

**APPENDIX**

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**Opinion, United States Court of Appeals for the Third  
Circuit. ( July 31, 2018 )**

**RICHARD A. WILFORD, Appellant v. WARDEN MCKEAN FCI; ATTORNEY GENERAL, OFFICIAL  
CAPACITY; THE UNITED STATES OF AMERICA, GOVERNMENT CAPACITY  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
733 Fed. Appx. 27; 2018 U.S. App. LEXIS 21199**

**No. 18-1834**

**July 19, 2018, Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or Summary  
Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6**

**July 31, 2018, Opinion Filed**

**Notice:**

**NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING PROCEDURE  
RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND THE  
COURT. PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1  
GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.**

**Editorial Information: Prior History**

On Appeal from the United States District Court for the Western District of Pennsylvania. (D.C. Civil  
Action No. 1-16-cv-00273). District Judge: Honorable Arthur J. Schwab. Wilford v. Recktenwald, 2018  
U.S. Dist. LEXIS 130302 (W.D. Pa., Apr. 2, 2018)

**Counsel**

Richard A Wilford, Plaintiff - Appellant, Pro se, Bradford, PA.

For United States of America, Defendant - Appellee: Rebecca

R. Haywood, Esq., Laura S. Irwin, Esq., Office of United States Attorney, Pittsburgh, PA.

For Warden Mckean Fci, Defendant - Appellee: Michael A.

Comber, Esq., Rebecca R. Haywood, Esq., Michael L. Ivory, Esq., Office of United States  
Attorney, Pittsburgh, PA.

For Attorney General, Defendant - Appellee: Rebecca R.

Haywood, Esq., Office of United States Attorney, Pittsburgh, PA.

**Judges:** Before: JORDAN, SHWARTZ and KRAUSE, Circuit Judges.

**Opinion**

{733 Fed. Appx. 27} OPINION\*

PER CURIAM

**Richard Wilford** appeals the District Court's order dismissing his habeas petition filed pursuant to 28  
U.S.C. § 2241. For the reasons below, we will grant the Government's motion for summary  
affirmance.

The procedural history of this case and the details of Wilford's claims are well known to the parties,  
set forth in the Magistrate Judge's Report and Recommendation, and need not be discussed at  
length. Briefly, in August 2014, Wilford was sentenced to 340 months in prison by the United States  
District Court for the District of Maryland after being convicted by a jury of conspiracy to distribute  
cocaine. In November 2016, while his direct appeal was pending before the United States Court of  
Appeals for the Fourth Circuit, Wilford filed his § 2241 petition in the United States District Court for

CIRHOT

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the Western District of Pennsylvania. The District Court dismissed the petition, and Wilford filed a timely notice of appeal. The Government has filed a motion to summarily affirm the District Court's order.

We have jurisdiction under 28 U.S.C. § 1291 and exercise plenary review over the District Court's legal conclusions. Cradle v. U.S. ex rel. Miner, 290 F.3d 536, 538 (3d Cir. 2002) (per curiam). Under the explicit terms of 28 U.S.C. § 2255, a § 2241 petition cannot be entertained by a court unless a § 2255 motion would be "inadequate or ineffective." Id. In Cradle, we explained that

A § 2255 motion is inadequate or ineffective only where the petitioner demonstrates that some limitation of scope or procedure would prevent a § 2255 proceeding {733 Fed. Appx. 28} from affording him a full hearing and adjudication of his wrongful detention claim. It is the inefficacy of the remedy, not the personal inability to use it, that is determinative. Section 2255 is not inadequate or ineffective merely because the sentencing court does not grant relief, the one-year statute of limitations has expired, or the petitioner is unable to meet the stringent gatekeeping requirements of the amended § 2255. Id. at 538-39 (citations omitted).

