

FILED: June 25, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-7539
(5:18-hc-02257-D)

TRAVIS LAVOY JENKINS

Petitioner - Appellant

v.

UNITED STATES OF AMERICA

Respondent - Appellee

O R D E R

The court denies the petitions for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Harris, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

(Appendix-A.A.)

FILED: April 10, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-7539
(5:18-hc-02257-D)

TRAVIS LAVOY JENKINS

Petitioner - Appellant

v.

UNITED STATES OF AMERICA

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

(Appendix B.)

UNPUBLISHED

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

No. 18-7539

TRAVIS LAVOY JENKINS,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Raleigh. James C. Dever III, District Judge. (5:18-hc-02257-D)

Submitted: April 4, 2019

Decided: April 10, 2019

Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Travis Jenkins, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

(Appendix B)

PER CURIAM:

Travis Lavoy Jenkins appeals the district court's orders transferring his 28 U.S.C. § 2241 (2012) petition to the United States District Court for the Southern District of Georgia and denying reconsideration. We have reviewed the record and find no reversible error. Accordingly, although we grant Jenkins leave to proceed in forma pauperis, we affirm for the reasons stated by the district court. *Jenkins v. United States*, No. 5:18-hc-02257-D (E.D.N.C. Nov. 14, 2018 & Dec. 12, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

(Appendix C)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:18-HC-2257-D

TRAVIS LAVOY JENKINS,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

On October 17, 2018, Travis Lavoy Jenkins (“Jenkins” or “petitioner”), a federal inmate proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 [D.E. 1]. Jenkins is incarcerated at the Federal Correctional Institution in Jesup, Georgia, which is located in the Southern District of Georgia. See BOP Inmate Locator, <https://www.bop.gov/inmateloc/> (search by inmate number) (last visited Dec. 12, 2018). On November 14, 2018, the court transferred the petition to the Southern District of Georgia [D.E. 4]. On November 29, 2018, Jenkins filed a “motion to clarify and object to transferring of case” [D.E. 6]. Jenkins seeks to “clarify the transferring of” his case because he “filed a 3582(c)(2) motion, a 2241(d) Habeas Corpus and an amended 2241(d) Habeas Corpus.” *Id.* at 1.

Jenkins’s motion for a sentence reduction under 18 U.S.C. § 3582(c)(2) remains pending in his criminal case. See Motion, United States v. Jenkins, No. 5:13-CR-168-BO-1, [D.E. 100] (E.D.N.C. Sept. 26, 2018). To the extent that Jenkins objects to the transfer of his section 2241 petition, the court DENIES the motion [D.E. 6]. See Rumsfeld v. Padilla, 542 U.S. 426, 441 (2004); Kanai v. McHugh, 638 F.3d 251, 258 (4th Cir. 2011).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:18-HC-2257-D

TRAVIS LAVOY JENKINS,	)	
	)	
Petitioner,	)	
	)	
v.	)	ORDER
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

On October 17, 2018, Travis Lavoy Jenkins (“Jenkins” or “petitioner”), a federal inmate proceeding pro se, petitioned for a writ of habeas corpus under 28 U.S.C. § 2241 [D.E. 1]. Jenkins is incarcerated at the Federal Correctional Institution in Jesup, Georgia, in the Southern District of Georgia. See BOP Inmate Locator, <https://www.bop.gov/inmateloc/> (search by inmate name) (last visited July 16, 2019). On November 14, 2018, the court transferred the petition to the United States District Court for the Southern District of Georgia [D.E. 4]. On November 29, 2018, Jenkins filed a motion for reconsideration [D.E. 6], which the court denied on December 12, 2018 [D.E. 9]. Jenkins appealed [D.E. 10]. On April 10, 2019, the United States Court of Appeals for the Fourth Circuit affirmed [D.E. 16]. On July 3, 2019, the Fourth Circuit issued its mandate [D.E. 21].

