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

MICHAEL CURTIS REYNOLDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

NO. 3:05-cr-493-ARC

(JUDGE CAPUTO)

MEMORANDUM ORDER

Presently before me are various motions filed by the petitioner, Michael Curtis Reynolds. Beginning in October 2018 and through the present date, Reynolds has filed over 40 motions with a varying degree of overlap between them. (*See* Docs. 566, 571, 572, 573, 574, 577, 582, 583, 586, 588, 589, 590, 592, 596, 597, 599, 601, 604, 605, 606, 607, 608, 609, 615, 617, 618, 619, 621, 622, 623, 624, 626, 627, 628, 629, 630, 631, 632, 633, 643, 644, 645, 646, 647, 652, 653, 655, 656, 657, 658, 659). The United States Court of Appeals for the Third Circuit granted Reynolds's application (re: Doc. 566) to file a second or successive 28 U.S.C. § 2255 motion on the basis that Reynolds made "a prima facie showing that his proposed § 2255 motion contains a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court that was previously unavailable." (Doc. 565 at 2). The United States Government contends that Reynolds is not entitled to relief under § 2255 because his sentence would not change even if he prevailed on his challenge to the Superceding Indictment. (*See* Doc. 650). The Government argues that each of Reynolds's other motions is time-barred. (*See id.*). Because Reynolds's request for relief under § 2255 will not change his custody status, his Motion to Vacate under § 2255 is denied. With respect to Reynolds's remaining motions, even though they bear various titles, each requests similar relief regarding his "actual innocence." Thus, I will construe them as

second or successive motions under § 2255 filed without prior authorization.[1]

By way of background, in October 2006, the grand jury returned a six-count superceding indictment for Reynolds. (Doc. 80). At Count One, the indictment charged Reynolds with attempting to provide material support and resources to a foreign terrorist organization, namely Al-Qaeda, in violation of 22 U.S.C. § 2339B. (*Id.* at 2-3). At Count Two, attempting to provide material support and resources to damage or destroy, or attempt to damage or destroy, any property used in interstate or foreign commerce with fire or an explosive, and to damage or attempt to damage an interstate gas pipeline facility in violation of 18 U.S.C. § 2339A. (*Id.* at 3-4). At Count Three, soliciting or commanding another person to damage or destroy any property used in interstate or foreign commerce with fire or an explosive, and to damage or attempt to damage an interstate gas pipeline facility in violation of 18 U.S.C. § 373. (*Id.* at 4). At Count Four, distributing through the internet information pertaining to, in part, the manufacture and use of an explosive and destructive device to damage or destroy, or attempt to damage or destroy any property used in interstate or foreign commerce with fire or an explosive, and to damage or attempt to damage an interstate gas pipeline facility in violation of 18 U.S.C. § 842(p)(2). (*Id.* at 5). At Counts Five and Six, possessing firearms, *i.e.* hand grenades, that were not registered to him in the National Firearms Registration and Transfer Record in violation of 26 U.S.C. §§ 5841, 5861(d) and 5871. (*Id.* at 6).

After pleading not guilty, Reynolds's jury trial commenced. (*See* Dkt. Entry No. 83). The jury found him guilty of Counts One, Two, Three, Four, and Six of the superceding indictment. (Doc. 297 at 1). He was found not guilty of Count 5. (*Id.*). Subsequently, Reynolds was sentenced to 360 months' imprisonment to be followed by three years of supervised release. (Doc. 297 at 3-4). The Judgement stated:

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[1] Regarding Reynolds's three motions to proceed in forma pauperis, I will grant one of these motions (re: Doc 577), and I will deny the remaining two motions (Docs. 644 and 647) as moot.

> The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 360 month(s). This term consists of terms of one hundred eighty (180) months imprisonment on each of Count 1 and 2, to be served consecutively to each other and terms of ninety (90) months imprisonment on Count 3, two hundred forty (240) months on Count 4, and one hundred twenty (120) months on Count 6, to be served concurrently with each other and with Counts 1 and 2 to the extent necessary to produce a total term of three hundred sixty (360) months.

