United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 28, 2021
Decided May 19, 2021

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-1466

ROBERT A. ESPINOZA,
Petitioner-Appellant,

v.

M. SEGAL, Warden,
Respondent-Appellee.

Appeal from the United States District Court for the Central District of Illinois.

No. 1:21-cv-01019-JES

James E. Shadid,
Judge.

ORDER

Robert Espinoza has appealed the district court's dismissal of his petition under 28 U.S.C. §§ 2255(e), 2241. We summarily affirm the district court's judgment.

A jury convicted Espinoza of, among other things, racketeering, 18 U.S.C. § 1962(a), (d), and using and carrying a firearm during his racketeering activities, *id.* § 924(c)(1)(A), (B)(ii). Predicate acts of racketeering sometimes are defined by state law; here, Espinoza's predicate acts of racketeering included Illinois residential arson and attempted residential arson. The district court imposed 600 months' imprisonment. No. 4:00-cr-40031-JBM-1 (Mar. 1, 2002 C.D. Ill.). Espinoza's convictions and sentence were affirmed on appeal. *United States v. Espinoza*, 52 F. App'x 846 (7th Cir. 2002).

Espinoza then submitted several motions under 28 U.S.C. § 2255. Eventually, in 2016, he filed a successive § 2255 motion with this court's authorization. No. 16-2727 (7th Cir. July 27, 2016). There, he argued that § 924(c)'s residual clause is unlawfully vague, that RICO offenses are indivisible under *Mathis v. United States*, 136 S. Ct. 2243 (2016), and that some forms of racketeering do not involve force and thus do not qualify as predicate crimes under the non-vague portions of § 924(c). Thus, by his lights, racketeering could never be a predicate crime of violence for purposes of § 924(c).

Alternatively, he argued, even if the racketeering statute were divisible into discrete crimes defined by the state laws cited for each charged racketeering predicate, then one of *his* racketeering predicates—attempted arson—was not a crime of violence. Specifically, Espinoza argued that Illinois "attempt" convictions do not have as an element the use, attempted use, or threated use of physical force. He did not, however, challenge the use of completed residential arson as a predicate crime of violence.

The district court rejected these arguments and denied Espinoza's motion, No. 4:16-cv-04145-JBM (C.D. Ill. Oct. 3, 2017), and this court affirmed on appeal, *Espinoza v. United States*, 710 F. App'x 267 (7th Cir. 2018).

Espinoza has now filed a saving-clause petition under §§ 2255(e) and 2241. He again attacks his § 924(c) conviction. This time, Espinoza says that his Illinois arson convictions do not have as an element the use of force against the person or property *of another*, because the statute criminalizes the destruction of one's own property for the purpose of committing insurance fraud. *See* 720 ILCS 5/20-1(b) (1993); *Torres v. Lynch*, 136 S. Ct. 1619, 1630 (2016) (for purposes of 18 U.S.C. § 16(a), arson convictions do not qualify as crimes of violence where the statute "defin[es] that crime to include the destruction of one's own property"); *accord United States v. Wilder*, 834 F. App'x 782, 784 (4th Cir. 2020) (concluding federal arson is not a crime of violence under force clause of § 924(c)(3)(A)); *United States v. Salas*, 889 F.3d 681, 683–84 (10th Cir. 2018) (same).

Espinoza's argument rests on his insistence that at least some of his arson convictions arose under Illinois's *general* arson statute, 720 ILCS 5/20-1 (1993), which includes insurance-related arson of one's own property, *id.* 5/20-1(b). But a review of the indictment reveals that each of Espinoza's convictions was specifically for residential arson. *See* 720 ILCS 5/20-1.2 (1993) (added by P.A. 90-787, § 5, eff. Aug. 14, 1998) (current version at 720 ILCS 5/20-1(b) (2013)). And Illinois residential arson, at that time, necessarily involved the use of force against the property of another. *Id.* ("A person commits the offense of residential arson when, in the course of committing an arson, he

or she knowingly damages, partially or totally, any building or structure that is the dwelling place of another."). Thus, even if Espinoza's convictions involved insurance-related arson, the residential-arson statute required the damage to have been done to "the dwelling place of another." Accordingly, we see no potential merit in his claim.

