UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7375

ROY M. BELFAST,

Petitioner - Appellant,

v.

WARDEN BRECKON,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Michael F. Urbanski, Chief District Judge. (7:18-cv-00453-MFU-RSB)

Submitted: June 29, 2021 Decided: July 1, 2021

Before HARRIS, RICHARDSON, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Roy M. Belfast, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Roy M. Belfast, a federal prisoner, appeals the district court's order denying relief on his 28 U.S.C. § 2241 petition, in which he sought to challenge his convictions by way of the savings clause in 28 U.S.C. § 2255, and a subsequent order denying Belfast's Fed. R. Civ. P. 59(e) motion to reconsider. Pursuant to § 2255(e), a prisoner may challenge his convictions in a traditional writ of habeas corpus pursuant to § 2241 if a § 2255 motion would be inadequate or ineffective to test the legality of his detention.

> [Section] 2255 is inadequate and ineffective to test the legality of a conviction when: (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.

In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000).

We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Belfast v. Breckon*, No. 7:18-cv-00453-MFU-RSB (W.D. Va. Sept. 17, 2019; Sept. 1, 2020). 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.

AFFIRMED

FILED: July 1, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7375
(7:18-cv-00453-MFU-RSB)

ROY M. BELFAST

Petitioner - Appellant

v.

WARDEN BRECKON

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: August 31, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7375
(7:18-cv-00453-MFU-RSB)

ROY M. BELFAST

Petitioner - Appellant

v.

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O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: September 8, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7375
(7:18-cv-00453-MFU-RSB)

ROY M. BELFAST

Petitioner - Appellant

v.

WARDEN BRECKON

Respondent - Appellee

MANDATE

The judgment of this court, entered July 1, 2021, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

APPENDIX 2

(7:18-cv-00453-MFU-RSB)

Western District Court For The Western District of Virginia Roanoke Division, Memorandum Opinion Denying Rule 59(e) Motion filed: August 31, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROY M. BELFAST,	)	
	)	
Petitioner,	)	Civil Action No. 7:18cv00453
	)	
v.	)	MEMORANDUM OPINION
	)	
WARDEN BRECKON,	)	By: Hon. Michael F. Urbanski
	)	Chief United States District Judge
Respondent.	)	

Roy M. Belfast, a federal inmate proceeding pro se, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Relying on 28 U.S.C. § 2255(e), In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000), and United States v. Wheeler, 886 F.3d 415, 429 (4th Cir. 2018), Belfast sought to invalidate the convictions and sentence imposed on him by the United States District Court for the Southern District of Florida in 2009. The court denied the petition, concluding that Belfast had failed to demonstrate that he was entitled to relief under § 2241. Belfast now seeks reconsideration of that Order. He has also filed a number of related motions. For the reasons stated herein, Belfast's motions will be denied.

I.

Belfast is in the custody of the Warden of United States Penitentiary ("USP") Lee. He is serving a term of 97 years' imprisonment for crimes of torture and firearms offenses.[1] Belfast filed the habeas petition pursuant to 28 U.S.C. § 2241 on September 14, 2018. Respondent subsequently filed a motion to dismiss for lack of subject matter jurisdiction, which the court

[1] For further information regarding the events leading to Belfast's convictions and sentence, the court refers to the Order of September 17, 2019 at 1 n.1.

granted by Order dated September 17, 2019.[2] On October 11, 2019, Belfast filed the present motion for reconsideration.

II.

Belfast first seeks reconsideration of the Order denying his § 2241 petition under Federal Rule of Civil Procedure 59(e). Rule 59(e) allows a court to alter or amend a judgment "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available [previously]; or (3) to correct a clear error of law or prevent manifest injustice." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). "Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance." Id. "Similarly, if a party relies on newly discovered evidence in its Rule 59(e) motion, the party must produce a legitimate justification for not presenting the evidence during the earlier proceeding." Id. (internal quotation marks omitted). The purpose of a Rule 59(e) motion is not to give "an unhappy litigant one additional chance to sway the judge." Durkin v. Taylor, 444 F. Supp. 879, 889 (E.D. Va. 1977). In general, "reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Pac Ins. Co., 148 F.3d at 403.

Belfast argues that by the motion for reconsideration he seeks to correct an error of law and fact and prevent manifest injustice. In essence, however, he is simply rehashing the arguments he made in his § 2241 petition. Belfast points to no change in law since the court's original ruling. See Pac. Ins. Co., 148 F.3d at 403. Although Belfast has attached 276 pages of

[2] The court also denied Belfast's motion for default judgment because it lacked merit.

exhibits to the motion for reconsideration, more exhibits to his additional motion for reconsideration, and additional evidence, he has not demonstrated that this evidence was previously unavailable. See id.;[3] see also id. (noting that a party must provide "legitimate justification" for failing to present the evidence during the previous proceeding). Nor has Belfast shown a "clear error of law" in the court's original ruling or "manifest injustice" resulting therefrom. See id.