In his § 2241 petition, Wilford argues that his judgment and commitment order contains a false recital of the facts of his conviction because he was never formally arraigned and never entered a plea of not guilty. While a federal prisoner may use a § 2241 petition to challenge the execution of his sentence, Wilford's arguments that he is actually challenging the execution of his sentence and not his conviction are unconvincing. See Cardona v. Bledsoe, 681 F.3d 533, 535 (3d Cir. 2012) (to challenge execution of sentence under § 2241, petitioner must allege Appellee's conduct was "inconsistent with a command or recommendation in the sentencing judgment").

And Wilford has not shown that a § 2255 motion would be inadequate or ineffective to raise a challenge to his judgment and conviction. Although the Court of Appeals rejected the same argument on direct appeal, see United States v. Wilford, 689 F. App'x 727, 729 (4th Cir. May 9, 2017) (per curiam), cert. denied, 138 S. Ct. 2707, 2018 U.S. LEXIS 4065, 2018 WL 3148305 (June 28, 2018) (No. 17-6892), we reiterate that "[s]ection 2255 is not inadequate or ineffective merely because the sentencing court does not grant relief," see Cradle, 290 F.3d at 539.

Summary action is appropriate if there is no substantial question presented in the appeal. See 3d Cir. LAR 27.4. For the reasons set forth above, we will grant the Government's motion and summarily affirm the District Court's April 2, 2018 order. See 3d Cir. I.O.P. 10.6.

#### Footnotes

\*

This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

**Order, United States Court of Appeals for the Third Circuit  
( July 31, 2018)**

**DLD-272**

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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No. 18-1834

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**RICHARD A. WILFORD,  
Appellant**

v.

**WARDEN MCKEAN FCI; ATTORNEY GENERAL,  
OFFICIAL CAPACITY; THE UNITED STATES OF  
AMERICA, GOVERNMENT CAPACITY**

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**On Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. Civil Action No. 1-16-cv-00273)  
District Judge: Honorable Arthur J. Schwab**

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**Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or  
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6  
July 19, 2018**

**Before: JORDAN, SHWARTZ and KRAUSE, Circuit Judges**

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**JUDGMENT**

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This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on July 19, 2018. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered April 2, 2018, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit  
Clerk

DATED: July 31, 2018

The seal of the United States Court of Appeals for the Third Circuit is circular. It features an eagle with wings spread, perched on a shield. The shield is supported by two figures. The eagle's chest is covered by a banner. The seal is surrounded by a ring of stars. The text "UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT" is written around the perimeter of the seal.  
Certified ~~as a true copy~~ and issued in lieu  
of a formal mandate on October 12, 2018

Teste: *Patricia S. Dodszuweit*  
Clerk, U.S. Court of Appeals for the Third Circuit

**Denial of panel rehearing and rehearing en-banc  
(October 4, 2018)**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 18-1834

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RICHARD A. WILFORD,  
Appellant

v.

WARDEN MCKEAN FCI; ATTORNEY GENERAL,  
OFFICIAL CAPACITY; THE UNITED STATES OF  
AMERICA, GOVERNMENT CAPACITY

---

On Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. No. 1-16-cv-00273)  
District Judge: Arthur J. Schwab

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SUR PETITION FOR REHEARING

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Present: SMITH, *Chief Judge*, MCKEE, AMBRO, CHAGARES, JORDAN,  
HARDIMAN, GREENAWAY, Jr., VANASKIE, SHWARTZ, KRAUSE, *and*  
RESTREPO, *Circuit Judges*.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Cheryl Ann Krause  
Circuit Judge

Dated: October 4, 2018  
Tmm/cc: Richard A. Wilford  
Laura S. Irwin, Esq.

