

UNPUBLISHED

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

No. 20-6670

JAMES MARCUS LLOYD, III,

Petitioner - Appellant,

v.

J. HUTCHINSON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Paige Jones Gossett, Magistrate Judge. (0:20-cv-00963-MGL)

Submitted: September 22, 2020

Decided: September 25, 2020

Before NIEMEYER, KEENAN, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

James Marcus Lloyd, III, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Marcus Lloyd, III, seeks to appeal the magistrate judge's report and recommendation recommending that Lloyd's 28 U.S.C. § 2241 petition be dismissed. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The report and recommendation Lloyd seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we deny Lloyd's motions to appoint counsel and for leave to proceed in forma pauperis, and dismiss the appeal for lack of jurisdiction. 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.

DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James M. Lloyd, III,	)	C/A No. 0:20-963-MGL-PJG
	)	
Petitioner,	)	
	)	
v.	)	REPORT AND RECOMMENDATION
	)	
J. Hutchinson, <i>Warden</i> ,	)	
	)	
Respondent.	)	
	)	

The petitioner, James M. Lloyd, III, a self-represented federal prisoner, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.). Having reviewed the Petition in accordance with applicable law, the court concludes that it should be summarily dismissed.

I. Factual and Procedural Background

Petitioner is an inmate at the Federal Correctional Institution in Edgefield, South Carolina. Petitioner indicates he was convicted in the United States District Court for the Middle District of Georgia of being a felon in possession of a firearm, 18 U.S.C. § 922(a)(2) and § 924(g), and sentenced in June 2015 to ninety-six months' imprisonment. (Pet., ECF No. 1-1 at 1.) He indicates he filed a direct appeal; filed a motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255; and sought permission to file a successive § 2255 motion, all of which were denied. (Id. at 1-2.)

Petitioner now brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner asks this court to vacate his conviction because of the United States Supreme Court's recent decision in Rehaif v. United States, 139 S. Ct. 2191 (2019) (holding that in a prosecution under 18 U.S.C. § 922(a)(2) and § 924(g), the Government must prove the defendant knew he

possessed a firearm and that the defendant knew he belonged to the relevant category of persons barred from possessing a firearm). Specifically, Petitioner argues his conviction should be vacated because (1) the Government failed to prove at trial that he knew he was barred from owning a firearm, (2) the jury was instructed that the Government did not have to prove that Petitioner knew he was not allowed to possess a firearm, and (3) Petitioner's indictment did not contain facts indicating that the Government could prove that it could meet the knowledge element required by Rehaif.

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* petition filed in this case pursuant to the Rules Governing § 2254 Cases,¹ 28 U.S.C. § 2254; the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214; and in light of the following precedents: Denton v. Hernandez, 504 U.S. 25 (1992); Neitzke v. Williams, 490 U.S. 319, 324-25 (1989); Haines v. Kerner, 404 U.S. 519 (1972); Nasim v. Warden, Md. House of Corr., 64 F.3d 951 (4th Cir. 1995) (en banc); Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983).

This court is required to liberally construe *pro se* pleadings, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep't of Soc. Servs.,

¹ The Rules Governing Section 2254 are applicable to habeas actions brought under § 2241. See Rule 1(b).

901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for “all civil actions”).

B. Analysis

A petitioner cannot challenge his federal conviction and sentence through § 2241 unless he can show under the “savings clause” of § 2255(e) that a § 2255 motion is “inadequate or ineffective to test the legality of his detention.” See 28 U.S.C. § 2255(e); see also Rice v. Rivera, 617 F.3d 802, 807 (4th Cir. 2010) (providing that if a federal prisoner brings a § 2241 petition that does not fall within the scope of the savings clause, the district court must dismiss the unauthorized habeas petition for lack of jurisdiction). The United States Court of Appeals for the Fourth Circuit has held that a petitioner must establish the following criteria to demonstrate that a § 2255 motion is inadequate or ineffective to test the legality of a prisoner’s conviction:

(1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner’s direct appeal and first § 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 § 2255 because the new rule is not one of constitutional law.

United States v. Wheeler, 886 F.3d 415, 427 (4th Cir. 2018) (quoting In re Jones, 226 F.3d 328, 333-34 (2000)).

Here, Petitioner is unable to meet the savings clause because he fails to allege facts that would plausibly show that Rehaif is a substantive change in the law that renders Petitioner’s conduct unlawful. Petitioner argues that he did not know he was barred from owning a firearm, (Pet., ECF No. 1-1 at 14, ECF No. 1-3 at 3), but Rehaif requires only that the Government prove that a person charged under 18 U.S.C. § 924(a)(2) & (g) knew he was a felon.² See Rehaif, 139

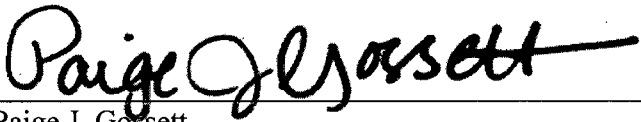
² Petitioner indicates that he stipulated to his status as a felon at trial. (Pet., ECF No. 1-1 at 11.)

