

FILED: July 23, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-7405
(5:18-hc-02058-D)

MARC PIERRE HALL

Petitioner - Appellant

v.

WARDEN ANDREWS

Respondent - Appellee

O R D E R

The court denies the petition 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 Diaz, Judge Thacker, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

Certified no. 70060100000692245293

Appendix A

UNPUBLISHED

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

No. 18-7405

MARC PIERRE HALL,

Petitioner - Appellant,

v.

WARDEN ANDREWS,

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-02058-D)

Submitted: May 16, 2019

Decided: May 20, 2019

Before DIAZ and THACKER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Marc Pierre Hall, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

certified no. 7006 01000006 9224 5293

Appendix B

PER CURIAM:

Marc Pierre Hall, a federal prisoner, appeals the district court's order denying relief on his 28 U.S.C. § 2241 (2012) petition. We have reviewed the record and find no reversible error. Accordingly, although we grant leave to proceed in forma pauperis, we affirm for the reasons stated by the district court. *Hall v. Andrews*, No. 5:18-hc-02058-D (E.D.N.C. Nov. 5, 2018). We grant Hall's motion for this court to adopt the exhibits attached to his Fed. R. Civ. P. 59(e) motion and deny Hall's motions for appointment of counsel and for an injunction pending appeal. 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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:18-HC-2058-D

MARC PIERRE HALL,

Petitioner,

v.

WARDEN ANDREWS,

Respondent.

ORDER

On March 8, 2018, Marc Pierre Hall (“Hall” or “petitioner”), a federal inmate proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pet. [D.E. 1].¹ On March 16, 2018, Hall refiled his petition on the form prescribed for use in this court [D.E. 7]. Hall has filed motions for appointment of counsel and discovery [D.E. 4–5, 9–10], and motions to amend [D.E. 17, 20] and supplements to his petition [D.E. 12, 15]. As explained below, the court grants Hall’s motions to amend, reviews all of Hall’s filings, conducts its preliminary review pursuant to 28 U.S.C. § 2243, and dismisses the petition.

In December 1995, in the United States District Court for the Western District of North Carolina, a

jury found Hall guilty of conspiracy to possess with intent to distribute cocaine and cocaine base within 1000 feet of a school or playground, in violation of 21 U.S.C. § 846 (count one), use and carry of a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C.A. § 924(c)(1) & (2) (counts ten and eleven), and use and carry of a destructive device and damage and destruction of real property in and affecting commerce in violation of 18 U.S.C.A. § 844(l) (count twelve). The district court imposed a life sentence on count one with a four hundred and eighty month

¹ Hall has filed numerous collateral attacks on his conviction and sentence. See PACER Case Locator, ADMIN. OFFICE OF THE U.S. COURTS, www.pacer.gov (Oct. 29, 2018) (search by “Hall, Marc Pierre” and nature of suit code 530).

sentence on count twelve to run concurrently with count one, a sixty month sentence on count ten to run consecutively to counts one and twelve, and a life sentence on count eleven to run consecutively to counts one, ten, and twelve

The Government's evidence tended to show that Hall was part of a conspiracy that distributed cocaine and cocaine base in the Charlotte, North Carolina, area. The organization is referred to as the Mobley organization and was headed by Paul Mobley and his nephew Darwin Mobley. Hall primarily worked for Darwin Mobley (Mobley). At trial, Mobley testified that he fronted Hall approximately one kilogram of crack cocaine each week. Hall had several people who would make sales and delivery of the crack for him. The Government showed that several members of the conspiracy lived and dealt the drugs within 1000 feet of a school or playground.

Mobley testified that Hall participated in a "home invasion" or robbery of one of Mobley's suppliers, William Matthews. The invasion was intended to retaliate for Matthews allegedly "shorting" Mobley of drugs. Mobley testified that he provided firearms, including an SKS assault rifle, for the Matthews home invasion.

Mobley also testified regarding another retaliatory incident. This incident stemmed from an episode that occurred when a quantity of Paul Mobley's drugs disappeared. Allegedly, Paul Mobley's girlfriend gave eighteen ounces of Paul's crack cocaine to Wesley Hunter without compensation. Paul wanted someone to harm Hunter in retaliation. Darwin Mobley suggested that Hall could take care of it for Paul. The Government's evidence tended to show that Hall arranged for his girlfriend, Tracy Rosner, and two juveniles, Maurice Mobley and Freddie Roseboro, to accompany him to Hunter's residence. The Government presented evidence that Rosner and the juveniles were responsible for lobbing a firebomb into Hunter's residence.

Jesse Mobley, Darwin's brother and another member of the conspiracy, testified about Hall's involvement in the conspiracy. Jesse testified about two drug deals that he made with Hall and corroborated Darwin's testimony regarding Hall's sharing of an apartment with Darwin, the Matthews robbery, and the Hunter residence firebombing. Paul Mobley also testified about the drug organization. He stated that he, Jesse, and Darwin had been involved in the drug business together. He also testified that he formerly had a girlfriend named Leslie Hunter, sister of Wesley Hunter, and that he had stored a half kilogram of cocaine at her residence that disappeared. Paul testified that Darwin offered Hall to him as a hit man and he had several conversations with Hall about assaulting Hunter. Hunter also testified that he was involved in distributing cocaine and that Paul Mobley was one of his customers. He testified that at the time of the firebombing he was storing a kilogram of cocaine and had a telephone at his residence that he used in furtherance of his drug business. Finally, Tracy Rosner was a reluctant Government witness and testified that Hall drove Maurice Mobley and Freddie Roseboro to Hunter's house with the gasoline-filled coke bottles on the night of the firebombing.