Jenkins has filed additional motions for reconsideration, “to clarify and/or consolidate cases into the same court[,]” and “to release on own recognizance pending 2241 habeas corpus relief[.]” See [D.E. 12, 14–15]. The motions lack merit and are DENIED. The clerk is directed not to accept any further filings in this case.

In The United States District Court
EASTERN DISTRICT OF NORTH CAROLINA

Travis LaRoy Jenkins
v

United States of America

Motion To Reconsider Order
Denial of Objection to Transfer Order

(Comes now, Travis LaRoy Jenkins, (herein known as

petitioner), on this 21st day of December, 2018, Pro-se,
respectfully moving this honorable court to reconsider
transferring and or denial of objection to transfer the
instant case from the North Carolina district to the
Southern District of Georgia, the district in which
petitioner is housed. In support petitioner state as
follows:

This honorable court reliance on *Burnsfield v. Padilla*

542 U.S. 426, 441 (2004), is misplaced where as petitioner
is not a terrorist, nor in military custody. While Congress

had authorized state prisoners, in filing federal habeas
corpus petitions under 28 USC 2254 to challenge present
physical custody, to name either the warden or state penal
officer as a respondent, Congress had made no such pro-

visions for 2241 petitions such as the one in question.

Congress also has legislated against background of the
district-of-confinement rule by fashioning, in provisions
such as 28 USC 2241(d), explicit exceptions to the

rule in certain circumstances. (See also 28 USC 2241(e)
(2)(3)(5)). Habeas Corpus relief is not limited to pet-
itioners who are physically confined, the reach of the

Writ have been construed liberally. Federal district court may issue the writ of habeas corpus "within their respective jurisdiction," however, while the Supreme

court has not made exceptions to the immediate - cus - todian - and district - of confinement rules, the supreme court has deviated from the two rules in cases invol - ving challenges to something other than present physical custody, and in the instant case petitioner is not chal - lenging present physical confinement that limits jurisd - iction to one district, petitioner is challenging a con - stitutional right and procedure that is guaranteed by the constitution that governs the country, the 6th amendment right to a trial and the 14th amendment right to be free.

The instant case is easily distinguished from

Rumsfeld as the instant circumstances has no terrorist inclinations requiring interceding by the secretary of defense or the president of the United States. Because a trial is warranted in this case, only the sentencing court can correct the denial of a trial that can prove petitioners' innocence, having been misinformed by a court appointed attorney and deceived by the court.

In *McNally v Hill*, 293 U.S. 131, 55 S. Ct 24, it's holding sanctioned a liberal interpretation of 2241(d) to the end that appropriate remedial order may issue, without unnecessary delay whenever a constitutional claim is established with a resultant effect upon the nature or duration of the prisoners' custody. (Ward, 406 F 2d 352 (1/15/59)).

In the instant case, like Ward, the custody of Jesus Ward under the authority of the conviction, is North

Carolina, Desups' Warden holds petitioner for North Carolina, not for Georgia. It is North Carolina's judgment and conviction that is under attack and North Carolina's attorney general must defend it, not Georgia's. An invalid conviction is not entitled to be given effect in another state any more than where it was obtained.

Conclusion

North Carolina, the sentencing state, has jurisdiction to grant relief, in the instant case a trial to prove petitioners innocence. The relegation of the jurisdiction of a district court in the confining state to a secondary status, one that will be "infrequently preferable" to the jurisdiction of a district court in the sentencing state, creates an obstacle to the exercise of habeas jurisdiction in the confining state impermissible, particularly in view of adverse effects the detainees presently inflict upon prisoners, especially outside of jurisdiction.

If Georgia, the confining state, relies on North Carolina's conviction/detainer to justify the imposition of increased harshness upon its prisoner, a federal court in North Carolina has the duty to consider habeas corpus whether the judgment underlying the detention/detainer is constitutionally valid.