Belfast's main contention appears to be that Respondent and the court failed to address his arguments on the merits. However, Respondent's motion to dismiss, and the court's dismissal Order, were based on the Court's lack of jurisdiction over the matter. The requirements for use of the savings clause, § 2255(e), are jurisdictional. Wheeler, 886 F.3d at 423. Belfast's petition did not meet the requirements for use of the savings clause and § 2241. Accordingly, this court lacked subject-matter jurisdiction over the petition and could not adjudicate the merits of Belfast's claims. See United States v. Wilson, 699 F.3d 789, 793 (4th Cir. 2012) ("[N]o other matter can be decided without subject matter jurisdiction."); see also Gonzalez v. Thaler, 565 U.S. 134, 141 (2012) ("[J]urisdictional rules . . . govern a court's adjudicatory authority") (internal quotation marks omitted); Moss v. Dobbs, No. 8:19-cv-02280, 2019 WL 7284989, at *9 n.3 (D.S.C. Sept. 23, 2019) (noting that "a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits"), adopted by 2019 WL 5616884 (D.S.C. Oct. 31, 2019). "Where, as here, 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 motion for lack of jurisdiction." Swindle v. Hudgins, No. 5:19-cv-

[3] In fact, many of the exhibits provided are references to or quoted portions of prior court documents.

300, 2020 WL 469660, at *3 (N.D. W. Va. Jan. 29, 2020) (citing Rice v. Rivera, 617 F.3d 802, 807 (4th Cir. 2010)).

Based on the foregoing, the court will deny Belfast's motion for reconsideration.

III.

Belfast has also moved for preliminary injunctive relief. He seeks his immediate release or, if the court deems immediate release inappropriate, a bond. As with motions for reconsideration, preliminary injunctive relief is an extraordinary remedy that courts should apply sparingly. See Direx Israel, Ltd. v. Breakthrough Med. Corp., 952 F.2d 802, 811 (4th Cir. 1991). The party seeking relief must demonstrate by a "clear showing" that: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20, 22 (2008). The party seeking relief must show that the irreparable harm he faces in the absence of relief is "neither remote nor speculative, but actual and imminent." Direx Israel, Ltd., 952 F.2d at 812. Without a showing that the movant will suffer imminent, irreparable harm, the court cannot grant preliminary injunctive relief. Rum Creek Coal Sales, Inc. v. Caperton, 926 F.2d 353, 360 (4th Cir. 1991). "The possibility that adequate compensatory or other corrective relief will be available at a later date . . . weighs heavily against a claim of irreparable harm." Va. Chapter, Associated Gen. Contractors, Inc. v. Kreps, 444 F. Supp. 1167, 1182 (W.D. Va. 1978) (quoting Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921 (D.C. Cir. 1958)).

This ruling on Belfast's motion for reconsideration defeats his attempt to obtain preliminary injunctive relief. He cannot demonstrate by a "clear showing" that he is likely to

succeed on the merits, Winter, 555 U.S. at 20, 22, and, as Belfast notes, a party seeking preliminary injunctive relief must satisfy all four requirements, JAK Prods., Inc. v. Bayer, 616 Fed. App'x 94, 95 (4th Cir. 2015) (per curiam) (unpublished). Therefore, the court will deny Petitioner's motion for preliminary injunctive relief.

IV.

Belfast has filed a number of additional motions: a motion to expedite consideration of his motion for reconsideration; an additional motion for reconsideration; a motion for an evidentiary hearing; and a request for counsel should an evidentiary hearing be needed. Based on the preceding rulings, the court will deny these motions as moot.

Belfast also filed a motion for referral to the Committee on Attorney Discipline of the Virginia State Bar based on alleged misconduct by the Assistant United States Attorney. The court will deny the motion because it lacks merit.

V.

For the reasons stated, Belfast's motion for reconsideration and motion for preliminary injunctive relief will be denied. Belfast's motion to expedite, additional motion for reconsideration, motion for an evidentiary hearing, and request for counsel will be denied as moot. Lastly, Belfast's motion for referral to the Committee on Attorney Discipline will be denied. An appropriate Order will be entered.

Entered: August 31, 2020

Michael F. Urbanski
Chief U.S. District Judge
2020.08.31 16:18:05 -04'00'

Hon. Michael F. Urbanski
Chief United States District Judge

APPENDIX 3

Western District Court For The Fourth Circuit, Memorandum, Opinion, Denying Original 28 U.S.C. § 2241 (c)(1), (3)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROY M. BELFAST,	)	
	)	
Petitioner,	)	Civil Action No. 7:18cv00453
	)	
v.	)	MEMORANDUM OPINION
	)	
WARDEN BRECKON,	)	By: Hon. Jackson L. Kiser
	)	Senior United States District Judge
Respondent.	)	

Petitioner Roy M. Belfast, a federal inmate proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the legality of his 2009 convictions arising in the Southern District of Florida.[1] Upon review of the petition, I conclude that Belfast has failed to demonstrate that he is entitled to relief under § 2241 and, therefore, I will grant respondent's motion to dismiss the petition.[2]

