

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

JEFFREY EUGENE LEE,

Petitioner,

v.

Case No. 5:15-cv-505-Oc-10PRL

WARDEN, FCC COLEMAN,

Respondent.

ORDER DISMISSING CASE

Petitioner, *pro se*, is a federal prisoner who initiated this case by filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). Respondent requests dismissal of the petition for lack of jurisdiction (Doc. 4) and Petitioner has filed a Reply to the Response. (Doc. 6). For the reasons discussed below, the Petition is due to be dismissed.

Background

Petitioner is a federal inmate currently incarcerated at the Coleman Correctional Complex within this district and division. In 1989, Petitioner was charged in the Tampa Division of this Court with conspiracy to possess with intent to distribute cocaine base in violation of 21 U.S.C. §§ 841(a)(1) (Count One) and distribution of 50 grams or more of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) (Count Fifteen).¹ 8:89-cr-4-17TGW. On March 19, 1992, a jury found Petitioner guilty of both counts. Petitioner was sentenced to life imprisonment. Petitioner appealed and the Eleventh Circuit Court of Appeals affirmed the judgment.

¹The grand jury returned a nineteen count superseding indictment against Petitioner and eight co-defendants.

APPENDIX EXHIBIT "C"

Petitioner filed a motion pursuant to 28 U.S.C. § 2255, which was denied as time barred. In 2003, Petitioner's petition for writ of error coram nobis was construed as a § 2255 motion and was also dismissed as time barred. In 2004, Petitioner filed another petition, which was construed as a motion to vacate and was dismissed. 8:04-cv-02136.

In the instant Petition, Petitioner argues that his "state court guilty plea is constitutionally invalid because Petitioner was not advised of elements of offense, nor was there a factual basis for the guilty plea." (Doc. 1). Petitioner claims that he filed motions to withdraw the plea, but the state court denied the motions. Id. Petitioner contends that his state appeal on the issue was dismissed because it was based on a non-final, non-appealable order. Petitioner claims that he has made numerous requests to the state court to "impose judgment/sentence so that he can appeal the lower court's denial, but for the last 16 years, the lower court has refused to do so." Id.

Petitioner states that he is serving a federal sentence for a nonviolent drug offense and the sentencing court relied upon the guilty plea in the state case to impose the life sentence. Petitioner states that he is "trying to vacate his guilty plea in the lower court so that he can apply to the federal court for re-sentencing." Id. Petitioner argues that he has no other remedy at law to enforce his right to a prompt sentencing in the lower court. Id.

As relief, Petitioner requests that the Court vacate his guilty plea in his state case. Id. Finally, in the Reply to the Response, Petitioner maintains that this Court has jurisdiction to consider this matter because the state court has persistently failed to adjudicate his claim and "he seeks habeas relief only to enforce the State of Florida's affirmative constitutional obligation to decide his claim that he is entitled to withdrawal of his guilty plea, or a prompt sentencing so that he can pursue his direct appeal remedies through the Florida State Appeals Court." (Doc. 6).

Discussion

Petitioner is pursuing his claim under § 2241 because he was unsuccessful with it on appeal, § 2255 and various other post-judgment motions. However, Petitioner is still not entitled to habeas relief under this law. Petitioner cannot utilize § 2241 to vacate a guilty plea with regard to a state offense as requested. A writ of habeas corpus is the means by which a prisoner may challenge the legality of his confinement. The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody. See Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).

The Court is also not persuaded that jurisdiction exists pursuant to § 2241 because the State Court has allegedly failed to decide his claim which it is "affirmatively obligat[ed]" to do. The Court fails to see how the state "refuses to adjudicate a claim properly before it" or how its decision or lack of action confers jurisdiction pursuant to § 2241.

