

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 10-12022  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEB 15, 2012 JOHN LEY CLERK
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D.C. Docket No. 2:09-cv-00114-LGW-JEG

JAMES CHAPLIN,

Petitioner-Appellant,

versus

DEBORAH A. HICKEY, Warden,  
ATTORNEY GENERAL ERIC HOLDER, JR.,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Southern District of Georgia

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(February 15, 2012)

Before TJOFLAT, CARNES and BLACK, Circuit Judges.

PER CURIAM:

James Chaplin, a counseled federal prisoner, appeals the district court's order dismissing his petition for writ of habeas corpus, under 28 U.S.C. § 2241, for failure to state a claim. His claim is that he was wrongly sentenced under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1), because of an escape conviction that *Begay v. United States*, 128 S. Ct. 1581 (2008), and *Chambers v. United States*, 129 S. Ct. 687 (2009), make clear is not a "violent felony" within the meaning of 18 U.S.C. § 924(e)(2)(B), and that as a result of the error he was sentenced to a term of imprisonment beyond the statutory maximum applicable to his crime. Our decision in *Gilbert v. United States*, 640 F.3d 1293 (11th Cir. 2010), did not decide that issue. *See id.* at 1295, 1306–07, 1312, 1316, 1319 n.20, 1323. The Government concedes that Chaplin's allegations, if true, do state a claim.

We exercise our discretion to accept in this case the Government's concession that Chaplin may present his claim in a § 2241 petition, and we remand to the district court for further proceedings on the merits of Chaplin's habeas claim to determine if the allegations of his petition are true.

**VACATED and REMANDED for further proceedings.**