

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12618-EE

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LAUREANO CHIRINO RIVERA,

Defendant - Appellant.

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

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Laureano Chirino Rivera has failed to pay the filing and docketing fees to the district court within the time fixed by the rules, effective June 29, 2018.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Elora Jackson/aw, EE, Deputy Clerk

FOR THE COURT - BY DIRECTION

Appendix (C)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LAUREANO CHIRINO RIVERA

Petitioner,

VS.

MAUREEN CRUZ,
Warden, FCI Seagoville

Respondent.

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Civil Action No. 3:12-CV-2954-P

ORDER OF TRANSFER

Petitioner Laureano Chirino Rivera, appearing *pro se*, has filed an application for writ of habeas corpus pursuant to 28 U.S.C. § 2241. For the reasons stated herein, the application is construed as a motion to correct, vacate, or set aside sentence and transferred to the Southern District of Florida for consideration.

I.

In 2008, petitioner was convicted in Florida federal court of conspiracy to interfere with commerce by threats or violence and conspiracy to carry a firearm during a crime of violence, in violation of 18 U.S.C. §§ 1951(a) & 924(o). Punishment was assessed at a total of 262 months confinement followed by a three-year term of supervised release. *United States v. Rivera*, No.1:07-CR-20825-MGC-6 (S.D. Fla. Jul. 28, 2008). His conviction and sentence were affirmed on direct appeal. *United States v. Rivera*, 348 F. App'x 461 (11th Cir. 2009). Petitioner also filed a motion to correct, vacate, or set aside his sentence pursuant to 28 U.S.C. § 2255. The motion was denied. *Rivera v. United States*, 2011 WL 1134982 (S.D. Fla. Feb. 25, 2011), *rec. adopted*, 2011 WL 1118668 (S.D. Fla. Mar. 28, 2011). A petition for habeas relief pursuant to 28 U.S.C. § 2241

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was construed as a successive § 2255 motion and dismissed. *See Rivera v. United States*, No. 1:12-cv-21139-FAM (S.D. Fla. Apr. 18, 2012). In the instant case, petitioner alleges that his sentence is unconstitutional, the trial court committed multiple errors, he received ineffective assistance of counsel, and that his guilty plea was involuntary.

II.

As a threshold matter, the court must determine whether this claim is properly raised in a section 2241 habeas petition. While an application for writ of habeas corpus under 28 U.S.C. § 2241 is the proper method for challenging the manner in which a sentence is being executed, *see United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992), a collateral attack on a federal criminal conviction or sentence is generally limited to a motion to correct, vacate or set aside sentence under 28 U.S.C. § 2255. *See Tolliver v. Dobre*, 211 F.3d 876, 877 (5th Cir. 2000). Thus, a section 2241 habeas petition is properly construed as a section 2255 motion if it seeks relief based on errors that occurred at trial or sentencing. *See id.* at 877-78. The only exception to this rule is when the remedy provided under section 2255 is inadequate or ineffective. *See Jeffers v. Chandler*, 253 F.3d 827, 830-31 (5th Cir. 2001). A petitioner must satisfy two factors to show inadequacy. First, the claim must be "based on a retroactively applicable Supreme Court decision which establishes that the petitioner may have been convicted of a nonexistent offense." *Id.* at 830, *quoting Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). Second, the claim must have been "foreclosed by circuit law at the time when the claim should have been raised in the petitioner's trial, appeal, or first § 2255 motion." *Id.*

Because petitioner is challenging the fact and duration of his present confinement, he must bring his claims in a section 2255 motion unless that remedy is inadequate or ineffective. No such showing has been made here. Petitioner does not claim that he was convicted of a non-existent

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offense. Nor are his claims based on a new law made retroactive by Supreme Court precedent. The court therefore treats petitioner's application for writ of habeas corpus as a section 2255 motion.

III.


Having determined that this action must be brought under section 2255, the court now turns to the issue of jurisdiction. A federal prisoner must seek section 2255 relief from the court which sentenced him. 28 U.S.C. § 2255(a); *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000). This filing requirement is jurisdictional. *See Ojo v. I.N.S.*, 106 F.3d 680, 683 (5th Cir. 1997). Because petitioner was convicted and sentenced in the Southern District of Florida, jurisdiction is proper only in that district.

IV.

Accordingly, petitioner's section 2241 motion is construed as a motion to correct, vacate, or set aside sentence and transferred to the Miami Division of the Southern District of Florida.

SO ORDERED.

Signed this 21st day of August 2012.



Jorge A. Solis
United States District Judge

Appendix CD)

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus LAUREANO CHIRINO RIVERA,
Defendant-Appellant.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

348 Fed. Appx. 461; 2009 U.S. App. LEXIS 21796

No. 08-14962 Non-Argument Calendar

October 5, 2009, Decided

October 5, 2009, Filed

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Subsequent History

US Supreme Court certiorari denied by Rivera v. United States, 559 U.S. 952, 130 S. Ct. 1539, 176 L. Ed. 2d 134, 2010 U.S. LEXIS 1495 (2010)Magistrate's recommendation at, Post-conviction proceeding at Rivera v. United States, 2011 U.S. Dist. LEXIS 36920 (S.D. Fla., Feb. 25, 2011)Writ of habeas corpus denied Rivera v. Mosley, 2015 U.S. App. LEXIS 22038 (5th Cir. Miss., Dec. 10, 2015)

Editorial Information: Prior History

Appeal from the United States District Court for the Southern District of Florida. D.C. Docket No. 07-20825-CR-MGC.

Disposition:

AFFIRMED IN PART, DISMISSED IN PART.