United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 1, 2021
Decided September 28, 2021

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 18-1202

JESUS RUIZ,
Petitioner-Appellant,

v.

LOUIS WILLIAMS, II,
Respondent-Appellee.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 15-cv-372-jdp

James D. Peterson,
Chief Judge.

ORDER

Jesus Ruiz appeals the district court's denial of his petition under 28 U.S.C. §§ 2255(e), 2241. We summarily affirm the judgment.

In 1999, a jury in the Northern District of Illinois convicted Ruiz of several crimes for a deadly kidnapping scheme to collect drug debts: conspiracy to commit racketeering, 18 U.S.C. § 1962(d); conspiracy to kidnap, *id.* § 1201(c); kidnapping resulting in death, *id.* § 1201(a); assaulting a federal officer, *id.* § 111; four counts under the Hostage Act, including one violation resulting in death, *id.* § 1203(a); and three counts of using a firearm in a crime of violence, *id.* § 924(c). The district court imposed

seven concurrent life sentences, a 10-year concurrent term, and a 45-year "consecutive" term for the § 924(c) convictions.

We recently affirmed the district court's denial of Ruiz's successive § 2255 motion. *Ruiz v. United States*, 990 F.3d 1025 (7th Cir. 2021). Now before us is Ruiz's habeas corpus appeal raising three claims:

(1) under *Burrage v. United States*, 571 U.S. 204 (2014) (addressing causation standard for drug distribution that results in death), the jury instructions on death-resulting-from-kidnapping and hostage-taking wrongly failed to specify that Ruiz's conduct must be a but-for cause of the victim's death;

(2) the jury instructions omitted certain elements of Illinois felony murder—one of the predicate crimes of racketeering here; and

(3) the § 924(c) convictions were based on a theory of aider-and-abettor liability, yet the government did not prove Ruiz's advance knowledge of a confederate's intent to carry a gun, as *Rosemond v. United States*, 572 U.S. 65 (2014), now requires.

The district court concluded that Ruiz's *Burrage* claim (about but-for causation of death) is foreclosed by *Camacho v. English*, 872 F.3d 811 (7th Cir. 2017). We agree: *Camacho* explains that *Burrage* does not apply to the death-based enhancement for kidnapping. The death-results enhancement for drug crimes in § 841(b)(1)(C) requires that death result "from the use" of the substance distributed by a defendant; from that language, *Burrage* infers that when the victim also has taken drugs from sources other than the defendant, the drugs distributed by the defendant must be a but-for or sufficient cause of death. But § 1201(a), at issue here, requires only that "the death of any person results" from the kidnapping. So, in *Camacho*, we concluded that under § 1201(a), the "specific cause" of death is "immaterial" and *Burrage* has nothing to say; it is enough that the defendant's kidnapping activities led to a death. Meanwhile, the death-results language in the hostage-taking statute, § 1203(a), is identical to § 1201(a)'s language—so the same result obtains.

Ruiz also attempts to link his argument about the elements of Illinois felony murder to *Burrage*. But the district court correctly concluded that *Burrage* did not change the elements or scope of any state-law crime. *See, e.g., People v. Nere*, 115 N.E.3d 205, 214–30 (Ill. 2018) (declining to adopt *Burrage*'s but-for causation standard in Illinois

homicide cases, which permit finding of causation on broader theory of "contributing cause"). Because Ruiz is not relying on any change in federal statutory interpretation, he cannot proceed with this theory under §§ 2255(e) and 2241. *See Montana v. Cross*, 829 F.3d 775, 783–85 (7th Cir. 2016).

Ruiz next argues that his three § 924(c) convictions are invalid because, he says, they were based on a theory of aider-and-abettor liability—and, *Rosemond* tells us, the government was required to prove that he knew that a codefendant intended to use firearms. But even if we assume that Ruiz was convicted as an aider and abettor, *Rosemond* cannot help Ruiz here because he was not foreclosed from raising a *Rosemond*-type argument at the time of his direct appeal or first § 2255 motion. *See Montana*, 829 F.3d at 783-85. In *Montana*, this court concluded that a *Rosemond*-like argument was available to petitioners convicted in this circuit as early as July 1998. *Id.* (citing *United States v. Woods*, 148 F.3d 843 (7th Cir. 1998)). Ruiz filed his direct appeal in September 1998 and his first § 2255 motion in 2001. *Montana*, then, forecloses saving-clause review here.

Accordingly, we summarily affirm the district court's judgment. Ruiz's request for counsel is denied.