In any event, Espinoza has not satisfied § 2255(e)'s threshold requirements, *see Chazen v. Marske*, 938 F.3d 851, 856 (7th Cir. 2019), so the merits are not squarely before us. Espinoza has not pointed to anything that prevented him from raising this exact argument in his last § 2255 motion, which was entertained on the merits in 2016. There, Espinoza specifically relied on *Mathis* to challenge his § 924(c) conviction, but he raised a different argument than the one he makes now. Espinoza has not explained his failure to raise this argument earlier and has not identified any new change in law that previously was unavailable to him.

Accordingly, we summarily **AFFIRM** the district court's judgment. Espinoza's request to proceed in forma pauperis is **DENIED**.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

July 20, 2021

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-1466

ROBERT A. ESPINOZA,
Petitioner-Appellant,

v.

M. SEGAL, Warden,
Respondent-Appellee.

Appeal from the United States District Court for the Central District of Illinois.

No. 1:21-cv-01019

James E. Shadid,
Judge.

ORDER

Petitioner-appellant filed a petition for rehearing and rehearing *en banc* on July 1, 2021. No judge* in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing.

The petition for rehearing and rehearing *en banc* is therefore DENIED.

* Judge Candace Jackson-Akiwumi did not participate in the consideration of this matter.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

ROBERT A. ESPINOZA,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. 21-cv-1019**
	)	
WARDEN, FCI PEKIN,	)	
	)	
Respondent.	)	

ORDER

JAMES E. SHADID, U.S. District Judge:

Before the Court is Petitioner Robert A. Espinoza's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (d/e 1). Espinoza argues, as he did in his successive § 2255 motion, that his conviction and sentence under 18 U.S.C. § 924(c) is invalid because his predicate offense is not a crime of violence. This matter is now before the Court for preliminary review of the § 2241 petition pursuant to 28 U.S.C. § 2243 and Rule 1(b) and Rule 4 of the Rules Governing Section 2254 Proceedings for the United States District Courts. Because it plainly appears from the Petition and attached exhibits that Petitioner is not entitled to relief, Petitioner's § 2241 Petition (d/e 1) is SUMMARILY DISMISSED.

I. BACKGROUND

On November 6, 2001, a jury in the United States District Court for the Central District of Illinois found Espinoza guilty of racketeering in violation of 18 U.S.C. § 1962(c) (Count One), conspiracy to commit racketeering in violation of 18 U.S.C. § 1962(d) (Count Two), conspiracy to distribute and possess with intent to distribute marijuana in violation of 18 U .S.C. §§ 841(a)(1) and 846 (Count Five), unlawful possession of a firearm in violation of 18 U.S.C.

§§ 922(g) and 924(a)(2) (Count Six), and using and carrying a firearm, an incendiary device, during and in relation to a crime of violence in violation of 18 U.S.C. §§ 924(c)(1)(A) and (c)(1)(B)(ii) and (2) (Count Seven). *See United States v. Espinoza,* Case No. 4:00-cr-40031-JBM-1 (C.D. Ill.); *Espinoza v. United States*, No. 11-4023, 2011 WL 1827232, at *1 (C.D. Ill. May 12, 2011). On March 1, 2002, Judge Joe Billy McDade sentenced Espinoza to 240 months' imprisonment on Counts One and Two, 60 months' imprisonment on Count Five, and 120 months' imprisonment on Count Six, all to run concurrently, and 360 months' imprisonment on Count Seven to run consecutively to Counts One, Two, Five, and Six. Judge McDade also sentenced Espinoza to a three-year term of supervised release. *Espinoza,* 2011 WL 1827232 at *1.

