EXHIBIT A

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 17, 2021
Decided June 9, 2021

Before

MICHAEL S. KANNE, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 21-1505

MATTHEW SULLIVAN,
Petitioner-Appellant,

v.

DANIEL SPROUL,
Respondent-Appellee.

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

No. 3:19-cv-01277

Nancy J. Rosenstengel,
Chief Judge.

ORDER

A grand jury indicted Matthew Sullivan for, among other things, conspiring to distribute more than 280 grams of cocaine base. The government notified Sullivan under 21 U.S.C. § 851 that it believed he had two prior "serious drug felony" convictions and so would face a mandatory life sentence for this conspiracy charge. *Id.* §§ 841(b)(1)(A), 846. Shortly before trial, however, Sullivan agreed to plead guilty to conspiracy if the government dismissed some other charges and amended its § 851 notice to list only one prior conviction—thereby reducing his minimum sentence from life to 20 years' imprisonment. More than that, the agreement provided that the district court would sentence him to 26 years' imprisonment. In exchange for these concessions, Sullivan waived his right to appeal or collaterally attack his conviction or sentence. The district court accepted the agreement and imposed the 26-year sentence.

Sullivan did not appeal but did unsuccessfully move to vacate his conviction on the ground that his lawyer ineffectively negotiated his sentence. *See* No. 1:15-cv-1280 (C.D. Ill. Nov. 2, 2015). Sullivan later petitioned for a writ of habeas corpus under 28 U.S.C. § 2241, challenging the calculation of his sentence, but the district court enforced Sullivan's collateral-attack waiver and dismissed the petition. *See* No. 3:17-cv-00640 (S.D. Ill. Feb. 20, 2018).

Undeterred, Sullivan filed another petition for a writ of habeas corpus in 2019. This time he argued that his plea was invalid because, he believes, recent judicial decisions clarify that neither of the crimes identified in his original § 851 notice was a "serious drug felony." He asserts that he thus never should have faced a life sentence, and indeed his minimum sentence should have been only 10 years, not 20. The district court again enforced the waiver and dismissed the petition. Sullivan appealed, and the government moves to dismiss the appeal based on the waiver.

The district court properly enforced Sullivan's broad collateral-attack waiver, which forecloses his ability to bring a § 2241 petition challenging his plea or his sentence. *See Muse v. Daniels*, 815 F.3d 265, 266–67 (7th Cir. 2016). Sullivan voluntarily traded his opportunity to challenge his sentence for significant concessions from the government, and he cannot reverse that agreement just because he now thinks his bargain was not as good as it could have been. As the district court recognized, "[a] defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended ... the likely penalties attached to alternative courses of action." *Brady v. United States*, 397 U.S. 742, 757 (1970). To the contrary, a primary purpose of express collateral-attack waivers like Sullivan's is "to account in advance for unpredicted future developments in the law." *Oliver v. United States*, 951 F.3d 841, 847 (7th Cir. 2020).

Sullivan resists the district court's comparison to *Brady* because that case involved an *unconstitutional* penalty provision; he, unlike Brady, does not argue that the sentence he faced was unconstitutional, but only that it was inconsistent with the statute (as now interpreted). He contends that the better comparison is *Fiore v. White*, 531 U.S. 225 (2001), or *Bousley v. United States*, 523 U.S. 614 (1998). In each of those cases, a criminal statute was interpreted more narrowly after the defendant was found guilty, and the Supreme Court permitted the defendants to collaterally attack their convictions if they showed that they were innocent of the crime as now understood. Sullivan, though, does not purport to be innocent of conspiring to distribute cocaine base. He disputes only his sentence for that conduct. He thus does not fit into the *Fiore* or *Bousley*

mold, even assuming either case's logic would extend to an express plea waiver. *Cf. Oliver*, 951 F.3d at 847 (concluding claim of statutory innocence did not allow defendant to escape plea waiver).

Sullivan otherwise argues that *Brady*'s reasoning applies only to "changes" in the law, while he insists recent decisions instead "clarified" that his crimes do not qualify as serious drug felonies. Whatever the merit of this distinction, it is ultimately self-defeating. Even absent a waiver, we do not permit a defendant to bring a statutory claim under 28 U.S.C. § 2241 unless the claim was foreclosed at the time of his § 2255 motion and the law has since changed. *See Montana v. Cross*, 829 F.3d 775, 785 (7th Cir. 2016). Sullivan's theory for escaping the waiver—that the law governing his claim has not changed at all—would lead straight to dismissal.

The government's motion to dismiss is **GRANTED** in part, to the extent that we summarily **AFFIRM** the district court's judgment enforcing Sullivan's plea waiver. Sullivan's motions to proceed in forma pauperis and for oral argument are **DENIED**.