Paradoxically, to transfer jurisdiction to the Southern District of Georgia, from the sentencing court in North Carolina, in so doing, the court not merely declines to entertain a challenge to the future services of the North Carolina sentence in due course, but in addition denies petitioners the very remedy and right the court acknowledges petitioners would be entitled to seek if

relief of Georgia's consequences were the only objective instead of Constitutional violations.

Petitioner asserts his innocence of the charge convicted of, having been misled by a court appointed counsel to plead guilty, depriving petitioner not only of the constitutional right to a trial also misleading petitioner to give up his 14th amendment right to be free, as a liberty issue is at stake, petitioner being innocent of the crime 924 (a)(1)(A), and the Conspiracy Conviction.

wherefore, petitioner prays this honorable court grant this motion to reconsider, taking into consideration all points and constitutional law along with the simple knowledge that the evidence that can prove petitioners innocence, the Southern District of Georgia is not privileged to, and only this honorable court can correct the denial of constitutional rights and the miscarriage of justice necessary to resolve this and afford the petitioner his day in court.

Respectfully Submitted,
Travis LaVoy Jenkins
Travis LaVoy Jenkins - 03537-104

UN-AUTHORIZED DATA

Comes now, Travis L. Jenkins, on this 21st day of December, 2018, under the penalties of perjury, do hereby declare the information herein is true and correct to the best of my knowledge.

Travis LaVoy Jenkins
FSL JESUP
2680 Hwy 301 South
JESUP, Ga. 31529

Personal (Appendix F)
Copy

In The United States District Court
For The Eastern District of North Carolina

Travis Lavooy Jenkins

Case NO: 5:13-CR-108-FL

United States of America

Motion For Appropriate Relief
Pursuant to 2241 Based on
Actual Innocence of Charge
Convicted of

Comes now, Travis Lavooy Jenkins, pro-se, (herein known as petitioner), on this 15th day of October, 2018, moving this honorable court for relief pursuant to 28 U.S.C. 2241(d) petitioner invoking the saving clause being actually innocent of the convicted charge(s) 924(c)(2)(A). In light of the supreme court's holding in *McQuiggin v Perkins*, U.S. 133 S. Ct. 1924, (2013) it is under the actual innocence doctrine a claim can be challenged. (a defendant's claim of actual innocence if proven can defeat procedural bars and time limitations).

Petitioner reminds this honorable court of the "less stringent" standard accorded pro se litigants, and asks that this court construe petitioners' motion liberally and consider all facts and points of law, even those that may not be mentioned by petitioner. (*Haines v Kerner* 404 U.S. 519, 520 (1972)).

It is petitioners' contention of having always being innocent of the charge of Use and carry of a firearm during and in relation to and possession of a firearm in furtherance of a drug trafficking offense. Having exhausted procedural remedy in accordance to 2255 petitioner is unable to meet the gate keeping provisions of section 2255(h), (2) for second or successive motions but now able to pass the saving clause. (*Burage v U.S.* 571 U.S. 204 (2014)); (See also *Herring v Ormond* NO: 17-1224).

Furthermore, the 4th circuit has held that the savings clause also applies, in pertinent part, when challenging the legality of a sentence under 2241, (868 F.3d 415, 428, *Id* at 429 (4th Cir 2018)); (See also *Persaud* 137 S.Ct. 1023 (2014)). When a prisoner uses the savings

clause to bring a claim that is cognizable in a motion to vacate, he bypasses his state of limitations and gains limitless time to press claims that prisoners who meet the requirements of section 2255 do not receive. (McArthur v. Coleman 851 F.3d 1074, 2017 U.S. App. Lexis 44957, 2017-14499 (3/17)).
Petitioner is actually innocent of the statutory provisions 924(c) (1)(A) under which he was convicted and it must be held invalid and conviction must be set aside and/or vacated. In support of petitioner states as follows:

Statement of Facts

On June 11, 2013, petitioner was indicted on 5 charges and pleaded guilty on September 3, 2013, without a plea agreement to counts 1-5, answering all rule 11 plea colloquy questions as told by appointed defense counsel having assured petitioner of receiving no more than a total of 5 years imprisonment due to a 5K1 motion and the substantial assistance provided by petitioner in the prosecution and convictions of others that was substantial, while at the same time petitioner preserving all appellate rights, the record being silent on petitioner's hesitation about 924(c) (1)(A), the reason for pleading guilty without a plea agreement.