→To the extent that the Petition can be interpreted as challenging the federal life sentence because it was derived from the state offense to which Petitioner pled guilty, collateral attacks on the validity of a federal conviction or sentence must be brought under 28 U.S.C. § 2255. Sawyer v. Holder, 326 F.3d 1363, 1365 (11th Cir. 2003). However, § 2255(e), the "savings clause," permits a federal prisoner to file a petition pursuant to § 2241 if a § 2255 motion "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e). The savings clause imposes a subject matter jurisdictional limit on petitions filed pursuant to § 2241. Williams v. Warden, 713 F.3d 1332, 1338 (11th Cir. 2013).²

²The United States Court of Appeals for the Eleventh Circuit has set forth five requirements that a petitioner must satisfy in order to demonstrate that his prior § 2255 motion was inadequate or ineffective such that he can proceed with a § 2241 petition under the savings clause. Bryant v. Warden, 738 F.3d 1253 (11th Cir. 2013). Specifically, the petitioner must establish that: (1) throughout the petitioner's sentencing, direct appeal,

Here, Petitioner's attempts at pursuing relief under § 2255 failed because he did not comply with the statute of limitations. Section 2255 is not inadequate or ineffective merely because the claim was previously raised in a § 2255 motion and denied or because a remedy under the section is time-barred. Light v. McCoun, 2011 U.S. Dist. LEXIS 109403, *4-5 (M.D. Fla. 2011) (citing United States v. Lurie, 207 F.3d 1075, 1077 (8th Cir. 2000)). The existence of § 2255's bar against second or successive motions does not render § 2255 inadequate or ineffective to test the legality of the detention. Wofford v. Scott, 177 F.3d 1236 (11th Cir. 1999).

While it does not appear to be the basis of Petitioner's claim, to the extent that his claim can be interpreted to include a request to proceed under the savings clause, Petitioner cannot avail because he has not met any of the factors required by Bryant. Any actual innocence claim is also not cognizable in a § 2241 petition. "[A] petitioner may not assert 'actual innocence' and nothing more in a § 2241 petition where § 2255 is not inadequate or ineffective." Fleming v. Warden of FCI Tallahassee, 631 Fed. Appx. 840, 844 (11th Cir. 2015) (affirming finding that actual innocence claims "were not cognizable in the § 2241 context because they were more appropriate in a § 2255 motion"); see also Bruce v. Warden, 2016 WL 4151194, __ Fed. Appx. __ (11th Cir. 2016) ("An actual-innocence claim cannot, by itself, open the gateway to relief under the savings clause.") (citing Zelaya v. Sec'y Fla. Dep't of Corr., 798 F.3d 1360, 1372 (11th Cir. 2015)). Petitioner has not otherwise established that he is entitled to relief under the savings clause.

and first § 2255 proceeding, Circuit precedent had specifically and squarely foreclosed the claim raised in the § 2241 petition; (2) after the petitioner's first § 2255 proceeding, the Supreme Court overturned that binding precedent; (3) that Supreme Court decision applies retroactively on collateral review; (4) as a result of that Supreme Court decision applying retroactively, the petitioner's current sentence exceeds the statutory maximum; and (5) the savings clause of § 2255(e) reaches his claim. Id. at 1274 (synthesizing the savings clauses tests discussed in Wofford v. Scott, 177 F.3d 1236 (11th Cir. 1999) and Williams, 713 F.3d at 1343).

Finally, Respondent contends that Petitioner's request for the Court to review the state guilty plea is improper and the proper respondent is the State of Florida pursuant to 28 U.S.C. § 2254. (Doc. 4). To the contrary, Petitioner argues that pursuing his remedy under § 2254 is inadequate because "it only covers State court actions where final judgment has been entered." (Doc. 1). Petitioner emphasizes in the Reply that he does not seek to litigate whether his guilty plea to the state charges was "constitutionally sound in this proceeding." (Doc. 6).

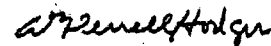
As such, it would seem that Petitioner would object to construing the Petition as filed pursuant to § 2254. The Court is also not inclined to interpret the Petition in this manner because the Tampa Division of this Court has already dismissed his § 2254 petition as an unauthorized second or successive petition. 8:15-cv-879-17MAP.³ A review of PACER does not reflect that Petitioner has sought leave to file a successive petition with the Court of Appeals.

Conclusion

➤ Based on the foregoing, the Petition is **DISMISSED**. The Clerk is directed to enter judgment accordingly, terminate any pending motions, and close the file.

IT IS SO ORDERED.

DONE AND ORDERED at Ocala, Florida, this 29th day of November 2016.



