANTHONY WILBOURN,

Petitioner,

v.

JAMES CROSS,

Respondent.

No. 11-cv-01127-DRH-SCW

MEMORANDUM AND ORDER

HERNDON, Chief Judge:

Pending now before the Court is respondent's unopposed motion to withdraw response and grant petition for habeas corpus (Doc. 26). Also before the Court is petitioner's petition for habeas corpus (Doc. 1), and petitioner's motion to file supplemental authority (Doc. 22). In his petition, Wilbourn challenged his career offender enhancement and argued he was entitled to resentencing in the district of conviction. Respondent now concedes that pursuant to the Seventh Circuit's recent decision in *Brown v. Caroway*, Wilbourn is entitled to relief under Section 2241. --F.3d--, 2013 WL 1920931 (7th Cir. May 10, 2013).

In *Brown*, the Court extended its reasoning in *Narvaez v. United States*, 674 F.3D 621 (7th Cir. 2011), holding that the erroneous application of the mandatory career offender guideline is a fundamental sentencing defect that can be remedied under § 2241. *Id.* at * 3. Furthermore, the *Brown* Court held that the misapplication of the sentencing guidelines, where the defendant was

sentenced in the pre-*Booker* era¹, represented a fundamental defect that constituted a miscarriage of justice corrigible in a § 2241 proceeding. *Id.*

In light of the Seventh Circuit's reasoning in *Brown v. Caraway*, this Court holds that Wilbourn is entitled to relief under §2241. Petitioner is entitled to be resentenced by the court of conviction in Case No. 01-cr-0064-RLM without being labeled a career offender under the guidelines.

IT IS THEREFORE ORDERED that respondent's unopposed motion to withdraw response and grant petitioner's petition for writ of habeas corpus (Doc. 26) is **GRANTED**, petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2241 (Doc. 1) is hereby **GRANTED**, and petitioner's sentence in Case No. 01-cr-0064-RLM is hereby **VACATED**.

IT IS FURTHER ORDERED that a copy of certain materials from the file in this case shall be forwarded with a copy of the judgment to the Clerk of the United States District Court for the Northern District of Indiana for filing in Case No. 01-cr-0064-RLM.

IT IS SO ORDERED.

Signed this 26th day of July, 2013.

 Digitally signed by
David R. Herndon
Date: 2013.07.26
14:05:32 -05'00'



**Chief Judge
United States District Court**

¹ *United States v. Booker*, 543 U.S. 220 (2005).