APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18-40953
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
June 10, 2019
Lyle W. Cayce
Clerk

ANTHONY DION COLLINS,

Petitioner–Appellant,

v.

FRANCISCO LARA, WARDEN, FEDERAL CORRECTIONAL COMPLEX-BEAUMONT,

Respondent–Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:17-CV-161

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Anthony Dion Collins, federal prisoner # 30693-048, appeals from the denial of his 28 U.S.C. § 2241 petition. In his petition, he cited to *Mathis v. United States*, 136 S. Ct. 2243 (2016), and *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), to challenge sentencing enhancements based on prior drug

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

convictions. He contends that he satisfied the savings clause of 28 U.S.C. § 2255(e), allowing him to pursue relief under § 2241.

Under the savings clause of § 2255(e), a § 2241 petition that attacks a federal sentence may be considered if the petitioner shows that § 2255 is "inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e). The requirement of showing the inadequacy of § 2255 "is stringent." *Reyes-Requena v. United States*, 243 F.3d 893, 901 (5th Cir. 2001). The savings clause applies only to a claim that is "based on a retroactively applicable Supreme Court decision which establishes that the petitioner may have been convicted of a nonexistent offense" and that was "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.* at 904.

We have consistently held that challenges to a sentencing enhancement do not satisfy the savings clause of § 2255(e). *See In re Bradford*, 660 F.3d 226, 230 (5th Cir. 2011); *Padilla v. United States*, 416 F.3d 424, 426-27 (5th Cir. 2005); *Kinder v. Purdy*, 222 F.3d 209, 213-14 (5th Cir. 2000); *see also, e.g.*, *Penson v. Warden, Fed. Corr. Inst. Three Rivers*, 747 F. App'x 976, 977 (5th Cir. 2019) (rejecting challenge to career offender enhancement based on *Mathis* and *Hinkle* in § 2241 petition). Collins's petition did not satisfy the savings clause.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-40953
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D.C. Docket No. 1:17-CV-161

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ANTHONY DION COLLINS,

Petitioner - Appellant

v.

FRANCISCO LARA, WARDEN, FEDERAL CORRECTIONAL COMPLEX-BEAUMONT,

Respondent - Appellee

Appeal from the United States District Court for the
Eastern District of Texas

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

ANTHONY DION COLLINS,	§	
	§	
Petitioner,	§	
	§	
versus	§	CIVIL ACTION NO. 1:17-CV-161
	§	
WARDEN, FCI BEAUMONT LOW,	§	
	§	
Respondent.	§	

FINAL JUDGMENT

This action came on before the court, Honorable Marcia A. Crone, District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, it is

ORDERED and **ADJUDGED** that this petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 is **DENIED**.

All motions by either party not previously ruled on are **DENIED**.

SIGNED at Beaumont, Texas, this 13th day of June, 2018.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

ANTHONY DION COLLINS,	§	
	§	
Petitioner,	§	
	§	
versus	§	CIVIL ACTION NO. 1:17-CV-161
	§	
WARDEN, FCI BEAUMONT LOW,	§	
	§	
Respondent.	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner, Christopher Helm, an inmate confined at FCI Beaumont Low proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition for writ of habeas corpus be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After a careful review, this court finds the objections lacking in merit. *Descamps*[1] and *Mathis*[2] did not announce a new rule of law made retroactively applicable to cases on collateral

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1 *Descamps v. United States*, 133 S.Ct. 2276 (2013).

2 *Mathis v. United States*, 136 S.Ct. 2243 (2016).

review. *See United States v. Morgan*, 945 F.3d 664 (5th Cir. 2017) (*Descamps* did not announce a new rule of law that was retroactively applicable to cases on collateral review); *In re Lott*, 838 F.3d 522, 523 (5th Cir. 2016) (denying authorization to file a successive § 2255 motion that relied on *Mathis* because *Mathis* did not announce a new rule of constitutional law that was retroactively applicable to cases on collateral review). Furthermore, the Fifth Circuit's decisions in *Hinkle*[3] does not compel a different result as the court applied *Mathis* on direct appeal, not collateral review. Moreover, *Hinkle* was decided by the Fifth Circuit Court of Appeals and not by the Supreme Court.

Petitioner's grounds for review do not meet the test established by the Fifth Circuit in *Reyes-Requena*. 243 F.3d 893, 904 (5th Cir. 2001). His grounds for review are not based on a retroactively applicable Supreme Court decision and do not demonstrate petitioner was convicted of a nonexistent offense. Petitioner's challenge to his sentence is not the type of claim that warrants relief under § 2241 because it challenges the punishment imposed rather than the conviction itself. *Kinder v. Purdy*, 222 F.3d 209, 213-14 (5th Cir. 2000). As a result, petitioner's grounds for review fail to establish § 2255 is insufficient to challenge his detention.

ORDER

Accordingly, the objections of the plaintiff are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is

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[3] *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016).