On or about April 1st, 2014, the evening before sentencing, the assistant U.S. attorneys decided not to file the 5K motion, having assured defense counsel without a plea agreement it would not influence the decision to file the 5K motion. Counsel requested a 30 day delay on sentencing to inquire of the government's change of mind, their reasoning being because petitioner did not have a binding plea agreement & was arrested with a gun in Florida, and was ultimately sentenced on April 30, 2014 to 21 months imprisonment for count 1, conspiracy to distribute and possess with intent to distribute 25gms or more of cocaine base (crack), in violation of 21 U.S.C. 846, 841(a) and 841(b) (1)(c); Count 2, 3 and 4, distribution of a quantity of cocaine base (crack) in violation of 21 U.S.C. 841(a) and 841(b) (1)(c); Count 5, use and carry of a firearm in furtherance of a drug trafficking offense in violation of 18 U.S.C. 924(c) (1)(A).

Let the statement of facts reflect that the record is

clear at no time did the agents and informant see a gun and it was not until petitioner retrieved the weapon from behind the driver's job after the agents lost sight of petitioner having made the agents aware of having the weapon after being searched and handcuffed. Consequently, petitioners sentence was reduced to 105 months pursuant to rule 35 by the government on April 3rd 2015.

Statement of the case

It is the holding in *Barley v United States*, 514 U.S. 137 that offers clarity to petitioners actual innocence having reasoned a need to appeal the 924(c)(1)(A) conviction preserving all appellate rights by not entering into a binding contract/plea agreement with the United States government, having never been in possession of a firearm during and in relation to any of the drug sales between petitioner and the agent confidential informant.

Even if petitioner was in possession of said weapon/ firearm during the offense, without conceding to actually possessing the weapon, the holding is clear of congress' intent, using 2 terms because it intended each term to have a partially nonsupportable meaning where as under congress' interpretation the supreme court clearly announced a firearm can be used without being carried, e.g. when an offender has a gun on display during a transaction, or barter with a firearm without holding it, and a firearm can be carried without being used, e.g. when an offender keeps a gun hidden in his clothing throughout a drug transaction. Because a firearm was never seen or mentioned petitioner had never been perceived to possess a weapon to the point of agents actually not finding a weapon after searching and handcuffing and petitioner actually having to make the agents aware petitioners indeed had a weapon on him, after the fact.

In 924(c)(1), liability attaches only to cases of actual use, not intended use, as when an offender places a firearm with the intent to use it later if necessary. The difference between the 2 provisions demonstrates that had congress' intent to broaden application of the statute beyond actual use, congress could and would have so specified, as

it did in 924(d)(1).

The intent presence of a firearm, without more, is

not enough to trigger 924(c)(1). If the gun is not disclosed

or mentioned it is not actively employed, and it is not

used. Congress knew how to draft a statute to reach a firearm

that was "intended to be used." In 924(c)(1), it chose not

to include the term, but instead established the 5-year

mandatory minimum only for those defendants who actually

use the firearm. (516 U.S. 137)

Petitioner pleading is further compounded due to counsels'

misinforming petitioner of not having a defense to the 924(c)(1)

(A) charge and take it up on appeal and the conspiracy charge

convicted of too, was questionable as well, needing more than an

agent, who cannot be part of a conspiracy, to support conspiracy.