(Doc. 297 at 3). Reynolds filed a timely notice of appeal, but the Third Circuit affirmed his conviction. *See United States v. Reynolds*, 374 F.App'x 356, 363 (3d Cir. 2010). Reynolds's subsequent § 2255 motion alleging ineffective assistance of counsel was dismissed (*See* Doc. 478), and the Third Circuit rejected his request for a certificate of appealability (Doc. 493 at 2). At this time, Reynolds proceeded to file various motions (*See* Docs. 522,526,531,535, 539, 557, 559), which I subsequently dismissed as second or successive § 2255 motions without authorization from the Court of Appeals (*See* Docs. 537, 543, 562). On October 10, 2018, the Third Circuit granted Reynolds the right to file a second or successive § 2255 motion, because he made a prima facie showing that his proposed § 2255 motion involves a new rule of constitutional law that was previously unavailable, which the Supreme Court made retroactive to cases on collateral review. (Doc. 565 at 2).

Reynolds contends that Count 4 of the Superceding Indictment is invalid, because 18 U.S.C. § 842(p)(2) incorporates the definition of "crime of violence" provided by 18 U.S.C. §16(b), which the Supreme Court declared unconstitutionally vague in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). The text of 18 U.S.C. § 842(p)(2) states

> It shall be unlawful for any person--
>
> (A) to teach or demonstrate the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, with the intent that the teaching, demonstration, or information be used for, or in furtherance of, an activity that constitutes a Federal crime of violence; or
>
> (B) to teach or demonstrate to any person the making or use of an explosive, a destructive device, or a weapon of mass destruction,

> or to distribute to any person, by any means, information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, knowing that such person intends to use the teaching, demonstration, or information for, or in furtherance of, an activity that constitutes a *Federal crime of violence.*

(Emphasis added).

Reynolds is proceeding *pro se*, and I am mindful of "[t]he obligation to liberally construe a *pro se* litigant's pleadings." *Higgs v. Atty. Gen. of the U.S.*, 655 F.3d 333, 339 (3d Cir. 2011), as amended (Sept. 19, 2011). Under § 2255, a prisoner in custody "may claim[] the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States or that the court was without jurisdiction to impose such sentence . . . ." In other words, "[t]he plain text of section 2255 provides relief only to those prisoners who claim the right to be released from 'custody.'" *United States v. Ross*, 801 F.3d 374, 379 (3d Cir. 2015). The concept of "custody" encompasses physical confinement among other restraints on individual liberty. *Id.* a petitioner is still considered to be "'in custody' if he is burdened by the 'collateral consequences' of the challenged conviction." *Id.* (citing *Carafas v. LaVallee,* 391 U.S. 234, 237–38 (1968)). A petition for relief under § 2255 is not actionable when the petitioner's status in custody would not change even if relief was granted. *Ross*, 801 F.3d at 383.

Here, Reynolds's challenge to the validity of Count Four will not change his "custody" status, because he was lawfully sentenced at Counts One, Two, Three, and Six, which are not impacted by the Supreme Court's decisions in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), *Welch v. United States*, 136 S. Ct. 1257 (2016), and *Johnson v. United States*, 135 S. Ct. 22551 (2015). *See Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) (holding that the federal criminal code's definition of "crime of violence," found in 18 U.S.C. § 16, was unconstitutionally vague); *Welch v. United States*, 136 S. Ct. 1257 (2016) (holding that the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 22551 was a substantive decision that is retroactive in cases on

collateral review); *Johnson v. United States*, 135 S. Ct. 22551 (2015) (holding that the definition of a "violent felony" does not survive the Constitution's prohibition of vague criminal laws). At Count Four, Reynolds was convicted of violating 18 U.S.C. § 842(p)(2) which does implicate the definition of a "crime of violence." (*See* Doc. 80 at 5). Reynolds, however, was also validly convicted of violating 18 U.S.C. § 2339B at Count One, 18 U.S.C. § 2339A(a) at Count Two, 18 U.S.C. § 373 at Count Three, and 26 U.S.C. §§ 5841, 5861(d) and 5871 at Count Six. None of these statutes incorporate the definition of a "crime of violence" or a "violent felony," which the Supreme Court has held are unconstitutionally void for vagueness. (*See id.*).