Espinoza filed a direct appeal, but the Seventh Circuit affirmed his conviction and sentence on December 5, 2002. *United States v. Espinoza*, 52 F. App'x 846 (7th Cir. 2002). Espinoza's Petition for Writ of Certiorari was denied by the United States Supreme Court on May 27, 2003. *Espinoza v. United States,* 538 U.S. 1065 (2003). On April 29, 2004, Espinoza filed his first Motion to Vacate, Set Aside, or Correct sentence pursuant to 28 U.S.C. § 2255. *Espinoza v. United States,* 4:04-cv-4023-JBM (C.D. Ill.). On July 14, 2004, Judge McDade dismissed Espinoza's § 2255 Motion for failure to prosecute. Judge McDade then vacated the dismissal and allowed Espinoza to file an amended § 2255 Motion, which he did on September 10, 2004. In his § 2255 Motion, Espinoza claimed that he received ineffective assistance of counsel during his pre-trial, trial, and appellate representation. On December 19, 2006, Judge McDade denied the § 2255 Motion. On June 6, 2007, the Seventh Circuit denied Espinoza's application for a certificate of appealability.

Next, Espinoza filed a petition entitled "Petition for Extraordinary Relief in the Nature of Audita Querela, Mandamus, Coram Nobis, Coram Vobis, Prohibition, Habeas Corpus and/or Injunctive or any other Extraordinary Relief Pursuant to Title 28 U.S.C. § 1651," bringing claims related to his $500.00 assessment. *Espinoza v. United States*, No. 11-4023, 2011 WL 1827232, at *1 (C.D. Ill. May 12, 2011). The district court found that Petition was an unauthorized successive collateral attack and dismissed the petition for lack of jurisdiction. *Id.*

On July 27, 2016, Espinoza filed a successive § 2255 motion after receiving authorization from the Seventh Circuit. The district court appointed counsel, who filed an amended § 2255 motion. Espinoza argued that his conviction and sentence under 18 U.S.C. § 924(c) for using and carrying a firearm during a crime of violence should be vacated pursuant to *Johnson v. United States*, 576 U.S. 591, 135 S. Ct. 2551 (2015). Specially, he argued "that (1) section 924(c)(3)(B) is unconstitutionally vague; (2) a RICO offense is indivisible under [*Mathis v. United States*, 136 S. Ct. 2243 (2016)] and is therefore not a crime of violence under § 924(c)'s elements clause; and (3) even if a RICO offense is divisible under *Mathis*, Espinoza's predicate offenses—residential arson and attempted arson—did not require the jury to find he used, attempted to use or threatened to use physical force against the person or property of another." *Espinoza v. United States*, No. 16-CV-4145, 2017 WL 4401626, at *3 (C.D. Ill. Oct. 3, 2017), *aff'd*, 710 F. App'x 267 (7th Cir. 2018). While the Government argued that Espinoza's *Mathis* claims were "untimely because *Mathis* is not a new substantive rule of constitutional law made retroactive by the Supreme Court," the district court disagreed and considered the *Mathis* claims on the merits. *Id.* at *4. Nonetheless, the district court denied the § 2255 Motion, finding that Espinoza's RICO predicate offenses of Illinois residential arson and attempted arson constitute crimes of violence under the elements clause of 18 U.S.C. § 924(c)(3)(A). *Id.* at *11.

Espinoza appealed, but the Seventh Circuit affirmed the judgment "on the authority of *Hill v. United States*, 877 F.3d 717 (7th Cir. 2017)." *Espinoza v. United States,* 710 F. App'x 267, 268 (7th Cir. 2018). In *Hill,* the Seventh Circuit had held that "[w]hen a substantive offense would be a violent felony under § 924(e) and similar statutes, an attempt to commit that offense also is a violent felony." *Hill*, 877 F.3d at 719.