MATTHEW G. SULLIVAN, Petitioner, v. DAN SPROUL, WARDEN, USP MARION, Respondent.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS
2020 U.S. Dist. LEXIS 209102
Case No. 3:19-CV-01277-NJR
November 9, 2020, Decided
November 9, 2020, Filed

Editorial Information: Subsequent History

Appeal terminated, 06/09/2021

Editorial Information: Prior History

Sullivan v. Warden, USP Marion, 2020 U.S. Dist. LEXIS 45432, 2020 WL 1248485 (S.D. Ill., Mar. 16, 2020)

Counsel **{2020 U.S. Dist. LEXIS 1}Matthew G. Sullivan**, Petitioner, Pro se, MARION, IL.

Judges: NANCY J. ROSENSTENGEL, Chief United States District Judge.

Opinion

Opinion by: NANCY J. ROSENSTENGEL

Opinion

MEMORANDUM AND ORDER

ROSENSTENGEL, Chief Judge:

Pending before the Court is a Motion to Dismiss (Doc. 12) filed by Respondent Dan Sproul, Warden of USP Marion ("Sproul"). For the reasons set forth below, the Court grants the motion and dismisses this action with prejudice.

Factual and Procedural Background

In 2014, Sullivan pleaded guilty pursuant to a written plea agreement to one count of conspiracy to manufacture, distribute and possess with intent to distribute more than 280 grams of crack cocaine in the Central District of Illinois. *United States v. Sullivan*, 12-cr-10115 at Doc. 143 (C.D. Ill. Mar. 6, 2014) ("Plea Agreement"). Pursuant to the Plea Agreement, Sullivan was sentenced to 312 months' imprisonment. While the Government had previously indicated intent to seek an enhanced sentence pursuant to 21 U.S.C. § 851 due to Sullivan's two prior felony drug offenses, under the plea agreement the Government agreed to rely on only one of the prior offenses. Plea Agreement at ¶ 8. Even with only one prior felony offense, the advisory guidelines range for Sullivan was calculated**{2020 U.S. Dist. LEXIS 2}** to be 360 months to life, but the court nonetheless imposed a sentence of only 312 months, in accordance with the Plea Agreement. *Sullivan*, 12-cr-10115-JES, Doc. 251 at 43-44. The Plea Agreement contained the following provision waiving rights to appeal or collaterally attack the sentence:

> 12. The defendant also understands that he has a right to attack the conviction and/or sentence

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MATTHEW G. SULLIVAN,

Petitioner,

v.

DAN SPROUL, WARDEN, USP MARION,

Respondent.

Case No. 3:19-CV-01277-NJR

JUDGMENT IN A CIVIL ACTION

DECISION BY THE COURT.

IT IS ORDERED AND ADJUDGED that pursuant to the Order dated **November 9, 2020** (Doc. 15), judgment is entered in favor of Respondent Dan Sproul. This action is **DISMISSED with prejudice.**

DATED: November 9, 2020

MARGARET M. ROBERTIE,
Clerk of Court

By: *s/ Deana Brinkley*
Deputy Clerk

APPROVED: *s/ Nancy J. Rosenstengel*
NANCY J. ROSENSTENGEL
Chief U.S. District Judge

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MATTHEW G. SULLIVAN, **Petitioner,** **v.** **DAN SPROUL, WARDEN, USP MARION,** **Respondent.**	**Case No. 3:19-CV-01277-NJR**

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FACTUAL AND PROCEDURAL BACKGROUND

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Agreement. Sullivan, 12-cr-10115-JES, Doc. 251 at 43-44. The Plea Agreement contained the following provision waiving rights to appeal or collaterally attack the sentence:

> 12. The defendant also understands that he has a right to attack the conviction and/or sentence imposed collaterally on the grounds that it was imposed in violation of the Constitution or laws of the United States; that he received ineffective assistance from his attorney; that the Court was without proper jurisdiction; or that the conviction and/or sentence was otherwise subject to collateral attack. The defendant understand that such an attack is usually brought through a motion pursuant to 28 U.S.C. § 2255. The defendant and the defendant's attorney have together reviewed § 2255, and the defendant understands his rights under this statute. Understanding those rights, and having thoroughly discussed those rights with the defendant's attorney, the defendant knowingly and voluntarily waives his right to collaterally attack the conviction and/or sentence with one exception: the defendant may raise on collateral attack only those discrete claims which relate directly to the negotiation of this waiver.

Plea Agreement at ¶12 (emphasis in original).