Alone-the-less, petitioners' plea becomes involuntarily and

unknowingly intelligent having been misinformed by appointed counsel

at side bar having hesitated when questioned, at both arraignment/charge

of plea hearing & sentencing, to understanding the 924(c)(1)(A) charge

petitioner was pleading to, the judge ordering counsel to make

sure petitioner understood what he was pleading to and counsel

telling petitioner he had no defense against the 924(c)(1)(A) charge,

when in fact petitioners' concern was justified as case law is

clear when petitioner was advised by his attorney that his having

the firearm when arrested, (mere possession), did support the conviction

under 924(c)(1)(A) was critically incorrect. (523 U.S. 614 Boosley v

U.S. (1998)). It's consequences for petitioner were just as severe

and just as unfair, as if the court and counsel had knowingly

conspired to deceive petitioner in order to induce him to plead

guilty to crimes that petitioner did not commit. (Please see comment)

change of plea transcripts of September 3, 2013)

Having relied on counsels' guarantee of the government's fil-

ing a SR motion, petitioner answered at the arraignment/charge

of plea hearing on Sept 3, 2013 all questions to the rule 11 plea

colloquy as told by counsel, (a failure is pure prejudicial and thus

must be a fundamental defect which inherently results in a complete miscarriage of

justice); (U.S. v. Timmreck 441 U.S. 767, 60 L.Ed. 2d 634), dependant on counsels'

advice of receiving no more than 5 years due to the SR motion be

be filed by the government for petitioners' substantial assistance

The U.S. Supreme Court has recognized a "narrow exception" to the procedural-default rule for cases in which a constitutional error has resulted in the conviction of a defendant who is actually innocent of the substantive offense, in this case 924(c)(1)(A). (Murray v. Carrier 477 U.S. 478)

In Conclusion

in the arrest and prosecution of others. Based on the government's decision not to file the SRT motion, after petitioner pled and the court accepted petitioner's plea, it is clearly established by the record that petitioner's guilty plea to the charges convicted of specifically 924(c)(1)(A) charge is constitutionally invalid and petitioner presumptively innocent of that offense, and the government has the burden to prove petitioner's unlawful use of the firearm which, in the instant case is impossible, if requiring more than a showing of mere possession by a person who commits a drug offense, where as, once again, if congress had intended possession alone to trigger liability under 924(c)(1)(A), then congress easily could have so provided, as it did in the frequent use term "possession in the gun crime statutes" to describe prohibited gun related conduct, the application of an "active employment" standard (1) is supported by the language of the statute, the context of the word "use" within 924(c)(1), the context of 924(c)(1) within the statute and legislative history of 924(c)(1), all of which indicate that the government must show active employment of the firearm, and (2) is not consistent with United States Supreme Court precedent which found a particular use to be within the meaning of 924(c)(1), under this analysis a conviction under 924(c)(1) is not supported when there never was a gun seen or mentioned at no time during any of the 3 drug transactions, the agents being clear with video proof, having petitioner always in sight with the exception of one ten minute period having lost sight of petitioner when they pulled into the drivers job and they got out of the vehicle, one (the driver), to report into work and petitioner to retrieve his firearm and/or relieve himself. Afterwards, petitioner's arrest and directing the agents to the weapon/firearm on petitioner's person missed by the agents after searching and handcuffing petitioner.

(1986) Petitioner was denied his 1st amendment right to appeal when defense counsel refused to file notice to appeal after sentencing, petitioner having pled guilty without a signed written plea agreement to preserve his appellate rights, and petitioners claim of actual innocence of 924(c)(1)(A) overcoming procedural hurdles held by the supreme court in McGurgin, 569 U.S. 383, 386, 133 S.Ct. 1924 (2013). Defense counsel admitting under oath at an evidentiary hearing when questioned by newly appointed defense counsel Mrs. Darnall, (Please see motion hearing transcripts, March 22, 2019, pages 99, 23, 24, 25 - Page 100 lines 1, 2, 4, 5, 6, 7, 8), is clear evidence of his either being in conspiracy with the government or unaware of case law when he stated, "he reviewed the written police reports) and petitioner not brandishing or overtly use any weapon during those transactions or any knowledge of using a weapon at all as the holding in Bailey and Bosley is clear what is required for a 924(c)(1)(A) conviction, counsel having misinformed petitioner he had no defense to the charge and convicted 924(c)(1)(A) offense that the supreme courts' holding in both cases convincingly supports petitioners actual innocence, that the record proves. The minute the government decided not to file the SR motion, counsel should have withdrawn petitioners plea and followed the counsel clause of the 6th amendment advocate for his client. To ask the court for a consecutive sentence for his client is not acting in his clients best interest.