Espinoza next filed an application in the Seventh Circuit to file a successive collateral attack under § 2255 in December 2019. Citing *United States v. Davis*, 139 S. Ct. 2319 (2019), which confirmed the Seventh Circuit's view that § 924(c)'s residual clause is unconstitutional, Espinoza again argued that racketeering is not a crime of violence under § 924(c). However, the Seventh Circuit denied the application, because "*Davis* concerns only § 924(c)'s residual clause, so that case is inapplicable here, where we have already upheld the district court's determination that Espinoza's § 924(c) conviction rests on the elements clause." *Espinoza*, Case No. 4:00-cr-40031-JBM, Notice (d/e 217).

Most recently, Espinoza filed a Motion pursuant to Fed. R. Civ. P. 60(b)(6) for relief from Judgment in his successive § 2255 case on March 6, 2020. *Espinoza*, Case No. 4:16-cv-4145 (C.D. Ill.), Order (d/e 26). He argued that the district court erred in denying his motion because it misunderstood the categorical approach as clarified in *Mathis. Id.* Finding this argument to be a direct attack on the merits of the prior decision, the district court dismissed the motion as an unauthorized successive collateral attack. *Id.* Espinoza appealed to the Seventh Circuit, but the appeal was later voluntarily dismissed on November 17, 2020, after his motion for leave to appeal in forma pauperis was denied.

On January 13, 2021, the Court received this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. In his Petition, Espinoza advances the identical argument as he did in his

previous § 2255 motion: he argues his conviction and sentence under 18 U.S.C. § 924(c) is invalid because "an 18 U.S.C. § 1962(c) RICO offense and an Illinois' Arson offense (720 ILCS 5/20-1) [cannot] categorically qualify as a 'crime of violence' for purposes of an 18 U.S.C. § 924(c) conviction under 18 U.S.C. § 924(c)(3)(A)." Pet. at 6 (d/e 1). The matter is now before the Court for preliminary review.

II. LEGAL STANDARD

This Court, in its discretion, applies Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to cases such as these purporting to arise under 28 U.S.C. § 2241. *See* Rules Governing Section 2254 Cases in the United States District Courts, Rule 1(b). Rule 4 requires the Court to "promptly examine" the Petition, and dismiss it if it "plainly appears . . . that the petitioner is not entitled to relief."

Espinoza's Petition challenges his federal conviction and sentence. Generally, federal prisoners who seek to collaterally attack their conviction or sentence must proceed by way of motion under 28 U.S.C. § 2255, the so-called "federal prisoner's substitute for habeas corpus." *Camacho v. English*, 872 F.3d 811, 813 (7th Cir. 2017) (quoting *Brown v. Rios*, 696 F.3d 638, 640 (7th Cir. 2012)). The exception to this rule is found in § 2255 itself: a federal prisoner may petition under § 2241 if the remedy under § 2255 "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e). Under the "escape hatch" of § 2255(e), "[a] federal prisoner should be permitted to seek habeas corpus only if he had no reasonable opportunity to obtain earlier judicial correction of a fundamental defect in his conviction or sentence because the law changed after his first 2255 motion." *In re Davenport*, 147 F.3d 605, 611 (7th Cir.

1998). The Seventh Circuit has developed a three-part test to determine whether 2255 was "inadequate or ineffective:

> • *Step #1*: the federal prisoner must seek relief based on a decision of statutory interpretation (as opposed to a decision of constitutional interpretation, which the inmate could raise in a second or successive § 2255 motion);
>
> • *Step #2*: the statutory rule of law in question must apply retroactively to cases on collateral review *and* could not have been invoked in a first § 2255 motion; and
>
> • *Step #3*: a failure to afford the prisoner collateral relief would amount to an error 'grave enough' to constitute 'a miscarriage of justice.'

Worman v. Entzel, 953 F.3d 1004, 1008 (7th Cir. 2020) (citing *Montana v. Cross*, 829 F.3d 775, 783 (7th Cir. 2016); *Beason v. Marske*, 926 F.3d 932, 935 (7th Cir. 2019)). "[T]here must be some kind of structural problem with section 2255 before section 2241 becomes available. In other words, something more than a lack of success with a section 2255 motion must exist before the savings clause is satisfied." *Webster v. Daniels*, 784 F.3d 1123, 1136 (7th Cir. 2015).