Reynolds's sentence for Count Four involved a sentencing scheme that took into account each of his crimes. (*See* Doc. 297). Under U.S.S.G. Section 2M5.3, Providing Material Support or Resources to Designated Foreign Terrorist Organizations or Specially Designated Global Terrorists, or For a Terrorist Purpose, Reynolds's base offense level was set at twenty-six (26). Then, it was increased two levels for providing resources to assist in a violent act (U.S.S.G Section 2M5.3(b)) and another twelve levels because Reynolds's offences were felonies that involved, or intended to promote a federal crime of terrorism (U.S.S.G. 3A1.4(a)). At sentencing, the Court found that the maximum term of fifteen-year (15) sentences were required for both Counts One and Two and that these sentences were to run *consecutively* with another. (Doc. 297 at 3). The Court proceeded to impose a maximum term of ninety (90) months imprisonment for Count Three, a maximum term of two hundred forty (240) months imprisonment for Count Four, and a maximum term of one hundred twenty (120) months imprisonment for Count Six. (*Id.*). The terms for Counts Three, Four, and Six were to be served *concurrently* with each other *and concurrently* with the terms for Counts One and Two, producing a total term of three hundred and sixty (360) months imprisonment. (*Id.*). Thus, Reynolds would remain in custody due to the sentences imposed for Counts One and Two, regardless of whether his sentence for Count Four was vacated.

Moreover, there are no significant "collateral consequences" stemming from Count Four of Reyolds's conviction that render him "in custody" for the purposes of § 2255 relief. The Supreme Court has held that even if the sentences are concurrent, duplicative convictions cannot stand when "'[t]he separate conviction, apart from the concurrent sentence, has potential adverse collateral consequences that may not be ignored.'" *Id.* at 382 (citing *Ball v. U.S.*, 470 U.S. 856, 865 (1985)). These consequences may involve "a potential delay in the defendant's eligibility for parole, an increased sentence under a recidivist statute for a future offense, the use of the additional conviction to impeach the defendant's credibility, and the societal stigma accompanying any criminal conviction." *Id.* On the other hand, "once a sentence for a conviction has completely expired, the collateral consequence of future sentencing enhancements potentially caused by that conviction is not itself sufficient to render an individual 'in custody' for the purpose of a habeas attack." *Id.* (citing *Maleng v. Cook*, 490 U.S. 488, 492 (1989)).

Multiple convictions in the same case coupled with concurrent sentences undermine a petitioner's claim that an "additional conviction will harm him in particular" such that § 2255 relief is appropriate. *Ross*, 801 F.3d at 383. In *Ross*, the plaintiff argued that one wrongful conviction out of his eight total convictions carried a variety of collateral consequences, such as greater social stigma, or an adverse affect on his eligibility for parole or the length of a sentence if he is convicted in the future. *Id.* at 383. The Court held that given his "remarkably long rap sheet," consisting of numerous violent crimes, "coupled with his seven other convictions" in the present case that included "one unquestionably valid conviction," it was difficult to see any significant collateral consequence originating from the one conviction that he challenged. *Id.* Thus, the collateral consequences identified did not rise to the level of "custody." *Id.*

Similarly, given that Reynolds was validly convicted of four other offenses in this case, the collateral consequences originating from Count Four are hard to identify.

As previously discussed, both sentence level enhancements were based on his involvement in terrorist activities. (*See* U.S.S.G. §§ 2M5.3(b), 3A1.4(a)). These enhancements resulted in fifteen (15) year sentences for Count One and a fifteen (15) year sentence for Count Two, which were to run consecutively, resulting in thirty (30) years of imprisonment. (Doc. 297 at 3).Then, the sentences for Counts Three, Four, and Six were each imposed at the maximum terms, but to run concurrently from the sentences for Counts One and Two, which encompass his terrorism related offenses. (*See id.*). Thus, his sentence of twenty (20) years imprisonment for Count Four did not impact his total term of imprisonment in the aggregate. For the foregoing reasons, I will deny Reynolds's second or successive § 2255 petition, because the status of his custody will not change even if the instant petition is granted.