Petitioners actual innocence claim actually constitutes a claim that there was insufficient evidence to convict petitioners for the offense of 924(c)(1)(A) and petitioner is factually innocent as well as actually innocent. It is important to note in this regard (in the instant case), that "Actual Innocence" means factual innocence, not mere legal insufficiency. (Bosley v U.S. 523 U.S. 614, 118 S.Ct. 1647, 140 L.Ed 2d 828 (1998))

The united states court of appeals for the 4th circuit (1) reversed the judgement of the District Court, holding that an act or omission by counsel which shows ignorance or oversight may satisfy the cause requirement of Wainwright v Sykes, and (2) remanded for a determination as to whether the procedural default in this case was the result of such attorney error or

reflected a deliberate appellate strategy (774 F.2d 394 adhered to 754 F.2d 520).

Petitioner pled guilty after hesitating when questioned about pleading to 924(c) at the arraignment/charge of plea hearing only because defense counsel assured defendant government would file a 51K motion and petitioner would receive only 5 years total, and no signed plea agreement would not influence the government filing of a 51K motion for petitioners' substantial assistance when the government decided not to file the 51K motion because of that very reason and agents finding a gun when petitioner was arrested but not charged with in Florida, petitioners' decision to preserve appeals rights were justified and counsel's obligation should have been to be an advocate and render the assistance necessary to assure petitioners' plea was knowingly and intelligently entered in accordance to the constitution and federal rules of criminal procedure, or at the very least file a notice to appeal. The evidence and record is clear and convincing as is

petitioners' actual innocence, where as the video clearly shows no weapon seen or no active employment and no mention of a firearm doing any of the drug offenses, as required by the holding in Bailey 516 U.S. 137, restricting the scope of 924(c)(1)(A) ruling to sustain a conviction under the statute, the government required to prove a firearm was actively employed during the offenses. (U.S. v. Look 76 F.3d 594 12/8/95). The record and the governments evidence (video recordings) proves just the opposite.

The 4th Circuit has held that the savings clause only pre-serves claims in which a petitioner alleges "actual innocence" of the conviction as in the instant case. (Rice v. Rivera 617 F.3d 802, 803 (4th Cir 2010)). A change of that character will "necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal." *Bostey v. U.S.* 523 U.S. 614, 620, 118 S.Ct. 1641, 142 L.Ed. 2d 828 (1998).

Wherefore, petitioner prays this honorable court grant habeas relief issuing an order to vacate or set aside petitioners conviction or whatever relief the court deems appropriate to ensure petitioners immediate release, petitioner serving time for an offense petitioners is actually innocent of.

Respectfully Submitted,

Un-Notarized Oath

1st James D. Jenkins
Travis Lavey Jenkins 03527-104

I, Travis Lavey Jenkins, on this 15th day of October, do hereby declare, under the penalties of perjury that the information herein is true and correct to the best of my knowledge.

1st James D. Jenkins
Travis Lavey Jenkins 03527-104

Certificate of Service

I, Travis Lavey Jenkins, on this 15th day of October, 2018, do hereby certify that a copy of the foregoing motion has been sent by institutional mail to the assistant United States attorneys office at: 310 New Bern Ave., Suite 800 Federal Building, Raleigh, North Carolina, 27601-1461

1st James D. Jenkins
Travis Lavey Jenkins 03527-104
FSL JCSVP
2680 HWY 301 South
JCSOP, Ga. 31599

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