Sullivan filed a challenge under 28 U.S.C. § 2255, arguing that his guilty plea was involuntary, but the sentencing court rejected that challenge, finding his plea valid. Sullivan v. United States, Case No. 15-cv-01280 (C.D. Ill. Nov. 2, 2015). Sullivan then filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in this Court, challenging the enhancement of his sentence as a career offender under U.S.S.G. § 4B1.1. Relying on Mathis v. United States, 136 S. Ct. 2243 (2016), Sullivan argued that his two prior convictions for drug offenses under Illinois law do not qualify as controlled substance offenses for purposes of the career offender enhancement under U.S.S.G. § 4B1.1. Sullivan's § 2241 petition was dismissed, however, by Judge Herndon, who found that (1) his collateral attack was barred by the valid waiver in his plea agreement, (2) even absent such a waiver, given the advisory nature of the sentencing guidelines, any misapplication would not constitute a miscarriage of justice permitting a §2241 petition, and (3) Sullivan's argument would likely fail anyway under United States v. Redden, 875 F.3d 374 (7th Cir. 2017), which held that a conviction for violation of 720 ILCS

570/401 is a "controlled substance offense" for purposes of the career offender guideline. Sullivan v. True, 17-cv-00640, Doc. 11 (S.D. Ill. Dec. 27, 2017). Judge Herndon again affirmed these findings in rejecting Sullivan's Motion to Alter or Amend Judgment. Id. at Doc. 14.

Now Sullivan has filed a second, successive petition under § 2241, again seeking to contest the application of the career offender enhancement under Mathis. In his new petition, as amended, Sullivan raises the cases United States v. Elder, 2018 U.S. App. Lexis 22665 (7th Cir. 2018); United States v. De La Torre, 940 F.3d 938 (7th Cir. 2019); Najera-Rodriguez v. Barr, 2019 U.S. App. LEXIS 16796 (7th Cir. 2019). Generally speaking, Sullivan argues that these cases show that the career offender enhancement was misapplied in calculating his sentence, and that he was induced to enter his plea agreement based on an erroneous understanding of the potential sentence that he faced, and that his plea agreement was therefore invalid.

ANALYSIS

A plea agreement may only be set aside under certain limited circumstances, such as where a defendant shows that his plea was uninformed and involuntary. In the context of a plea agreement containing a waiver of rights to appeal and collaterally attack a conviction, courts have found a plea to be involuntary where a court did not ascertain that a defendant was aware of the waiver provision and its ramifications. E.g., United States v. Sura, 511 F.3d 654, 658-69 (7th Cir. 2007). Here, transcripts from Sullivan's plea hearing show that the Court did advise him of the waiver provision and that he indicated that he fully understood that provision and its ramifications. Sullivan, 12-cr-10115, Doc. 252 at 9-10. Sullivan claims that his plea should still be considered involuntary because under Mathis his sentence was miscalculated, and he therefore entered his plea under a misapprehension as to the potential sentence that he faced. As Sullivan notes, however, the decision in Mathis was not published

until 2016, while Sullivan entered his plea in 2014. A plea will not be found to be involuntary based on a defendant's lack of awareness of case law that did not exist at the time that the plea was entered. *United States v. Vela*, 740 F.3d 1150, 1151 (7th Cir. 2014).

Accordingly, despite the new cases cited by Sullivan in his second § 2241 petition, the publication of *Mathis* and subsequent cases from this circuit do not affect the validity of the waiver provision in his plea agreement, which prevents Sullivan from bringing a § 2241 petition. As such, the Court sees no need to revisit its previous conclusions about the merits of Sullivan's arguments.

CONCLUSION

For the reasons set forth above, the Court **GRANTS** the Motion to Dismiss and **DISMISSES** this action **with prejudice**. The Clerk of Court is **DIRECTED** to enter judgment accordingly in favor of respondent.

IT IS SO ORDERED.

DATED: November 9, 2020

Nancy J. Rosenstengel

NANCY J. ROSENSTENGEL
Chief U.S. District Judge

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 4, 2021

Before

MICHAEL S. KANNE, Circuit Judge

DIANE P. WOOD, Circuit Judge

DAVID F. HAMILTON, Circuit Judge

No. 21-1505

MATTHEW SULLIVAN,
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v.

DANIEL SPROUL,
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Appeal from the United States District Court for the Southern District of Illinois.

No. 3:19-cv-01277

Nancy J. Rosenstengel,
Chief Judge.

ORDER

Petitioner-appellant filed a petition for rehearing and rehearing en banc on September 14, 2021. No judge[1] 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 en banc is therefore DENIED.

[1] Judge Candace Jackson-Akiwumi did not participate in the consideration of this matter.