Accordingly, **NOW**, this 26th day of September, 2019, **IT IS HEREBY ORDERED** that

(1) Reynolds's Motion to Proceed In Forma Pauperis (Doc. 577), is **GRANTED**.

(2) Reynolds subsequent Motions to Proceed In Forma Pauperis (Docs. 644 and 647), are **DENIED** as moot.

(3) Reynolds's Motion to Vacate under 28 U.S.C. 2255 (Doc. 566), filed with authorization, is **DENIED**.

(4) The following motions (Docs. 571, 572, 573, 574, 582, 583, 586, 588, 589, 590, 592, 596, 597, 599, 601, 604, 605, 606, 607, 608, 609, 615, 617, 618, 619, 621, 622, 623, 624, 626, 627, 628, 629, 630, 631, 632, 633, 643, 644, 645, 646, 647, 652, 653, 655, 656, 657, 658, 659), construed as second or successive motions under 28 U.S.C. § 2255 filed without prior authorization, are **DISMISSED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

APPENDIX B

DISTRICT COURT ORDER TO COMBINE CASE #16-cv-1093 and CASE #05-cr-0493

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

MICHAEL CURTIS REYNOLDS,	:	
	:	
Petitioner	:	CIVIL NO. 3:CV-18-1093
	:	
v.	:	
	:	(Judge Conaboy)
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent	:	

ORDER
Background

Michael Curtis Reynolds, an inmate presently confined at the Federal Correctional Institution, Greenville, West Virginia (FCI-Greenville) filed this pro se "Hazel-Atlas motion for fraud upon the court." Doc. 1, p. 1.

By way of background, Petitioner was convicted of multiple terrorism related criminal offenses following a July, 2007 jury trial before the Honorable Edwin M. Kosik of this district court. See United States v. Reynolds, Case No. 3:05-CR-493. This filing of this action was the most recent of multiple attempts by Reynolds challenging the legality of his federal conviction under Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944). Named as Respondent is the United States of America.

By Memorandum and Order dated June 14, 2018 this Court

concluded that to the extent that Reynolds intended his action to proceed as a civil rights complaint, it was subject to dismissal because inmates may not use civil rights actions to challenge the fact or duration of their confinement or to seek earlier or speedier release.

The Memorandum added that to the extent Petitioner was attempting to pursue a habeas corpus petition under 28 U.S.C. § 2241, such relief was not available because his pending claims did not fall within this narrow exception to the general rule that section 2255 provides the exclusive avenue by which a federal prisoner may mount a collateral challenge to his conviction or sentence. Based upon those considerations and the fact that Petitioner had not been granted leave to pursue a second or successive petition under 28 U.S.C. § 2255, Reynolds' action was dismissed.

By Order dated September 5, 2018, Petitioner's appeal challenging the June 14, 2018 decision of this Court was dismissed by the United States Court of Appeals for the Third Circuit.

Presently pending is Petitioner's motion seeking mandamus relief (Doc. 15), an in forma pauperis application (Doc. 19), and his motion seeking relief under Hazel-Atlas (Doc. 16). Since this matter has been closed, those motions to the extent that they seek relief in this matter will be dismissed on the basis of mootness.

However, since the Court of Appeals for the Third Circuit recently granted Petitioner's request to file a second or

successive § 2255 motion on September 27, 2018, the Clerk of Court will be directed to refile those motions as well as any other post-September 27, 2018 filings in this matter into Petitioner's pending § 2255 action, Reynolds v. USA, Civ. No. 3:18-CV-1977. An appropriate Order will enter.

AND NOW THIS 1st DAY OF OCTOBER, 2018, IT IS HEREBY ORDERED THAT:

1. Petitioner's motions seeking mandamus relief (Doc. 15), leave to proceed in forma pauperis (Doc. 19), and for relief under Hazel-Atlas (Doc. 16) to the extent that they seek relief in this matter are **DISMISSED AS MOOT.**

2. The Clerk of Court will be directed to refile those motions as well as any other post-September 27, 2018 filing in this matter (Docs. 15-20) into Petitioner's pending § 2255 action, Reynolds v. USA, Civ. No. 3:18-CV-1977.

RICHARD P. CONABOY
United States District Judge