

**NOT RECOMMENDED FOR PUBLICATION**

No. 21-5464

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

May 4, 2022  
DEBORAH S. HUNT, Clerk

STEVEN MARTINEZ,

Petitioner-Appellant,

v.

CHRISTOPHER GOMEZ, Warden,

Respondent-Appellee.

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ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF  
KENTUCKY

**ORDER**

Before: GIBBONS, STRANCH, and LARSEN, Circuit Judges.

Steven Martinez, a federal prisoner proceeding pro se, appeals the district court's denial of his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 1996, a jury in the United States District Court for the Southern District of New York found Martinez guilty of conspiracy to commit murder, murder, conspiracy to commit robbery, and robbery. The district court imposed a sentence of life imprisonment. Martinez appealed, but the U.S. Court of Appeals for the Second Circuit upheld his convictions. The Supreme Court denied his petition for a writ of certiorari. *See United States v. Gallego*, 191 F.3d 156, 173 (2d Cir. 1999), *cert. denied sub nom. Martinez v. United States*, 528 U.S. 1127 (2000). He subsequently sought to vacate his convictions and sentence pursuant to 28 U.S.C. § 2255, but the district court denied his motion and the Second Circuit denied his request for a certificate of

appealability. *Martinez v. United States*, No. 01-2292 (2d Cir. Dec. 14, 2001). Martinez then unsuccessfully sought relief several more times under § 2241 and § 2255. See *Martinez v. Coakley*, No. 3:19-CV-59, 2019 WL 9077287, at \*2-3 (N.D. W. Va. Sept. 13, 2019) (detailing attempts at relief).

In 2021, Martinez filed a § 2241 petition in the United States District Court for the Eastern District of Kentucky,<sup>1</sup> arguing that his conviction was invalid and his continued imprisonment violates 18 U.S.C. § 4001(a). The district court denied the petition because it constituted an impermissible collateral attack on Martinez's convictions. *Martinez v. Gomez*, No. 6:21-008, 2021 WL 731348 (E.D. Ky. Jan. 25, 2021). We dismissed his appeal for want of prosecution. In the meantime, Martinez filed the underlying § 2241 petition asserting essentially the same claims. The district court again denied his petition on the same grounds as it had previously. *Martinez v. Gomez*, No. 6:21-059, 2021 WL 1878364 (E.D. Ky. Apr. 16, 2021).

Martinez now appeals, arguing that his most recent § 2241 petition was not an impermissible collateral attack on his convictions, nor were its claims duplicative of those in his previous § 2241 petition. He asks us to order his immediate release from prison.

We review de novo a district court's denial of a § 2241 petition. *Charles v. Chandler*, 180 F.3d 753, 755 (6th Cir. 1999) (per curiam). "A federal prisoner must challenge the legality of his detention by motion under 28 U.S.C. § 2255, but may challenge the manner or execution of his sentence under 28 U.S.C. § 2241." *Wooten v. Cauley*, 677 F.3d 303, 306 (6th Cir. 2012). An exception known as the savings clause, see 28 U.S.C. § 2255(e), allows a prisoner to challenge his conviction or sentence under § 2241 if he can show "that his remedy under § 2255 is inadequate or ineffective," *Charles*, 180 F.3d at 756, but the circumstances under which that burden may be met "are narrow," *United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001); cf. *Wright v. Spaulding*, 939 F.3d 695, 698 (6th Cir. 2019). "[T]he § 2255 remedy is not considered inadequate

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<sup>1</sup> A § 2241 petition must be brought in the court of the judicial district in which a prisoner is confined, see *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004), and Martinez is now confined at USP McCreary in Pine Knot, Kentucky.

or ineffective simply because § 2255 relief has already been denied, or because the petitioner is procedurally barred from pursuing relief under § 2255, or because the petitioner has been denied permission to file a second or successive motion to vacate.” *Charles*, 180 F.3d at 756 (citations omitted); *see Taylor v. Owens*, 990 F.3d 493, 499 (6th Cir. 2021).

Although Martinez attempts to argue otherwise, his underlying § 2241 petition both constitutes an impermissible collateral attack on his convictions and contains claims that are duplicative of those that he previously asserted. He argues that he is merely “[c]hallenging Administrative Remedy under Program Statement that gives Appellee the authority to receive Cost of Incarceration Fee” and that he is “not collaterally attacking his . . . underlying conviction.” But at the time same, Martinez describes his convictions as having been dismissed and contends that the criminal judgment against him is void, ostensibly because he was sentenced based on a superseding indictment. And, as noted above, he seeks his “immediate release from . . . wrongful imprisonment.” As the United States District Court for the Northern District of West Virginia noted in response to one of Martinez’s previous § 2241 petitions, the “[d]ismissal of an initial or underlying indictment does not function as a dismissal of the case in its entirety when a superseding indictment has replaced the underlying indictment.” *Martinez*, 2019 WL 9077287, at \*5. Martinez otherwise provides no factual basis or legal authority in support of his argument.