III. DISCUSSION

Espinoza argues that his conviction and sentence under 18 U.S.C. § 924(c), for using and carrying a firearm during a crime of violence, is invalid because his predicate RICO offenses are not categorically crimes of violence after *Mathis*. This argument, however, has already been addressed on the merits in Espinoza's successive § 2255 proceeding, and his attempt to relitigate the issue without any relevant change in the law is an abuse of writ. A petitioner abuses the federal writ of habeas corpus "by raising a claim in a subsequent petition that he could have raised in his first, regardless of whether the failure to raise it earlier stemmed from a deliberate choice." *McCleskey v. Zant*, 499 U.S. 467, 489 (1991). The federal courts generally decline "to entertain successive petitions under § 2241 or § 2255, unless the law [has] changed or new facts . . . come to light." *Arnaout v. Marberry*, 351 F. App'x 143, 144 (7th Cir. 2009). Here, Espinoza

raised the identical claim in his previous § 2255 Motion and nothing has changed in the law to make his claim more viable. In fact, since his § 2255 Motion was denied and the denial was affirmed on appeal, additional Seventh Circuit precedent supports the district court's decision. *See Haynes v. United States*, 936 F.3d 683, 691 (7th Cir. 2019) ("Specific 'acts of racketeering activity' are elements that must be proven beyond a reasonable doubt...."). While Espinoza does not agree with the result of his § 2255 proceedings, the law does not permit Espinoza to file repetitive motions and petitions seeking to raise the same arguments when the relevant law has not changed in his favor. Accordingly, the Court dismisses Espinoza's Petition as an abuse of the writ. *See Arnaout*, 351 F. App'x at 145 (second habeas petition was an abuse of writ and thus properly dismissed with prejudice).

Moreover, because his claims have already been addressed on the merits in his previous § 2255, he cannot show that the remedy under § 2255 "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e). Espinoza argues he can proceed through the § 2255(e) savings clause because he is relying on the retroactive statutory interpretation case of *Mathis v. United States*, 136 S. Ct. 2243 (2016). While *Mathis* may open the door to § 2241 to some petitioners, Espinoza's *Mathis* claims were already determined on the merits in his successive § 2255 motion. Espinoza argues that the district court's ruling was incorrect, but, even if Espinoza is correct, that does not make his remedy under § 2255 inadequate or ineffective for purposes of § 2255(e) (e). *See Webster v. Daniels*, 784 F.3d 1123, 1136 (7th Cir. 2015) ("[T]here must be some kind of structural problem with section 2255 before section 2241 becomes available. In other words, something more than a lack of success with a section 2255 motion must exist before the savings clause is satisfied."); *Taylor v. Gilkey*, 314 F.3d 832, 835 (7th Cir. 2002) (concluding that because the question posed by § 2255(e)is "whether the

remedy is adequate '*to test* the legality' of the detention [,] [t]his implies a focus on procedures rather than outcomes. Judges sometimes err, but this does not show that the procedures are inadequate; it shows only that people are fallible."). Accordingly, the Court also dismisses this Petition pursuant to 28 U.S.C. § 2255(e). *See also Prevatte v. Merlak*, 865 F.3d 894, 901 (7th Cir. 2017) (holding a dismissal pursuant to § 2255(e) should be with prejudice).

IV. CONCLUSION

For the reasons state above, Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (d/e 1) is SUMMARILY DISMISSED with prejudice as an abuse of the writ and pursuant to 28 U.S.C. § 2255(e). This case is CLOSED.

Signed on this 8th day of February 2021.

/s/ James E. Shadid
James E. Shadid
United States District Judge

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Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

ROBERT A. ESPINOZA,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. 21-cv-1019**
	)	
WARDEN, FCI PEKIN,	)	
	)	
Respondent.	)	

ORDER

JAMES E. SHADID, U.S. District Judge:

Before the Court is Petitioner Robert A. Espinoza's Motion for Reconsideration Pursuant to Fed. R. Civ. P. 59(e) (Doc. 4). Petitioner asks this Court to reconsider its February 8, 2021 Order (Doc. 2), which summarily dismissed Petitioner's Petition for Writ of Habeas pursuant to 28 U.S.C. § 2241 both as an abuse of the writ and pursuant to 28 U.S.C. § 2255(e). For the reasons below, Petitioner's Motion (Doc. 4) is DENIED.

