

**A P P    A**

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

Submitted October 15, 2019  
Decided October 24, 2019

## Before

JOEL M. FLAUM, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 19-1065

MIGUEL RODRIGUEZ,  
*Petitioner-Appellant,*

Appeal from the United States District  
Court for the Northern District of Illinois,  
Eastern Division.

*v.*

No. 18 C 6081

UNITED STATES OF AMERICA,  
*Respondent-Appellee.*

Rubén Castillo,  
*Judge.*

## ORDER

Miguel Rodriguez has filed a notice of appeal from the dismissal as successive of his motion under 28 U.S.C. § 2255, which we construe as an application for a certificate of appealability. We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is **DENIED**.

**A P P    B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MIGUEL RODRIGUEZ, )  
Petitioner, ) No. 18 C 6081  
v. ) Chief Judge Rubén Castillo  
UNITED STATES OF AMERICA, )  
Respondent. )

ORDER

Presently before the Court is a *pro se* filing by Miguel Rodriguez (“Petitioner”) labeled, “Motion to Vacate, Correct, or Set Aside Pursuant to Title 28 U.S.C. § 2255 In Light of *McCarthan v. Director of Goodwill Industries-Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017) (en banc).” (R. 1.) For the reasons stated below, the motion is dismissed for lack of jurisdiction.

In 2008, Petitioner and his co-defendants, members of the Insane Deuces street gang, were convicted by a jury of racketeering conspiracy and other offenses. *See United States v. Morales*, 655 F.3d 608, 615-20 (7th Cir. 2011). Petitioner was sentenced to life in prison. *Id.* at 620. His conviction and sentence were upheld on direct appeal. *Id.* at 620-37. In November 2012, he filed a motion to vacate his sentence under 28 U.S.C. § 2255, claiming ineffective assistance of counsel on various grounds. *Rodriguez v. United States*, No. 12 C 9050 (N.D. Ill. filed Nov. 9, 2012). This Court summarily denied the motion. *Id.*, R. 4, Min. Entry. Petitioner appealed, and the U.S. Court of Appeals for the Seventh Circuit remanded for this Court to articulate its reasons for denying the motion in more detail. *Id.*, R. 18, 7th Cir. Order. Thereafter, this Court issued a 32-page opinion denying the motion. *Id.*, R. 22, Mem. Op. & Order. Petitioner appealed again, and in September 2016, the Seventh Circuit denied Petitioner’s certificate of appealability,

finding that he had failed to make a substantial showing of the denial of a constitutional right.

*Id.*, R. 37, 7th Cir. Order.

In September 2018, Petitioner returned with the present filing. (R. 1.) The motion is somewhat difficult to decipher, but Petitioner appears to argue that he is entitled to pursue a second motion under Section 2255 because a decision by the U.S. Court of Appeals for the Eleventh Circuit—the Circuit that encompasses the facility where he is presently incarcerated—precludes him from attacking his conviction under 28 U.S.C. § 2241. (*Id.* at 1-2.) He argues that, under these circumstances, any “restrictions placed on second or successive § 2255 motions . . . must be declared unconstitutional.”<sup>1</sup> (*Id.* at 2.)

The Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) provides that before a second or “successive” motion under Section 2255 can be filed in the district court, the movant must “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). If the movant has not obtained authorization from the appropriate court of appeals, the district court has no jurisdiction to

---

<sup>1</sup> To understand Petitioner’s argument, some background is necessary. Federal prisoners like Petitioner who seek to collaterally attack their conviction or sentence “must ordinarily bring an action under § 2255, the federal prisoner’s substitute for habeas corpus.” *Camacho v. English*, 872 F.3d 811, 813 (7th Cir. 2017) (citation and internal quotation marks omitted), *cert. denied*, 138 S. Ct. 1028 (2018). A federal prisoner may seek habeas corpus relief under 28 U.S.C. § 2241, however, in unusual situations where “his section 2255 remedy is inadequate or ineffective to test the legality of his detention.” *Id.* (citation and internal quotation marks omitted). This provision, referred to as the “Savings Clause,” ordinarily “requires a structural problem in § 2255 that forecloses even one round of effective collateral review[.]” *Id.* (citation omitted). In the Seventh Circuit, a federal prisoner may obtain relief under the Savings Clause if, among other requirements, he can establish an applicable change in case law on a matter of statutory interpretation, and can establish that his conviction or sentence involved an error so “grave” that it can be “deemed a miscarriage of justice[.]” *Id.* (citation omitted). In *McCarthan v. Director of Goodwill Industries–Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017) (en banc), the Eleventh Circuit adopted a different rule, holding that “a change in caselaw does not trigger relief under the saving clause.” *Id.* at 1085. The Savings Clause is of questionable applicability to Petitioner here, since it permits a qualifying prisoner to seek relief under Section 2241, *see Camacho*, 872 F.3d at 813, and Petitioner is not trying to litigate under Section 2241 in this Court—nor could he, since such a petition would have to be filed in the district where he is incarcerated. *See Webster v. Daniels*, 784 F.3d 1123, 1144 (7th Cir. 2015). In any event, his motion fails on the threshold matter of jurisdiction for the reasons outlined herein.

consider the motion. *Burton v. Stewart*, 549 U.S. 147, 152-53 (2007); *Suggs v. United States*, 705 F.3d 279, 282 (7th Cir. 2013). It is apparent from Petitioner's filing that he is attempting to seek relief under Section 2255 for a second time, but there is no indication from his filing that he obtained authorization from the Seventh Circuit to do so. Therefore, this Court lacks jurisdiction to consider the motion. *See Burton*, 549 U.S. at 152-53. If Petitioner believes he is entitled to pursue a successive motion under Section 2255, the appropriate place for him to make this argument is in the Seventh Circuit.<sup>2</sup> *See 28 U.S.C. § 2244(b)(3)(A)*.

For these reasons, the motion (R. 1) is DISMISSED for lack of jurisdiction.

ENTERED: 

Chief Judge Rubén Castillo  
United States District Court

Dated: September 20, 2018

---

<sup>2</sup> The Court notes that the bulk of Petitioner's motion is devoted to discussing the interplay between Section 2241 and Section 2255 rather than to clearly articulating the claim Petitioner wishes to pursue in a successive Section 2255 motion. (R. 1, Mot. at 1-9.) He makes a passing reference to having "received an erroneous career offender enhancement" to his sentence based on U.S. Supreme Court cases decided after his conviction became final. (R. 1, Mot. at 10.) He appears to be invoking *Johnson v. United States*, 135 S. Ct. 2551 (2015), and other recent Supreme Court cases interpreting the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1), which imposes enhanced sentences on defendants who qualify as "career offenders" based on their prior criminal records. These cases would not apply to Petitioner, however, because he was not sentenced under the ACCA. *See United States v. Rodriguez*, No. 03 CR 90, R. 1771, Sentencing Tr. at 5-60. Rather, the length of Petitioner's sentence was driven by the fact that the conspiracy involved four murders and other acts of violence. *See id.* at 5-35, 57-59. But even if Petitioner had a *Johnson* claim, criminal defendants like Petitioner whose convictions became final prior to *Johnson* had one year from the date *Johnson* was decided—or until June 2016—to seek authorization to pursue a second Section 2255 motion based on that case. *See Holt v. United States*, 843 F.3d 720, 723 (7th Cir. 2016). The present motion was filed more than two years beyond that deadline.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS**

United States of America )  
v. ) Case No: 18 C 6081  
Miguel Rodriguez ) Chief Judge Ruben Castillo

## **ORDER**

Petitioner's motion to vacate, correct or set aside pursuant to Title 28 U.S.C. 2255 [1] is dismissed for lack of jurisdiction.

Dated: September 20, 2018

/s/ Chief Judge Ruben Castillo

A P P      C

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

**MIGUEL RODRIGUEZ,**

**Petitioner,**

v.

**Case No: 5:18-cv-225-Oc-10PRL**

**WARDEN, FCC COLEMAN - MEDIUM,**

**Respondent.**

---

**ORDER**

Petitioner, a federal prisoner proceeding *pro se*, initiated this case by filing a Petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). Petitioner argues that his conviction is invalid and his sentence enhancement is unconstitutional under Mathis v. United States, 136 S.Ct. 2243 (2016), and Johnson v. United States, 135 S.Ct. 2551 (2015). As relief, Petitioner seeks release.

Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that “[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” See also Rule 12, Rules Governing Section 2255 Proceedings. Recently, sitting en banc the Eleventh Circuit overruled prior precedent and held that 28 U.S.C. § 2241 is not available to challenge the validity of a sentence except upon very narrow grounds not present in this case. McCarthan v. Director of Goodwill Industries-Suncoast, Inc., 851 F.3d 1076, 1079 (11th Cir. 2017) (en banc) (quoting 28 U.S.C. § 2255(e)). Bernard v. FCC Coleman Warden, No. 15-13344 (11th Cir. April 24, 2017) (citing McCarthan, 851 F.3d at 1092-93).

Thus, pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts (directing *sua sponte* dismissal if the petition and records show that the moving party is not entitled to relief), this case is **DISMISSED**. See also 28 U.S.C. § 2255(b). The **Clerk** is directed to enter judgment accordingly.