UNITED STATES DISTRICT JUDGE

³In that case, Petitioner again argued that his guilty plea was involuntary, the state court refused to impose a sentence and adjudicate his motion, and he cannot proceed with an appeal.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17466
Non-Argument Calendar

D.C. Docket No. 5:15-cv-00505-WTH-PRL

JEFFREY EUGENE LEE,

Petitioner-Appellant,

versus

WARDEN, FCC COLEMAN - USP II,

Respondent-Appellee.

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

(March 9, 2018)

Before ED CARNES, Chief Judge, JULIE CARNES, and HULL, Circuit Judges.

PER CURIAM:

Jeffrey Lee, a federal prisoner proceeding pro se, filed a petition under 28 U.S.C. § 2241 requesting the district court to vacate his state court guilty plea. The district court dismissed his petition for lack of jurisdiction. This is Lee's appeal.

I.

A jury convicted Lee of conspiracy to possess with intent to distribute crack cocaine and distribution of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. Because he had two prior felony drug convictions, the Controlled Substances Act (CSA) mandated that the district court sentence Lee to life imprisonment without eligibility for parole. Id. § 841(b)(1)(A).

On direct appeal, Lee contended that one of the predicate convictions for his federal sentence was invalid. That conviction was the result of a state law drug offense to which Lee pleaded guilty. Lee did not appear for sentencing and the state court did not enter judgment of conviction. Lee contended that the state court's failure to enter judgment disqualified his guilty plea as a conviction under the CSA. We affirmed his federal conviction without discussion and affirmed his federal sentence on the basis that "a plea of guilty is a conviction within the meaning of the CSA." United States v. Lee, No. 92-2760, at 4 (11th Cir. June 21, 1994).

In his § 2241 petition, Lee claimed that his state court guilty plea is invalid and asked the district court to vacate that plea. But Lee now contends that he

meant to ask the district court to order the state court to impose the sentence for his drug conviction, because only after that is done can he appeal it. He concedes that he has abandoned any argument that the state court guilty plea is invalid. See Appellant's Reply Br. at 1.

II.

Lee contends that the district court had jurisdiction to order the state court to impose a sentence. We review de novo the dismissal of his petition, Howard v. Warden, 776 F.3d 772, 775 (11th Cir. 2015), and we construe liberally filings by pro se litigants, Albra v. Advan, Inc., 490 F.3d 826, 829 (11th Cir. 2007).

Lee argues that the state court's failure to impose his sentence prevents him from appealing and as a result violates due process. In support of that argument, he cites Betterman v. Montana, 578 U.S. ___, 136 S. Ct. 1609 (2016), which he says held that "the failure of a state court to promptly impose sentence violates the Due Process Clause of the 14th Amendment." Appellant's Br. at 4. He also cites Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 93 S. Ct. 1123 (1973), which he says authorized the district court "to issue an order directing the Florida state court to impose [his] sentence immediately." Appellant's Br. at 3.¹

¹ Neither Braden nor Betterman stand for those propositions. The Betterman Court noted that the petitioner "did not preserve a due process challenge" and as a result the Court "confine[d] [its] opinion to his Sixth Amendment challenge." 136 S. Ct. at 1612. And the Braden decision simply held that a defendant who was detained based on a pending indictment may file a § 2241 petition to assert his Sixth Amendment right to a speedy trial. 410 U.S. at 489, 93 S. Ct. at 1126-27.

The district court properly denied Lee's § 2241 petition because he challenges action, or inaction, of the state court, not of the federal court whose judgment put him in custody. See 28 U.S.C. § 2241(c)(3) ("The writ of habeas corpus shall not extend to a prisoner unless . . . he is in custody in violation of the Constitution or laws or treaties of the United States.") (emphasis added). The due process violation that Lee alleges relates only to the state court's failure to sentence him. Section 2241 does not authorize the district court to order the state court to impose Lee's sentence, and absent statutory authority to review the state court's inaction, "a federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties." Moye v. Clerk, DeKalb Cty. Sup. Ct., 474 F.2d 1275, 1276 (5th Cir. 1973).

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17466-AA

JEFFREY EUGENE LEE,

Petitioner - Appellant,

versus

WARDEN, FCC COLEMAN - USP II,

Respondent - Appellee.

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

BEFORE: ED CARNES, Chief Judge, JULIE CARNES, and HULL, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by appellant Jeffrey Eugene Lee is DENIED.

ENTERED FOR THE COURT:


CHIEF JUDGE

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