**Opinion / Magistrate Judge's Report & Recommendation - U.S. District  
Court for the Western District of Pennsylvania (March 14, 2018)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD A. WILFORD,	)	
Petitioner,	)	Civil Action No. 16-273 Erie
	)	
v.	)	Judge Arthur J. Schwab
	)	Magistrate Judge Susan Paradise Baxter
MONICA RECKTENWALD,	)	
Respondent.	)	

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

**I. RECOMMENDATION**

Before the Court is the amended petition for a writ of habeas corpus that federal prisoner Richard A. Wilford filed pursuant to 28 U.S.C. § 2241. (ECF No. 30-1). It is respectfully recommended that the petition be dismissed for lack of jurisdiction.

**II. REPORT**

**A. Background**

A jury convicted Wilford in the United States District Court for the District of Maryland of conspiracy to distribute cocaine in violation of 21 U.S.C. § 846. That court sentenced him to a term of imprisonment of 340 months. On May 9, 2017, the United States Court of Appeals for the Fourth Circuit affirmed Wilford's judgment of conviction. United States v. Wilford, 689 F.App'x 727 (4<sup>th</sup> Cir. 2017). Wilford filed a *pro se* petition for a writ of certiorari with the Supreme Court of the United States in which he presented the following four questions:

I. Whether the warrantless seizure and search of Real-Time cell-phone location information disclosing the location and movements of the cell phone and its possessor continuously for many months is permitted by the Fourth Amendment.

II. Whether a Franks Hearing and the exclusion of Real-Time cell-phone pinging evidence was required based on the actions of federal investigating agents in obtaining court orders.

III. Whether the good-faith exception to the exclusionary rule appl[ies] to the Government's nonconsensual warrantless GPS attachment to private vehicles and use to monitor those vehicles in public and private areas over a prolonged period of time.

IV. Whether Procedural Due-Process is violated thereby rendering the trial, conviction and judgment invalid when the Government arrest[s] an individual based on an indictment for an infamous crime and hold the accused in prison for about 2 years and 3 months without providing an arraignment, bond hearing, nor an opportunity to plead to the charged indictment prior to jury trial.

(Petition for Writ of Cert. at i, Wilford v. United States, S.Ct. Docket No. 17-6892 (Nov. 15, 2017) (available on PACER)). The Supreme Court has granted the government several extensions to file a response to Wilford's petition for a writ of certiorari, and its response is currently due by March 30, 2018. (Docket entry, Wilford v. United States, S.Ct. Docket No. 17-6892 (Feb. 13, 2018) (available on PACER)).

In September 2017, Wilford, who is incarcerated within the territorial boundaries of the Western District of Pennsylvania at FCI McKean, filed with this Court an amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (ECF No. 30-1) and he reiterates his allegations in his reply (ECF No. 36).<sup>1</sup> He contends that the District Court for the District of Maryland's judgment and commitment order is invalid because it "is fatally deficient" and, therefore, the Federal Bureau of Prisons (the "BOP") lacks the authority to detain him. (ECF No. 36, ¶ 13). Specifically, he "maintains that the J&C utilized by respondent is a forged document for all intents and purposes as it recites elements demanded by

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<sup>1</sup> Wilford filed his original petition in December 2016. (ECF No. 4). This case was listed as being one in which the parties voluntarily consented to have a United States Magistrate Judge conduct proceedings, including entry of a final judgment, and I issued a memorandum opinion and order that dismissed the original petition. (ECF Nos. 22, 23). Wilford then contended that he had not consented to have a United States Magistrate Judge enter final judgment in this case and, therefore, I vacated the memorandum opinion and order and the judgment. (ECF No. 29). I also granted Wilford's motion for leave to file an amended § 2241 petition, which he filed on September 15, 2017. (ECF No. 30-1).

Fed.R.Crim.P. 32(k)(1) even though they never occurred; [t]he record clearly shows that the constructive phases which the J&C portrays never existed and this document is clearly forgery, hence, null and void having no legal effect[.]" (Id., ¶ 16).

The Respondent has filed an answer to the amended petition (ECF No. 34), and Wilford filed a reply (ECF No. 36).

