

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14021-H

JEREMEL REMYMARTIN SMITH,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court
for the Middle District of Florida

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Jeremel Remy martin Smith has failed to pay the filing and docketing fees to the district court within the time fixed by the rules, effective April 21, 2021.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Gerald B. Frost, H, Deputy Clerk

FOR THE COURT - BY DIRECTION

Appx. "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. 16-20489-CR-DIMITROULEAS

Plaintiff,

vs.

JEREMEL R. SMITH,

Defendant.

ORDER

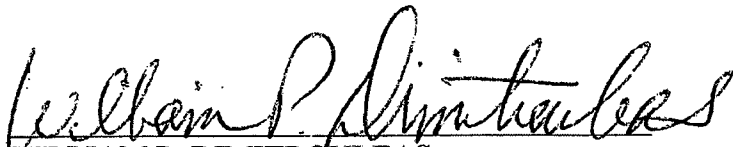
THIS CAUSE is before the Court on Defendant's *pro se* May 25, 2020, letter requesting correction of PSIR [DE-96]. The Court has reviewed the Court file and Pre Sentence Investigation Report (PSIR), and having presided over this cause, finds as follows:

The PSIR correctly scored Smith with 13 criminal history points, which equates to a Criminal History Category VI [DE-71, p. 9]; [DE-82, p. 6]. The Court imposed a downward departure because a Criminal History Category VI over-represented Smith's criminal history. [DE-82, p. 16]. Nevertheless, the PSIR is correct.

As far as a recommendation, the Court exercises discretion and leaves the matter of placement to the Bureau of Prisons; the request [DE-96] is Denied.

The Clerk shall mail a copy of this order to the Defendant.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 29th day of May, 2020.


WILLIAM P. DIMITROULEAS
United States District Judge

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

JEREMEL REMYMARTIN SMITH,

Petitioner,

v.

Case No. 5:20-cv-305-Oc-32PRL

WARDEN CARLTON,

Respondent.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Before the Court is Petitioner's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1). He also filed a Memorandum of Law in support (Doc. 2). In 2016, Petitioner was convicted of being a felon in possession of a firearm and ammunition in the Southern District of Florida. He is currently serving a 100-month sentence at FCC Coleman, which is located within the Middle District of Florida. He acknowledges that the Southern District denied his motion to vacate under 28 U.S.C. § 2255 in 2018. This Court takes judicial notice of the Eleventh Circuit's recent denial of Petitioner's application to file a second or successive motion to vacate under § 2255. See In re: Jeremel Smith, No. 20-12392-C (11th Cir. July 7, 2020).

In the instant Petition, Petitioner claims that he is "actually innocent" based on United States v. Rehaif, 139 S. Ct. 2191 (2019). He argues that the

Rehaif case “is a substantive change in the law by the U.S. Supreme Court,” and that he “is therefore actually innocent of his sentence and conviction based on Rehaif.” Notably, this is the same basis on which he requested the Eleventh Circuit’s permission to file a second or successive motion to vacate under § 2255.

A motion to vacate under 28 U.S.C. § 2255 is the “exclusive mechanism for a federal prisoner to seek collateral relief unless he can satisfy the ‘saving clause,’” i.e., § 2255(e). McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc., 851 F.3d 1076, 1081 (11th Cir. 2017) (en banc). The saving clause permits a federal prisoner to proceed with a habeas petition under § 2241 only when “the remedy by [§ 2255] motion is inadequate or ineffective to test the legality of his detention.” 28 U.S.C. § 2255(e). The Eleventh Circuit has made clear that § 2255 is inadequate or ineffective to test the legality of a federal prisoner’s detention, such that he may proceed under § 2241, only in very narrow circumstances:

(1) when raising claims challenging the execution of the sentence, such as the deprivation of good-time credits or parole determinations; (2) when the sentencing court is unavailable, such as when the sentencing court itself has been dissolved; or (3) when practical considerations, such as multiple sentencing courts, might prevent a petitioner from filing a motion to vacate.

Bernard v. FCC Coleman Warden, 686 F. App’x 730, 730-31 (11th Cir. 2017) (citing McCarthan, 851 F.3d at 1092-93), cert. denied sub nom. Bernard v. Jarvis, 138 S. Ct. 1164 (2018). McCarthan also makes clear that “‘ordinary sentencing challenges’ may not be brought under § 2241.” Donaldson v. Warden,

FCI Coleman Medium, 691 F. App'x 602, 603 (11th Cir. 2017) (quoting McCarthan, 851 F.3d at 1092). “[A]ny ‘cognizable claim’ that could have been brought under § 2255, even if circuit precedent or a procedural bar would have foreclosed the claim, cannot be brought under § 2241 in this circuit after McCarthan.” Id. (citing McCarthan, 851 F.3d at 1086-90).

Petitioner’s claim is not cognizable under § 2241. Petitioner is a federal inmate and he is challenging the validity of his conviction. His claim does not meet any of the narrow circumstances outlined above that would allow him to proceed under § 2241. Although the Rehaif decision was issued after Petitioner’s § 2255 proceedings concluded, that does not mean § 2255 is inadequate or ineffective to test the legality of Petitioner’s detention. As the Eleventh Circuit has clarified, “any ‘cognizable claim’ that could have been brought under § 2255, even if circuit precedent or a procedural bar would have foreclosed the claim, cannot be brought under § 2241 in this circuit after McCarthan.” Donaldson, 691 F. App'x at 603 (citing McCarthan, 851 F.3d at 1086-90).¹

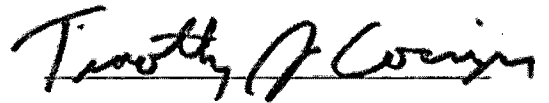
Accordingly, it is

ORDERED:

¹ In an opinion concurring in the judgment denying Petitioner’s request to file a second or successive motion to vacate under § 2255, Judge Rosenbaum asserts that a Rehaif claim should be able to be brought under § 2241. However, as noted in the panel opinion, Judge Rosenbaum also “acknowledges that [the Eleventh Circuit’s] en banc McCarthan decision precludes it.”

1. This case is **DISMISSED without prejudice**.
2. The Clerk shall enter judgment dismissing the case without prejudice, terminate any pending motions, and close the file.

DONE AND ORDERED in Jacksonville, Florida, this 25th day of September, 2020.

A handwritten signature in black ink, appearing to read "Timothy J. Corrigan". The signature is written in a cursive, flowing style.

TIMOTHY J. CORRIGAN
United States District Judge

JAX-3 9/23

c:

Jeremel Remymartin Smith