I. BACKGROUND

On November 6, 2001, after a jury trial, Espinoza was convicted of racketeering in violation of 18 U.S.C. § 1962(c) (Count One), conspiracy to commit racketeering in violation of 18 U.S.C. § 1962(d) (Count Two), conspiracy to distribute and possess with intent to distribute marijuana in violation of 18 U .S.C. §§ 841(a)(1) and 846 (Count Five), unlawful possession of a firearm in violation of 18 U.S.C. §§ 922(g) and 924(a)(2) (Count Six), and using and carrying a firearm, an incendiary device, during and in relation to a crime of violence in violation of 18 U.S.C. §§ 924(c)(1)(A) and (c)(1)(B)(ii) and (2) (Count Seven). *See United States v. Espinoza,* Case No. 4:00-cr-40031-JBM-1 (C.D. Ill.); *Espinoza v. United States,* No. 11-

4023, 2011 WL 1827232, at *1 (C.D. Ill. May 12, 2011). On March 1, 2002, Judge Joe Billy McDade sentenced Espinoza to 240 months' imprisonment on Counts One and Two, 60 months' imprisonment on Count Five, and 120 months' imprisonment on Count Six, all to run concurrently, and 360 months' imprisonment on Count Seven to run consecutively to Counts One, Two, Five, and Six. *Espinoza,* 2011 WL 1827232 at *1.

Espinoza's direct appeal affirmed his conviction and sentence. *United States v. Espinoza,* 52 F. App'x 846 (7th Cir. 2002). Espinoza's initial 2255 motion was denied and a certificate of appealability was denied. *Espinoza v. United States,* 4:04-cv-4023-JBM (C.D. Ill.).

On July 27, 2016, Espinoza filed a successive § 2255 motion after receiving authorization from the Seventh Circuit. The district court appointed counsel, who filed an amended § 2255 motion. Espinoza argued that his conviction and sentence under 18 U.S.C. § 924(c) for using and carrying a firearm during a crime of violence should be vacated pursuant to *Johnson v. United States*, 576 U.S. 591, 135 S. Ct. 2551 (2015). Specially, he argued "that (1) section 924(c)(3)(B) is unconstitutionally vague; (2) a RICO offense is indivisible under [*Mathis v. United States*, 136 S. Ct. 2243 (2016)] and is therefore not a crime of violence under § 924(c)'s elements clause; and (3) even if a RICO offense is divisible under *Mathis*, Espinoza's predicate offenses—residential arson and attempted arson—did not require the jury to find he used, attempted to use or threatened to use physical force against the person or property of another." *Espinoza v. United States*, No. 16-CV-4145, 2017 WL 4401626, at *3 (C.D. Ill. Oct. 3, 2017), *aff'd,* 710 F. App'x 267 (7th Cir. 2018). While the Government argued that Espinoza's *Mathis* claims were "untimely because *Mathis* is not a new substantive rule of constitutional law made retroactive by the Supreme Court," the district court disagreed and considered the *Mathis* claims on the merits. *Id.* at *4. Nonetheless, the district court denied the § 2255 Motion, finding

that Espinoza's RICO predicate offenses of Illinois residential arson and attempted arson constitute crimes of violence under the elements clause of 18 U.S.C. § 924(c)(3)(A). *Id.* at *11.

Espinoza appealed, but the Seventh Circuit affirmed the judgment "on the authority of *Hill v. United States*, 877 F.3d 717 (7th Cir. 2017)." *Espinoza v. United States,* 710 F. App'x 267, 268 (7th Cir. 2018). In *Hill,* the Seventh Circuit had held that "[w]hen a substantive offense would be a violent felony under § 924(e) and similar statutes, an attempt to commit that offense also is a violent felony." *Hill*, 877 F.3d at 719.