#### **B. Discussion**

The Court must dismiss Wilford's petition for lack of jurisdiction. "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]" Cardona v. Bledsoe, 681 F.3d 533, 535 (3d Cir. 2012) (quoting Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)). "Two federal statutes, 28 U.S.C. §§ 2241 & 2255, confer federal jurisdiction over habeas petitions filed by federal inmates." Id. "The 'core' habeas corpus action is a prisoner challenging the authority of the entity detaining him to do so, usually on the ground that his predicate sentence or conviction is improper or invalid." McGee v. Martinez, 627 F.3d 933, 935 (3d Cir. 2010). That type of action is brought in the district court that tried and sentenced the prisoner by way of a motion filed under 28 U.S.C. § 2255. See Bruce v. Warden Lewisburg USP, 868 F.3d 170, 177-78 (3d Cir. 2017) ("a federal prisoner's first (and most often only) route for collateral review of his conviction or sentence is under § 2255.") In contrast, § 2241 "confers habeas jurisdiction to hear the petition of a federal prisoner who is challenging not the validity but the execution of his sentence." McGee, 627 F.3d at 935. A habeas corpus action pursuant to § 2241 must be brought in the custodial court (the federal district court in the district the prisoner is incarcerated). Bruce, 868 F.3d at 178.

Wilford is not challenging the execution of his sentence. In Cardona v. Bledsoe, 681 F.3d 533 (3d Cir. 2012), the United States Court of Appeals for the Third Circuit analyzed what it means for a

federal prisoner to challenge the execution of his sentence, and the allegations that Wilford makes in his amended § 2241 petition do not qualify. It explained:

*In order to challenge the execution of his sentence under § 2241, Cardona would need to allege the BOP's conduct was somehow inconsistent with a command or recommendation in the sentencing judgment. Cardona has failed to do so here. He has not alleged that BOP's conduct was inconsistent with any express command or recommendation in his sentencing judgment. Indeed, at oral argument, Cardona conceded that there was nothing in the judgment forbidding, or even concerning, his placement in the [Special Management Unit]. Cardona's petition simply does not concern how BOP is "carrying out" or "putting into effect" his sentence, as directed in his sentencing judgment. Consequently, Cardona has not challenged the execution of his sentence, such that the District Court would have jurisdiction over his petition under § 2241.*

Cardona, 681 F.3d at 537 (emphasis added).

In this case, Wilford's allegations attack the validity of the judgment issued by District Court for the District of Maryland, not how the BOP is "carrying out" or "putting into effect" that judgment. Therefore, this Court lacks jurisdiction over the amended § 2241 petition and it must be dismissed for that reason.

Finally, there is an unusual circumstance when the court of confinement has jurisdiction to consider the validity of a federal prisoner's judgment of conviction in a § 2241 petition. It is when it "appears that the remedy by [§ 2255 motion] is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e). This provision of § 2255 is commonly referred to as the "savings clause." See, e.g., Bruce, 686 F.3d at 174, 178-79. In its landmark case In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997), the Third Circuit Court of Appeals recognized the one circumstance under which it has found § 2255's remedy to be inadequate or ineffective since AEDPA amended § 2255 in 1996 the include a one-year statute of limitations and the prohibition against the filing of second or successive motions. In Bruce v. Warden Lewisburg USP, 868 F.3d 170 (3d Cir. 2017), a recent decision by the Third Circuit Court of Appeals that applied Dorsainvil, the court set forth the two conditions a federal

prisoner must satisfy to fall within § 2255's savings clause in order to utilize § 2241 to collaterally attack his judgment of conviction in the district of his confinement:

First, a prisoner must assert a "claim of 'actual innocence' on the theory that 'he is being detained for conduct that has subsequently been rendered non-criminal by an intervening Supreme Court decision' and our own precedent construing an intervening Supreme Court decision"—in other words, when there is a change in statutory caselaw that applies retroactively in cases on collateral review. [United States v. Tyler, 732 F.3d 241, 246 (3d Cir. 2013)] (quoting Dorsainvil, 119 F.3d at 252). And second, the prisoner must be "otherwise barred from challenging the legality of the conviction under § 2255." Id. Stated differently, the prisoner has "had no earlier opportunity to challenge his conviction for a crime that an intervening change in substantive law may negate." Dorsainvil, 119 F.3d at 251.

