

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5035

September Term, 2018

1:17-cv-02367-UNA

Filed On: October 25, 2018

Benjamin P. Foreman,

Appellant

v.

Federal Bureau of Prisons,

Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Henderson, Millett, and Wilkins, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia, and on appellant's brief and response to the court's order to show cause. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order entered December 28, 2017, dismissing appellant's complaint, be affirmed. Appellant seeks either amendment of his presentence report to remove a Michigan state conviction that served as the basis for his sentencing as a career offender, or a declaration that he is not a career offender and the criminal history point assessed for the conviction no longer applies. Because success on these claims would necessarily imply the invalidity of his sentence, the claims are barred by Heck v. Humphrey, 512 U.S. 477, 486 (1994). See also Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005) (stating Heck applies regardless of the type of relief sought, if success would necessarily demonstrate the invalidity of confinement or its duration). Moreover, amendment of the complaint to add claims against individual defendants under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), would be futile, because the Heck bar would still apply. See Williams v. Hill, 74 F.3d 1339, 1340 (D.C. Cir. 1996) (applying Heck to Bivens action).

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam