United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 23, 2019
Decided July 26, 2019

Before

KENNETH F. RIPPLE, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 18-1278

KEVIN WHITE, *Petitioner-Appellant,*	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 1:16-cv-01342-JES
HERIBERTO H. TELLEZ, *Respondent-Appellee.*	James E. Shadid, Judge.

ORDER

Kevin White pleaded guilty in the Eastern District of Missouri to a drug conspiracy and money laundering, for which he was sentenced to 188 months in prison. On direct appeal, the Eighth Circuit affirmed. *United States v. White*, 734 F.3d 843 (8th Cir. 2013). White then moved—again in the Eastern District of Missouri—to vacate the judgment under 28 U.S.C. § 2255, to no avail. No. 4:15CV1193 (E.D. Mo. Oct. 18, 2016).

Eventually White was transferred to a federal prison in the Central District of Illinois. He then turned to the nearest district court with a habeas corpus petition under 28 U.S.C. § 2241. He claimed that he was factually innocent; that there had been no probable cause to arrest and indict him within Missouri; that the Missouri-based federal

judge failed to discuss a variety of important topics at the plea colloquy and did not elicit an adequate factual basis for the plea; and that federal prosecutors at one point amended the indictment without input from a grand jury.

But the Illinois-based district court, invoking 28 U.S.C. § 2255(e)'s exclusive-remedy provision, denied the petition. Specifically, § 2255(e) makes a § 2255 motion the exclusive remedy for a prisoner who seeks to collaterally attack a federal sentence or conviction—thus barring any habeas corpus petition under § 2241—*unless* the § 2255 mechanism is "inadequate or ineffective to test the legality of his detention." And White did not meet the inadequate-or-ineffective-remedy test. In this circuit, a § 2255 motion is inadequate or ineffective only if the prisoner now relies on a new and retroactive change in statutory law that took place after a prior round of § 2255 review. *In re Davenport*, 147 F.3d 605, 611 (7th Cir. 1998); *see also Montana v. Cross*, 829 F.3d 775, 783 (7th Cir. 2016). (Retroactive changes in *constitutional* law, but not statutory law, sometimes permit a successive motion to vacate the sentence under § 2255(h).) Because White had identified no relevant change in statutory law, and because he could have brought his current claims on direct appeal or in his first § 2255 motion, the district court concluded that the exclusive-remedy clause of § 2255(e) barred the petition at issue here.

White filed a notice of appeal. When directed to explain why this court should not summarily affirm, he filed a response memo, a slightly modified version of the same memo, and a set of amendments. He also requested counsel.

Yet the district court's application of *Davenport* and § 2255(e) is unassailable. And White's filings here do not grapple with the district court's rationale in any event.

Thus, we **AFFIRM** the district court's judgment. And because there is no nonfrivolous issue to argue, we **DENY** White's motion for counsel. All other pending motions are **DENIED**.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

August 20, 2019

Before

KENNETH F. RIPPLE, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 18-1278

KEVIN WHITE,	Appeal from the United States District
Petitioner-Appellant,	Court for the Central District of Illinois.
v.	No. 1:16-cv-01342-JES
HERIBERTO H. TELLEZ,	James E. Shadid,
Respondent-Appellees.	*Judge.*

ORDER

On consideration of the petition for rehearing *en banc* filed on August 5, 2019 in the above-entitled cause by *pro se* appellant, Kevin White, no judge in active service has requested a vote on the petition for rehearing *en banc* and all members of the original panel have voted to deny rehearing. It is, therefore, **ORDERED** that rehearing and rehearing *en banc* are **DENIED**.