Martinez has ultimately failed to demonstrate that his underlying claims were cognizable in a § 2241 action, or that the remedies afforded under § 2255 were inadequate or ineffective. *See Peterman*, 249 F.3d at 461.

Accordingly, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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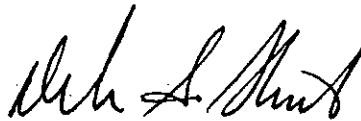
**JUDGMENT**

On Appeal from the United States District Court  
for the Eastern District of Kentucky at London.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

**ENTERED BY ORDER OF THE COURT**



Deborah S. Hunt, Clerk



denied, *Martinez v. United States*, 528 U.S. 1127 (2000). Martinez then filed a postconviction motion pursuant to 28 U.S.C. § 2255, but the trial court denied that motion and the Second Circuit denied him a certificate of appealability. *See Martinez v. United States*, No. 1:01-cv-1172 (S.D.N.Y. 2001).

Martinez then filed a § 2241 petition with this Court. *See Martinez v. Gomez*, No. 6:21-cv-008-HRW, at D. E. No. 1 (E.D. Ky. 2021). In that petition, Martinez put forth two claims, both of which claimed that the Department of Justice (DOJ) and the Bureau of Prisons (BOP) were improperly confining him in violation of 18 U.S.C. § 4001. [*See id.* at 5]. Martinez asked the Court to order his prompt release. [*Id.* at 8]. The Court, however, denied Martinez's § 2241 petition because it constituted an impermissible collateral attack on his underlying convictions. *See Martinez*, No. 6:21-cv-008-HRW, at D. E. No. 4.

Nevertheless, Martinez has now filed another § 2241 petition. [D. E. No. 1]. In that petition, Martinez once again claims that the DOJ and BOP are holding him in violation of § 4001. [*See id.*]. Martinez then asks the Court to order his immediate release from his "illegal imprisonment." [*Id.* at 8].

Martinez's latest § 2241 petition, however, once again constitutes an impermissible collateral attack on his underlying convictions. As the Court has explained, while a federal prisoner may challenge the legality of his convictions on direct appeal and in a § 2255 motion, he generally may not do so in a § 2241 petition.

*See United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001) (explaining the distinction between a § 2255 motion and a § 2241 petition). After all, a § 2241 petition is usually only a vehicle for challenges to actions taken by prison officials that affect the way the prisoner's sentence is being carried out, such as computing sentence credits or determining parole eligibility. *See Terrell v. United States*, 564 F.3d 442, 447 (6th Cir. 2009). Simply put, Martinez cannot use a § 2241 petition as a way of challenging his convictions.

To be sure, there is a limited exception under which federal prisoners have been permitted to challenge the validity of their convictions in a § 2241 petition. However, the United States Court of Appeals for the Sixth Circuit has explained that a prisoner can only proceed in this manner if he can demonstrate, among other things, that an intervening change in statutory law from the United States Supreme Court establishes his actual innocence. *See Wooten v. Cauley*, 677 F.3d 303, 307-08 (6th Cir. 2012).

Here, Martinez has not made such a showing. In fact, Martinez has not clearly identified any intervening change in statutory law, let alone one that establishes his actual innocence. Instead, it appears that, at most, Martinez is trying to litigate claims that could have only been asserted on direct appeal and/or in a § 2255 motion. That is simply not proper in a § 2241 action. *See also Martinez v. Coakley*, No. 3:19-

cv-059-GMG (N.D. W. Va. 2019) (Martinez filed a § 2241 petition, the trial court denied it, and the Fourth Circuit affirmed).

Accordingly, it is **ORDERED** that:

1. Martinez's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 [D. E. No. 1] is **DENIED**.
2. All pending motions are **DENIED** as moot.
3. This action is **DISMISSED** and **STRICKEN** from the Court's docket.
4. A corresponding Judgment will be entered this date.

This 16th day of April, 2021.



Signed By:

Henry R Wilhoit Jr. *HTW*

United States District Judge

APPENDIX .H.



**Additional material  
from this filing is  
available in the  
Clerk's Office.**