

FILED: February 25, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7167
(0:21-cv-01513-DCN)

OSCAR LENTON, SR.

Petitioner - Appellant

v.

WARDEN OF FCI EDGEFIELD

Respondent - Appellee

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wynn, Judge Richardson, and Senior Judge Keenan.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: December 20, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7167 /
(0:21-cv-01513-DCN)

OSCAR LENTON, SR.

Petitioner - Appellant

v.

WARDEN OF FCI EDGEFIELD

Respondent - Appellee

JUDGMENT

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

PER CURIAM:

Oscar Lenton, Sr., a federal prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on Lenton's 28 U.S.C. § 2241 petition in which Lenton sought to challenge his convictions by way of the savings clause in 28 U.S.C. § 2255. 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. *Lenton v. Warden of FCI Edgefield*, No. 0:21-cv-01513-DCN (D.S.C. July 22, 2021). We also deny Lenton's motions to assign counsel and amend his petition. 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

Appendix b

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Oscar Lenton, Sr.,) C/A No. 0:21-1513-DCN-PJG

Petitioner,)
v.) **ORDER AND
REPORT AND RECOMMENDATION**

United States of America,)
Respondent.)

Petitioner Oscar Lenton, Sr., a self-represented federal prisoner, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The action is filed *in forma pauperis* pursuant to 28 U.S.C. § 1915.¹ This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.). Having reviewed the Petition in accordance with applicable law, the court concludes that it should be summarily dismissed.

I. Factual and Procedural Background

Petitioner is an inmate at the Federal Correctional Institution in Edgefield, South Carolina. Petitioner was convicted in the United States District Court for the Northern District of Florida of drugs and firearms offenses and sentenced to an aggregate term of 360 months' imprisonment in 2003. Case No. 4:02-cr-26. The United States Court of Appeals for the Eleventh Circuit affirmed his convictions and sentences in 2003. Petitioner filed a motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255 that was denied by the sentencing court in 2008. The sentencing court similarly denied his motions to reduce his sentence in 2009 and 2020. Petitioner also previously filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 in this

¹ Petitioner's motion for leave to proceed *in forma pauperis* is granted. (ECF No. 11.)

court in 2018 that was summarily dismissed for lack of subject matter jurisdiction. C/A No. 0:18-cv-1836.

In April 2021, Petitioner filed the instant matter—another petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241—in the Northern District of Florida. Petitioner argues that the Government failed to produce a portion of a tape purportedly showing that someone other than Petitioner committed a drug offense of which Petitioner was convicted. Petitioner argues that the Government's failure to disclose exculpatory evidence violated his right to due process under the Fourteenth Amendment pursuant to Brady v. Maryland, 373 U.S. 83 (1963). Thus, Petitioner argues, there is no factual basis to support his conviction for possession with intent to distribute cocaine base, and his conviction should be vacated. The Northern District of Florida *sua sponte* transferred the case to this court, finding jurisdiction is proper in this court because Petitioner is housed in South Carolina.

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* petition filed in this case pursuant to the Rules Governing § 2254 Cases,² 28 U.S.C. § 2254; the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. No. 104-132, 110 Stat. 1214; and in light of the following precedents: Denton v. Hernandez, 504 U.S. 25 (1992); Neitzke v. Williams, 490 U.S. 319, 324-25 (1989); Haines v. Kerner, 404 U.S. 519 (1972); Nasim v. Warden, Md. House of Corr., 64 F.3d 951 (4th Cir. 1995) (en banc); Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983).

² The Rules Governing Section 2254 are applicable to habeas actions brought under § 2241. See Rule 1(b).

This court is required to liberally construe *pro se* pleadings, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for “all civil actions”).

B. Analysis

A petitioner cannot challenge his federal conviction and sentence through § 2241 unless he can show under the “savings clause” of § 2255(e) that a § 2255 motion is “inadequate or ineffective to test the legality of his detention.” See 28 U.S.C. § 2255(e); see also Rice v. Rivera, 617 F.3d 802, 807 (4th Cir. 2010) (providing that if 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 petition for lack of jurisdiction). The United States Court of Appeals for the Fourth Circuit has held that a petitioner must establish the following criteria to demonstrate that a § 2255 motion is inadequate or ineffective to test the legality of a prisoner’s conviction:

- (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 (2000); see also United States v. Wheeler, 886 F.3d 415, 427 (4th Cir. 2018).

In this case, Petitioner does not even allege that a change in the law rendered his conviction unlawful. Rather, he seeks to raise an argument based on new facts that he did not previously

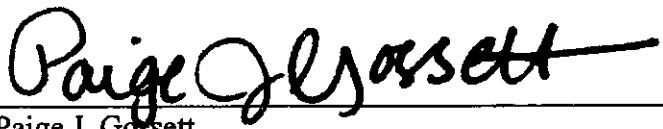
present to the sentencing court. Therefore, Petitioner fails to show that a § 2255 motion is inadequate or ineffective to test the legality of his conviction under the In re Jones test. See In re Vial, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997) (“[T]he remedy afforded by § 2255 is not rendered inadequate or ineffective merely because an individual has been unable to obtain relief under that provision, or because an individual is procedurally barred from filing a § 2255 motion.”) (internal citations omitted).

Because Petitioner is foreclosed from bringing a § 2241 habeas petition in this court to challenge his sentence, Petitioner’s remedy, if any, appears to be to seek permission to file a § 2255 motion in the court in which he was sentenced by filing a motion for leave to file a successive § 2255 motion in the United States Court of Appeals for the Eleventh Circuit. See 28 U.S.C. § 2255(h)(1). Therefore, this case should be dismissed because this court lacks jurisdiction over the Petition. See Wheeler, 886 F.3d at 426 (holding that the failure to meet the requirements of the savings clause is a jurisdictional defect that may not be waived).

III. Conclusion

Accordingly, the court recommends that the Petition in the above-captioned case be dismissed without prejudice and without requiring the respondent to file a return.

June 22, 2021
Columbia, South Carolina


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

The parties’ attention is directed to the important notice on the next page.

~~PURSUANT~~
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Oscar Lenton, Sr.,)	C/A No.: 0:21-cv-1513 DCN
)	
Petitioner,)	
)	
vs.)	<u>ORDER</u>
)	
United States of America,)	
)	
Respondent.)	
)	

The above referenced case is before this court upon the magistrate judge's recommendation that the petition be dismissed without prejudice and without requiring respondent to file a return.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v. Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).¹ Petitioner timely filed objections on July 6, 2021.

¹In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED**, and the petition is **DISMISSED** without prejudice and without requiring respondent to file a return.

IT IS FURTHER ORDERED that a certificate of appealability is denied because petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(b)(2).

AND IT IS SO ORDERED.



David C. Norton
United States District Judge

July 20, 2021
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure

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