Espinoza next filed an application in the Seventh Circuit to file a successive collateral attack under § 2255 in December 2019. Citing *United States v. Davis*, 139 S. Ct. 2319 (2019), which confirmed the Seventh Circuit's view that § 924(c)'s residual clause is unconstitutional, he again argued that racketeering is not a crime of violence under § 924(c). However, the Seventh Circuit denied the application, because "*Davis* concerns only § 924(c)'s residual clause, so that case is inapplicable here, where we have already upheld the district court's determination that Espinoza's § 924(c) conviction rests on the elements clause." *Espinoza*, Case No. 4:00-cr-40031-JBM, Notice (d/e 217).

Espinoza filed a Motion pursuant to Fed. R. Civ. P. 60(b)(6) for relief from Judgment in his successive 2255 case on March 6, 2020. *Espinoza*, Case No. 4:16-cv-4145 (C.D. Ill.), Order (d/e 26). He argued that the district court erred in denying his motion because it misunderstood the categorical approach as clarified in *Mathis. Id.* Finding this to be a direct attack on the merits of the prior decision, the district court dismissed the motion as an unauthorized successive collateral attack. *Id.* Espinoza appealed to the Seventh Circuit, but the appeal was later voluntarily dismissed on November 17, 2020, after his motion for leave to appeal in forma pauperis was denied.

Espinoza then filed this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (Doc. 1) on January 13, 2021. In his Petition, Espinoza advanced the identical argument as his previous § 2255 motion: he argues his conviction and sentence under 18 U.S.C. § 924(c) is invalid because "an 18 U.S.C. § 1962(c) RICO offense and an Illinois' Arson offense (720 ILCS 5/20-1) [cannot] categorically qualify as a 'crime of violence' for purposes of an 18 U.S.C. § 924(c) conviction under 18 U.S.C. § 924(c)(3)(A)." Pet. at 6 (d/e 1). On February 8, 2021, the Court summarily dismissed the Petition as an abuse of the writ and pursuant to 28 U.S.C. § 2255(e).

Espinoza has now filed a Motion for Reconsideration pursuant to Fed. R. Civ. P. 59(e), arguing that the Court's decision was incorrect.

II. DISCUSSION

Rule 59(e) enables courts to correct their own errors and avoid unnecessary appeals. *Miller v. Safeco Ins. Co. of Am.*, 683 F.3d 805, 813 (7th Cir. 2012) (internal citation omitted). In order "[t]o prevail on a Rule 59(e) motion, the moving party must clearly establish (1) that the court committed a manifest error of law or fact, or (2) that newly discovered evidence precluded entry of judgment." *Edgewood Manor Apartment Homes, LLC v. RSUI Indem. Co.*, 733 F.3d 761, 770 (7th Cir. 2013) (internal quotation omitted).); *see also*, *Vesely v. Armslist LLC*, 762 F.3d 661, 666 (7th Cir. 2014) ("[W]e have held that a Rule 59(e) motion is not to be used to 'rehash' previously rejected arguments"). "A 'manifest error' occurs when the district court commits a 'wholesale disregard, misapplication, or failure to recognize controlling precedent.'" *Burritt v. Ditlefsen*, 807 F.3d 239, 253 (7th Cir. 2015) (internal citation omitted).

Espinoza argues that the Court erred in finding that his *Mathis* claim had been addressed on the merits in his previous § 2255 motion. As Espinoza highlights, the Seventh Circuit has