[1] Belfast is the son of the former President of Liberia, Charles Taylor. Belfast was convicted of committing acts of torture in Liberia between 1999 and 2003, during his father's presidency. See United States v. Belfast, 611 F.3d 783, 793-00 (11th Cir. 2010) (recounting Belfast's conduct as head of an Anti-Terrorism Unit in Liberia and describing how he "wielded his power in a terrifying and violent manner" and tortured numerous individuals). After a jury trial in the Southern District of Florida, the court convicted Belfast of: committing substantive crimes of torture against five named victims, in violation of 18 U.S.C. § 2340A(a); using and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A); and conspiring to use and carry a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(o). The court sentenced Belfast to ninety-seven years of incarceration. The Court of Appeals for the Eleventh Circuit affirmed his convictions and sentence, Belfast, 611 F.3d at 783, and the Supreme Court of the United States denied his petition for writ of certiorari, Belfast v. United States, 562 U.S. 1236 (2011).

[2] In his § 2241 petition, Belfast argues that the trial court applied the wrong evidentiary standard to his conviction under 18 U.S.C. § 2340A(c); no evidence supports any element of his conviction; prosecutorial misconduct led to an unconstitutional conviction; the Government failed to charge any additional individuals with the same conspiracy and left Belfast in an improper "one[-]man conspiracy"; information obtained through a Freedom of Information Act request shows a lack of evidence that Belfast violated criminal laws; because he was not "duly convicted of offenses against the United States," the Federal Bureau of Prisons ("BOP") is not properly applying 18 U.S.C. § 3624 ("Release of a prisoner"), and 18 U.S.C. § 3585 ("Calculation of a term of imprisonment"); the BOP is not properly applying 18 U.S.C. § 3621 ("Imprisonment of a convicted person") and 18 U.S.C. § 4042 ("Duties of Bureau of Prisons") because it is relying on a Presentence Report that incorrectly states Belfast was convicted of

Ordinarily, a motion pursuant to 28 U.S.C. § 2255, and not a petition pursuant to § 2241, is the appropriate vehicle for challenging a conviction or the imposition of a sentence, unless a motion pursuant to § 2255 is "inadequate and ineffective" for those purposes. In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000); see also United States v. Little, 392 F.3d 671 (4th Cir. 2004) ("[An] attack on the execution of [a] sentence and not a collateral attack on [a] conviction . . . [is] properly brought under . . . § 2241."). A motion pursuant to § 2255 is "inadequate and ineffective" to challenge a federal conviction when: (1) settled law established the legality of the conviction or sentence at the time imposed; (2) after the prisoner has completed his appeal and first § 2255 motion, a change in substantive law renders the conduct for which the prisoner was convicted no longer criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law made retroactively applicable to cases on collateral review. In re Jones, 226 F.3d at 333.

Belfast does not demonstrate that his claims meet the standard under In re Jones to proceed under § 2241. Specifically, the second element of the test requires that "substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal." Clearly there has been no change in the law making it now legal to torture people, use and carry a firearm during and in relation to a crime of violence, or conspire to use and carry a firearm during and in relation to a crime of violence. Therefore, Belfast fails to show that § 2255 is inadequate and ineffective to test the legality of his conviction and, thus, his claims cannot be

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violating 18 U.S.C. § 2340A(c); and the Administrative Procedures Act imposes a duty on the BOP to release Belfast because he was improperly convicted by the trial court.

addressed under § 2241.[3] Accordingly, I will grant respondent's motion to dismiss Belfast's petition.[4]

ENTERED this 17th day of September, 2019.

SENIOR UNITED STATES DISTRICT JUDGE

[3] In several filings submitted to the court after the government's motion to dismiss, Belfast argues that I should consider his claims under § 2241 based on United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018). Under Wheeler, § 2255 is inadequate and ineffective to test the legality of a sentence when: (1) at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review; (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions; and (4) due to this retroactive change, the sentence now presents an error sufficiently grave to be deemed a fundamental defect. Wheeler, 886 F.3d at 429. However, Belfast does not rely on a retroactively applicable change in the law and has not demonstrated that his sentence presents an error sufficiently grave to be deemed a fundamental defect. Accordingly, I find that his argument lacks merit.

[4] I decline to construe Belfast's petition as a § 2255 motion. First, § 2255 motions must be brought in the court which imposed the sentence. See 28 U.S.C. § 2255; Swain v. Pressley, 430 U.S. 372, 378 (1977). Second, Belfast has already filed a § 2255 motion in the Southern District of Florida. See Belfast v. United States, No. 12-20754 (S.D. Fla. Feb. 14, 2013). In order to file a successive § 2255 motion in the district court, he must receive pre-filing authorization from the appropriate court of appeals. See § 2255(h). Because Belfast has not demonstrated that the United States Court of Appeals for the Eleventh Circuit has issued him pre-filing authorization to submit a second or successive § 2255 motion, the district court has no jurisdiction to consider the merits of his § 2255 claims. Accordingly, I conclude that transfer of a clearly successive § 2255 motion to the sentencing court does not further the interests of justice or judicial economy. Therefore, I decline to construe and transfer Belfast's petition.