ADOPTED. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

SIGNED at Beaumont, Texas, this 13th day of June, 2018.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

ANTHONY DION COLLINS	§	
VS.	§	CIVIL ACTION NO. 1:17-CV-161
WARDEN, FCI BEAUMONT LOW	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, Anthony Dion Collins, a federal prisoner currently confined at USP Beaumont Low, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The above-styled action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Factual Background

Petitioner is in custody pursuant to a judgment entered in the United States District Court for the District of Nevada in *United States v. Collins*, CR-95-0216. Petitioner was convicted of possession with intent to distribute a controlled substance, namely cocaine base, pursuant to 21 U.S.C. § 841(a)(1) and was sentenced to term of life imprisonment. Petitioner argues *United States v. Mathis*, 136 S.Ct. 2243 (2016) invalidates petitioner's career offender status as the state convictions used to enhance his sentence no longer qualify as controlled substance offenses within the federal generic definition.

Discussion

Petitioner is not challenging the manner in which his sentence is being executed. Instead, petitioner is attacking his sentence as it was imposed by the trial court. Section 2255 provides the primary means of collaterally attacking a federal conviction and sentence. *Tolliver v. Dobre*, 211 F.3d 876, 877 (5th Cir. 2000). Relief under this section is warranted for errors that occurred at or

prior to sentencing. *Cox v. Warden, Fed. Detention Ctr.*, 911 F.2d 1111, 1113 (5th Cir. 1990). A motion to vacate, set aside or correct sentence must be filed in the district where the person seeking relief was sentenced. *Solsona v. Warden, F.C.I.*, 821 F.2d 1129, 1132 (5th Cir. 1987). As petitioner was not convicted in the Eastern District of Texas, this court would lack jurisdiction to consider a motion to vacate if petitioner's filing was construed as such.

A petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 is not a substitute for a motion to vacate. *Jeffers v. Chandler*, 253 F.3d 827, 830 (5th Cir. 2001), *cert. denied*, 534 U.S. 1001 (2001). A prisoner may use Section 2241 as the vehicle for attacking the conviction only if it appears that the remedy provided by Section 2255 "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255. The burden of coming forward with evidence to show the inadequacy or ineffectiveness of a motion under Section 2255 rests squarely on the petitioner. *Jeffers,* 253 F.3d at 830. A prior unsuccessful Section 2255 motion, or the inability to meet AEDPA's "second or successive" requirement, does not make Section 2255 inadequate or ineffective. *See Tolliver*, 211 F.3d at 878.

The United States Court of Appeals for the Fifth Circuit has set forth the factors that must be satisfied for a petitioner to file a Section 2241 petition in connection with Section 2255's savings clause. *See Reyes-Requena v. United States*, 243 F.3d 893 (5th Cir. 2001). In *Reyes-Requena*, the Fifth Circuit held that "the savings clause of § 2255 applies to a claim (i) that is based on a retroactively applicable Supreme Court decision which establishes that the petitioner may have been convicted of a nonexistent offense and (ii) that was 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.* at 904. In order to satisfy the first prong of the test, the petitioner must show that, based on a retroactively applicable Supreme Court decision, he was convicted for conduct that did not constitute a crime. *Jeffers*, 253 F.3d at 830-31.

Petitioner does not meet the requirements of *Reyes-Requena.* The Supreme Court has not expressly held that *Mathis* applies retroactively to cases on collateral review. The Supreme Court also has not suggested that *Mathis* announced a watershed rule of criminal procedure or that an infringement of the rule would seriously diminish the likelihood of an accurate conviction. Petitioner has failed to make a prima facie showing that *Mathis*, sets forth new rules of constitutional law that have been made retroactive to cases on collateral review. *See Graham v. Collins,* 506 U.S. 461, 478 (1993). In fact, the Supreme Court went to great lengths to explain that its decision was based on its "longstanding principles, and the reasoning that underlies them." *Mathis*, 136 S.Ct. at 2251. The Supreme Court held that "[u]nder our precedents, [the] undisputed disparity [between generic burglary and the Iowa statute] resolves" the case. *Id.* Accordingly, it is evident that *Mathis* does not announce a new substantive rule or apply retroactively on collateral review.

Furthermore, petitioner does not attack his conviction. Rather, he challenges his sentencing enhancement. Thus, petitioner's challenge does not suggest that he was convicted of a nonexistent offense. *Padilla v. United States*, 16 F.3d 424, 427 (5th Cir. 2005); *Reyes-Requena*, 243 F.3d at 904; *Kinder v. Purdy*, 222 F.3d 209, 213-14 (5th Cir. 2000).

Recommendation

The above-styled petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 should be denied.

Objections

Within fourteen (14) days after receipt of the Magistrate Judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the Magistrate Judge. 28 U.S.C. § 636(b)(1)(c).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within fourteen (14) days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by

the district court except on grounds of plain error. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SIGNED this the 25th day of April, 2017.

KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE

Additional material from this filing is available in the Clerk's Office.