United States v. Hall, 129 F.3d 1261, 1997 WL 712885, at *1 (4th Cir. 1997) (per curiam) (unpublished table decision); see Hall v. Williamson, No. 07-2533, 2007 WL 2900557, at *1 (3d Cir. Oct. 4, 2007) (per curiam) (unpublished); Am. Pet. [D.E. 7] 1.

Hall thereafter filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, based upon, *inter alia*, the Supreme Court's decision in Bailey v. United States, 516 U.S. 137 (1995), and jurisdictional challenges to the four counts on which he was found guilty. The District Court for the Western District of North Carolina dismissed Hall's § 2255 motion on October 10, 2001, after concluding that his Bailey claim had been rejected on direct appeal and that his jurisdictional challenges did not entitle[] him to relief. The Fourth Circuit Court of Appeals denied Hall's request for a certificate of appealability and dismissed the appeal on the reasoning of the District Court. See United States v. Hall, 26 F. App'x 357, 2002 WL 216431 (4th Cir. 2002). Once again, the Supreme Court denied certiorari. Hall v. United States, 537 U.S. 894 (2002).

Hall, 2007 WL 2900557, at *1; see Am. Pet. 4.

Hall argues that he

is not challenging his conviction or sentence. Rather that of effective counsel on direct appeal in which counsel withdrew prior to the court's opinion that was decided on erroneous information not adduced at trial. Which counsel never disclosed nor challenged on direct appeal. By the lack of knowledge by counsel, the issue could not be presented on the 2255. "Justifiable ignorance." Petitioner just became aware of the erroneous records and significance of claim.

Am. Pet. 5; see [D.E. 1] 2-5; [D.E. 17] 5-6. Hall seeks to "reinstate direct appeal for first appeal rights under due process and equal protection of law." Am. Pet. 12.

The court may not consider a section 2241 motion challenging the legality of Hall's conviction and sentence unless "the remedy by [section 2255] motion is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e); see In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997) (en banc). Section 2255 is inadequate or ineffective to test the legality of a conviction when three conditions exist:

- (1) at the time of conviction, settled law . . . established the legality of the conviction;
- (2) subsequent to the prisoner's direct appeal and first [section] 2255 motion, the

substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of [section] 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333–34 (4th Cir. 2000) (per curiam). If a section 2241 petition does not fall within the scope of section 2255(e)'s savings clause, the district court must dismiss the “unauthorized habeas motion . . . for lack of jurisdiction.” Rice v. Rivera, 617 F.3d 802, 807 (4th Cir. 2010) (per curiam); see United States v. Wheeler, 886 F.3d 415, 423 (4th Cir. 2018).

Hall is procedurally barred from filing a section 2255 motion because he already filed one such motion and has not received authorization from the Fourth Circuit to file another. See 28 U.S.C. § 2255(h). Section 2255 is “not rendered inadequate or ineffective merely because . . . an individual is procedurally barred from filing a [section] 2255 motion.” Vial, 115 F.3d at 1194 n.5. Here, the conduct of which Hall was convicted remains criminal, and the savings clause does not help him. Because Hall has not demonstrated that section 2255 is an inadequate or ineffective remedy, Hall may not proceed on his claim under section 2241. See Wheeler, 886 F.3d at 429; In re Jones, 226 F.3d at 333–34. Hall's citation to Burrage v. United States, 134 S. Ct. 881 (2014), does not alter this conclusion because Hall was not convicted and sentenced under 21 U.S.C. § 841(b). See Tucker v. United States, 889 F.3d 881, 884–85 (7th Cir. 2018); United States v. Sica, 676 F. App'x 81, 86–87 (2d Cir. Jan. 24, 2017) (unpublished), cert. denied, 138 S. Ct. 181 (2017); Borjas-Hernandez v. United States, No. 3:12-8368, 2014 WL 1572803, at *14 (S.D. W. Va. Apr. 17, 2014) (unpublished).

As for Hall's motions for appointment of counsel, no right to counsel exists in habeas corpus actions. See, e.g., Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). Nonetheless, the court may appoint counsel if it determines that “the interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B). This action does not present legally complex issues, and Hall has set forth his

claims adequately. Thus, the interests of justice do not require the appointment of counsel. Accordingly, the court denies the request.

After reviewing the claims presented in Hall's habeas petition in light of the applicable standard, the court determines that reasonable jurists would not find the court's treatment of any of Hall's claims debatable or wrong, and none of the issues deserve encouragement to proceed further. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, the court denies a certificate of appealability.

In sum, the court GRANTS petitioner's motions to amend [D.E. 17, 20], DENIES petitioner's motions for appointment of counsel and discovery [D.E. 4–5, 9–10], and DISMISSES petitioner's application for a writ of habeas corpus under 28 U.S.C. § 2241 [D.E. 1] for lack of jurisdiction. The court DENIES a certificate of appealability. The clerk shall close the case.

SO ORDERED. This 5 day of November 2018.

A. Dever
JAMES C. DEVER III
United States District Judge