Bruce, 868 F.3 at 180.

The allegations that Wilford makes do not satisfy those requirements. In fact, there is no basis at this time to consider whether this case is an unusual one that falls within § 2255's savings clause. That is because Wilford's judgment of conviction has not become final, as he has a petition for a writ of certiorari pending before the Supreme Court. If he does not get relief in his direct appeal, he has one year from the "date on which the judgment of conviction becomes final" to file his first § 2255 motion.

28 U.S.C. § 2255(f)(1).<sup>2</sup>

### III. CONCLUSION

For the foregoing reasons, it is respectfully recommended that the Court dismiss Wilford's amended petition for a writ of habeas corpus (ECF No. 30-1) for lack of jurisdiction.<sup>3</sup>

<sup>2</sup> The docket for Wilford's criminal case in the District Court for the District of Maryland shows that in August 2017 he filed a motion with it that he entitled "Motion to Dismiss for Lack of Subject-Matter Jurisdiction Pursuant to the Court's Inherent Supervisory Power and Not to Be Construed as 28 U.S.C. § 2255." (ECF No. 507 in United States v. Wilford, No. 1:11-cr-258 (D. Md. Aug. 31, 2017) (available on PACER)). That motion is pending before that court.

<sup>3</sup> 28 U.S.C. § 2253 codified standards governing the issuance of a certificate of appealability for appellate review of a district court's disposition of a habeas petition. Federal prisoner appeals from the denial of a habeas corpus proceeding are not governed by the certificate of appealability requirement. United States v. Cepero, 224 F.3d 256, 264-65 (3d Cir. 2000) (en banc), abrogated on other grounds by Gonzalez v. Thaler, 132 S.Ct. 641 (2012). As such, the Court should make no certificate of appealability determination in this matter.

Pursuant to the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Civil Rules, the parties are allowed fourteen (14) days from the date of this Order to file objections to this Report and Recommendation. Failure to do so will waive the right to appeal.

Brightwell v. Lehman, 637 F.3d 187, 193 n.7 (3d Cir. 2011).

Dated: March 14, 2018

/s/ Susan Paradise Baxter  
SUSAN PARADISE BAXTER  
United States Magistrate Judge

**ORDER, United States District Court for the Western  
District of Pennsylvania (April 2, 2018)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD A. WILFORD,	)	
Petitioner,	)	Civil Action No. 16-273 Erie
	)	
v.	)	Judge Arthur J. Schwab
	)	Magistrate Judge Susan Paradise Baxter
MONICA RECKTENWALD,	)	
Respondent.	)	

**MEMORANDUM ORDER**

This action, filed pursuant to 28 U.S.C. § 2241, was referred to United States Magistrate Judge Susan Paradise Baxter for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Local Rules for Magistrate Judges. On March 14, 2018, the Magistrate Judge issued a Report and Recommendation [ECF No. 38] in which she recommended that the amended petition be dismissed for lack of jurisdiction. Objections were filed by the petitioner on March 30, 2018. [ECF No. 41]. After *de novo* review of the petition and documents in this case, together with the Report and Recommendation and Objections thereto, the following order is entered:

AND NOW, this 2nd day of April, 2018;

IT IS HEREBY ORDERED that the amended petition for a writ of habeas corpus is DISMISSED for lack of jurisdiction. The Report and Recommendation [ECF No. 38] is adopted as the opinion of the Court. The Clerk of Court shall mark this case CLOSED.

s/Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc/ecf: All counsel of record  
cc/via first-class mail: Richard A. Wilford at his address of record