

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-6328

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jul 18, 2018

DEBORAH S. HUNT, Clerk

MICHAEL LEE MILLIS,)
Petitioner-Appellant,)
v.) ON APPEAL FROM THE UNITED
M.L. KING, Warden,) STATES DISTRICT COURT FOR
Respondent-Appellee.) THE EASTERN DISTRICT OF
) KENTUCKY
)
)

O R D E R

Before: GUY, COOK, and DONALD, Circuit Judges.

Michael Lee Millis, a federal prisoner proceeding pro se, appeals the district court's judgment denying his petition for a writ of habeas corpus under 28 U.S.C. § 2241. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).*

In 1994, a jury found Millis guilty of aiding and abetting armed bank robbery, in violation of 18 U.S.C. §§ 2 and 2113(a) and (d); being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1); Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a); and two counts of aiding and abetting the use or carrying of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 2 and 924(c). The district court determined that, because he qualified as a career offender, Millis's total offense level was 34 and his criminal history category was VI, resulting in a guidelines range of 262 to 327 months for the robbery and felon-in-possession convictions. Millis was also subject to statutory minimum terms of 60

months for one § 924(c) conviction and 240 months for the other § 924(c) conviction. Based on Millis's age and the fact that his career offender designation overstated the seriousness of his criminal background, the district court departed downward to a total offense level of 26 and criminal history category of V, resulting in a guidelines range of 110 to 137 months for the robbery and felon-in-possession convictions. The court sentenced Millis to concurrent 110-month terms for those convictions, a consecutive 60-month term for one § 924(c) conviction, and a consecutive 240-month term for the other § 924(c) conviction. The district court noted that, if it had discretion, it would depart downward further and sentence Millis to approximately 25 years in prison. We affirmed the district court's judgment. *United States v. Millis*, No. 95-5474, 1996 WL 341181 (6th Cir. June 19, 1996). In 1997, Millis unsuccessfully sought relief under 28 U.S.C. § 2255. *Millis v. United States*, No. 97-6494, 1998 WL 898837 (6th Cir. Dec. 16, 1998).

In 2017, Millis filed a § 2241 petition in the United States District Court for the Central District of Illinois, arguing that he should be resentenced in light of *Dean v. United States*, 137 S. Ct. 1170 (2017). In *Dean*, the Supreme Court held that, when sentencing a defendant who is subject to a mandatory minimum prison term under 18 U.S.C. § 924(c) for using or possessing a firearm in connection with a violent or drug-trafficking crime, a district court may consider that term when determining the appropriate sentence for the predicate offense. *Id.* at 1174, 1178. Millis subsequently moved under 28 U.S.C. § 1404(a) to transfer his case to the District Court for the Eastern District of Kentucky, and, with the government's consent, the District Court for the Central District of Illinois granted the motion and transferred the case. The District Court for the Eastern District of Kentucky denied Millis's petition, concluding that he could not obtain relief under § 2241 because *Dean* is not retroactive to cases on collateral review, and, in any case, it would have no effect on Millis's sentence.

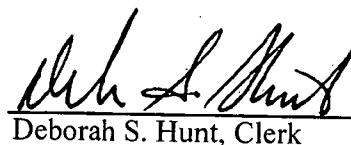
On appeal, Millis argues that the district court erred by denying his petition because it states a viable basis for relief. We review de novo a district court's denial of a § 2241 petition. *Hill v. Masters*, 836 F.3d 591, 594 (6th Cir. 2016). A challenge to the validity of a federal sentence is generally brought under § 2255, while a challenge to the manner or execution of the sentence is appropriate under § 2241. *Id.* A federal prisoner may challenge the validity of his

sentence under § 2241, however, if he satisfies the savings clause in 28 U.S.C. § 2255(e) by establishing that his remedy under § 2255 is inadequate or ineffective. *Id.* In *Hill*, this court held that a petitioner can use a § 2241 petition to challenge his sentence if he can show “(1) a case of statutory interpretation, (2) that is retroactive and could not have been invoked in the initial § 2255 motion, and (3) that the misapplied sentence presents an error sufficiently grave to be deemed a miscarriage of justice or a fundamental defect.” *Id.* at 595.¹

We need not decide in this case what specific showing is required by *Hill* because, under either formulation discussed in *Hill*, Millis has failed to show that his remedy under § 2255 is inadequate or ineffective. Millis cannot make the showing required by the “narrow subset” caveat because he has not identified a new Supreme Court case that calls into question whether one of his prior convictions is a predicate offense for a career offender enhancement. And Millis cannot make the initial showing discussed in *Hill* because, even if *Dean* applies retroactively, Millis has not shown that his sentence constituted a miscarriage of justice or fundamental defect, given that he received the lowest possible sentence under the mandatory guidelines, and he has not identified any way that the decision in *Dean* would provide for a downward departure.