observed that "[a]n independent claim based on *Mathis* must be brought, if at all, in a petition under 28 U.S.C. § 2241." *Chazen v. Marske*, 938 F.3d 851, 863 (7th Cir. 2019) (quoting *Dawkins v. United States*, 829 F.3d 549, 551 (7th Cir. 2016)). However, that does not mean *Mathis* claims will not be addressed in § 2255 motions that also rely on other claims. That is the case here. Espinoza's successive § 2255 motion was authorized to proceed due to its reliance on *Johnson v. United States*, 576 U.S. 591, 135 S. Ct. 2551 (2015). *Espinoza v. United States*, No. 16-CV-4145, 2017 WL 4401626, at *3 (C.D. Ill. Oct. 3, 2017), *aff'd*, 710 F. App'x 267 (7th Cir. 2018). However, the district court found that Petitioner's *Mathis* argument could also be raised within his successive § 2255 motion and *did* consider the claim on the merits. The district court made a specific finding that Espinoza's RICO predicate offenses of Illinois residential arson and attempted arson constitute crimes of violence under the elements clause of 18 U.S.C. § 924(c)(3)(A). *Id.* at *11. And, on appeal, the Seventh Circuit affirmed the district court's decision on the authority of *Hill v. United States*, 877 F.3d 717 (7th Cir. 2017), which addressed the application of *Mathis* to Illinois attempt statutes. *Espinoza v. United States*, 710 F. App'x 267, 268 (7th Cir. 2018). And, in denying Espinoza's most recent application to file a successive § 2255 motion, the Seventh Circuit noted that "we have already upheld the district court's determination that Espinoza's § 924(c) conviction rests on the elements clause." *Espinoza*, Case No. 4:00-cr-40031-JBM, Notice (d/e 217). The record confirms that Espinoza's *Mathis* claim was considered on the merits.

Espinoza argues that there is "no way the district court applied *Mathis*" because if it had, it would have found in Espinoza's favor. However, Espinoza's opinion that the district court and the Seventh Circuit's decisions were incorrect does not change the fact that they considered his *Mathis* argument on the merits.

Espinoza also argues that because this is his first § 2241 petition, it cannot be an abuse of the writ. The Court disagrees. Espinoza obtained a decision on the merits in his § 2255 for the very same argument he seeks to raise here. Espinoza argues that his *Mathis* claim was unavailable at the time of his initial § 2255 case. Again, this is inapposite in finding Espinoza's petition an abuse of the writ due to the fact that he raised the claim he seeks to raise here on his successive § 2255 motion.

III. CONCLUSION

For the reasons stated above, Petitioner Robert Espinoza's Motion for Reconsideration (Doc. 4) is DENIED.

Signed on this 23rd day of February 2021.

/s/ James E. Shadid
James E. Shadid
United States District Judge

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U.S. District Court

CENTRAL DISTRICT OF ILLINOIS

Notice of Electronic Filing

The following transaction was entered on 3/2/2021 at 10:15 AM CST and filed on 3/1/2021
Case Name: Espinoza v. FCI Pekin
Case Number: 1:21-cv-01019-JES
Filer:
WARNING: CASE CLOSED on 02/08/2021
Document Number: No document attached

Docket Text:
TEXT ORDER: Petitioner has filed an Amended Motion for Reconsideration [6] seeking reconsideration of the Courts February 8, 2021 Order summarily dismissing Petitioners claim. The Court received Petitioners Amended Motion after already deciding Petitioners original motion for reconsideration. See Order [5]. Petitioner's Amended Motion argues that the Court's decision to dismiss his petition as an abuse of the writ and pursuant to 28 U.S.C. 2255(e) was incorrect because those procedural barriers should be excused because he is actually innocent of his 924(c) conviction. However, as explained in the Court's two previous orders, the district court in Petitioner's successive 2255 proceedings already addressed his claims on the merits and found against him. That Petitioner vehemently disagrees with the result does not change the fact that the claim was addressed on the merits. Petitioner is not entitled to another collateral attack on the same claim when the law has not changed in his favor. His Amended Motion for Reconsideration [6] is DENIED. Entered by Judge James E. Shadid

Pet. App. E.

on 3/1/2021. (AH, ilcd)

1:21-cv-01019-JES Notice has been electronically mailed to:

W. Scott Simpson w.scott.simpson@usdoj.gov, allison.ramsdale@usdoj.gov, CaseView.ECF@usdoj.gov

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