S. Ct. at 2198 (2019) (differentiating between Rehaif's defense—that the Government had to prove the defendant's intent to as to each element of the crime, and a "mistake of law" defense—that the defendant was unaware of a statute proscribing his conduct). Petitioner provides no indication here that he did not know he was a felon, or that he sought to argue such at trial. Accordingly, Rehaif is not a change in the law that would allow him to meet the savings clause of § 2255. Therefore, this case should be dismissed because this court lacks jurisdiction over the Petition. See Wheeler, 886 F.3d at 426 (holding that the failure to meet the requirements of the savings clause is a jurisdictional defect that may not be waived).

III. Conclusion

Accordingly, the court recommends that the Petition in the above-captioned case be dismissed without prejudice and without requiring the respondent to file a return.

March 25, 2020
Columbia, South Carolina


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

The parties' attention is directed to the important notice on the next page.



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

JAMES M. LLOYD III, 96603-071,
Petitioner,

vs.

J. HUTCHINSON, *Warden*,
Respondent.

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§

CIVIL ACTION NO. 0:20-963-MGL-PJG

**ORDER TRANSFERRING THIS CASE TO
THE EASTERN DISTRICT OF NORTH CAROLINA**

I. INTRODUCTION

Petitioner James M. Lloyd III (Lloyd) filed this 28 U.S.C. § 2241 petition against Respondent J. Hutchinson (the Warden of F.C.I. Edgefield). He is self represented.

II. FACTUAL AND PROCEDURAL HISTORY

When Lloyd filed his Section 2241 petition, he was incarcerated at F.C.I.–Edgefield, which is located in Edgefield, South Carolina. As such, F.C.I.-Edgefield, as well as the Warden of F.C.I. Edgefield, are within this Court’s jurisdiction.

Lloyd, however, has been moved from F.C.I.–Edgefield and is now at R.R.M. Raleigh, which is located in Butner, North Carolina. See <https://www.bop.gov/inmateloc/> (last visited February 17, 2021). R.R.M. Raleigh and its warden are within the jurisdiction of the United

States District Court for the Eastern District of North Carolina (the E.D.N.C.). *See* 28 U.S. Code § 113(a).

III. DISCUSSION AND ANALYSIS

“The federal habeas statute straightforwardly provides . . . the proper respondent to a habeas petition is ‘the person who has custody over [the petitioner].’” *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (quoting 28 U.S.C. § 2242). “The writ, or order to show cause shall be directed to the person having custody of the person detained.” 28 U.S.C. § 2243.

“The consistent use of the definite article in reference to the custodian indicates . . . there is generally only one proper respondent to a given prisoner’s habeas petition. This custodian, moreover, is ‘the person’ with the ability to produce the prisoner’s body before the habeas court.” *Rumsfeld*, 542 U.S. at 434–35 (quoting § 2242).

Ascertaining the proper respondent is critical because “[t]he writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody.” *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 494–95 (1973). “The whole force of the writ is spent upon the respondent.” *Id.* at 495 (citation omitted) (internal quotation marks omitted).

“District courts are limited to granting habeas relief ‘within their respective jurisdictions.’” *Rumsfeld*, 542 U.S. at 442 (quoting 28 U.S.C. § 2241(a)). The Supreme Court has “interpreted this language to require ‘nothing more than that the court issuing the writ have jurisdiction over the custodian.’” *Id.* (quoting *Braden*, 410 U.S. at 495). “[T]he custodian’s absence from the territorial jurisdiction of the district court is fatal to habeas jurisdiction.” *Id.* at 445.

From this law and these facts, we know the following: the Court has jurisdiction over Lloyd's Section 2241 habeas petition only if it has jurisdiction over his current custodian. But, it does not.

Lloyd's current custodian is the warden of R.R.M. Raleigh. S/he is located, not within this Court's jurisdiction, but instead within that of the E.D.N.C.. Accordingly, Lloyd's custodian's absence from the territorial jurisdiction of this Court is fatal to its jurisdiction to consider the merits of his petition.

Besides, even if somehow this Court were to assess the petition and then grant the relief Lloyd seeks, the Warden of F.C.I. Edgefield lacks the ability to fulfill an order by this Court granting the petition. This is so because Lloyd is no longer in the Warden of F.C.I. Edgefield's custody. That is why Lloyd's Section 2241 petition must be transferred: so it can be presented to R.R.M. Raleigh's warden, Lloyd's immediate custodian, who is within the jurisdiction of the E.D.N.C..

The Court notes, if it were to consider the merits of Lloyd's petition, it would likely dismiss it.

IV. CONCLUSION

Consequently, it is the judgment of the Court this case is **TRANSFERRED** to the E.D.N.C. for further proceedings, and any pending motions are **DEEMED AS MOOT**.

To the extent Lloyd requests a certificate of appealability from this Court, that certificate is **DENIED**.

IT IS SO ORDERED.

Signed this 17th day of February, 2020, in Columbia, South Carolina.

/s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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