Accordingly, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

¹ At the end of the *Hill* decision, the panel stressed that its decision addresses “only a narrow subset” of savings-clause petitions filed under § 2241, involving petitioners sentenced under the pre-*United States v. Booker*, 543 U.S. 220 (2005), mandatory guidelines regime who argued that “a subsequent, retroactive change in statutory interpretation by the Supreme Court reveals that a previous conviction is not a predicate offense for a career-offender enhancement.” *Hill*, 836 F.3d at 599-600. It is not clear whether this language was intended to add an additional element to the substantive showing that a petitioner must make to challenge a sentencing error in a § 2241 petition under the savings clause, *see id.* at 595, or merely a statement of the specific circumstances before the court in *Hill*. It should be noted that another panel, albeit in an unpublished order, has applied *Hill* to allow a § 2241 challenge to a sentencing enhancement imposed under the Armed Career Criminal Act, without regard to *Hill*’s “narrow subset” caveat. *See Sutton v. Quintana*, No. 16-6534 (6th Cir. July 12, 2017).

No. 17-6328

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Oct 09, 2018

DEBORAH S. HUNT, Clerk

MICHAEL LEE MILLIS,

)

Petitioner-Appellant,

)

v.

)

O R D E R

STEPHEN KALLIS,

)

Respondent-Appellee.

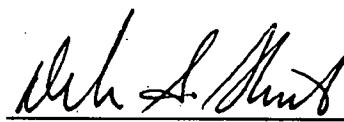
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Before: GUY, COOK, and DONALD, Circuit Judges.

Michael Lee Millis has petitioned for rehearing of this court's order entered on July 18, 2018, affirming the district court's judgment denying his petition for a writ of habeas corpus under 28 U.S.C. § 2241.

Upon careful consideration, we conclude that no point of law or fact was overlooked or misapprehended. *See* Fed. R. App. P. 40(a)(2). Accordingly, we **DENY** the petition for rehearing.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

MICHAEL LEE MILLIS,

)

Petitioner,

)

v.

)

Case No. 17-1321

UNKNOWN PERSONS,

)

Respondent.

)

ORDER

The matter presently before the Court is a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

Pursuant to 28 U.S.C. §§ 2243 and 2241, the Court's preliminary review indicates that the Petition could have merit and therefore orders Respondent to show cause, if any it may have, within twenty-one (21) days after service of this Order, why said writ should not be granted.

IT IS ORDERED that the Clerk serve a copy of the Petition upon Respondent as directed by Petitioner. All costs of service shall be advanced by the United States.

After Respondent has filed its response, Petitioner is ordered to file any traverse or reply to Respondent's response within twenty-one (21) days after service of said response on him. The Court admonishes Petitioner that a failure to reply to the response pursuant to 28 U.S.C. § 2248 will cause the Court to take the allegations in the response to the Writ of Habeas Corpus as true except to the extent that the judge finds from the evidence that they are not true.

IT IS FURTHER ORDERED that Petitioner shall serve upon Respondent or, if appearance has been entered by counsel, upon its attorney, a copy of every further pleading or other document submitted for consideration by the Court. Petitioner shall include with the original paper to be filed

with the Clerk of the Court a certificate stating the date that a true and correct copy of any document was mailed to Respondent or its counsel. Any paper received by this Court which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

IT IS FURTHER ORDERED that Petitioner immediately notify the Court of any change in his mailing address. Failure to notify the Court of any change in mailing address will result in dismissal of this lawsuit, with prejudice.

Entered this 12th day of July, 2017.

s/ James E. Shadid
JAMES E. SHADID
CHIEF UNITED STATES DISTRICT JUDGE