

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA

Plaintiff,

vs.

EDWARD BISHOP

Defendant.

CASE NUMBER: 3:17CR55-001

USM Number: 17070-027

WILLIAM J STEVENS
DEFENDANT'S ATTORNEY

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT was found guilty on count 1 of the Indictment after a plea of not guilty on 12/12/2017.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense:

| <u>Title, Section & Nature of Offense</u> | <u>Date Offense Ended</u> | <u>Count Number(s)</u> |
|--|---------------------------|------------------------|
| 18:924(c) DISCHARGE OF A FIREARM DURING DRUG TRAFFICKING CRIME and FORFEITURE ALLEGATION | May 13, 2017 | 1 |

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of any material change in economic circumstances.

May 3, 2018

Date of Imposition of Judgment

/s/ Robert L. Miller, Jr.

Signature of Judge

Robert L. Miller, Jr., United States District Judge

Name and Title of Judge

May 4, 2018

Date

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA) INDICTMENT
)
)
)
v.) Case No. 3:17-cr-55 RUM
)
)
EDWARD BISHOP) 18 U.S.C. § 924(c)

-FILED-

JUN 14 2017

THE GRAND JURY CHARGES.

At ROBERT N. TRYOVICH, Clerk M
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

COUNT 1

On or about May 13, 2017, in the Northern District of Indiana.

EDWARD BISHOP.

defendant herein, knowingly used and discharged a firearm during and in relation to a drug trafficking crime of which he may be prosecuted in a court of the United States.

In violation of Title 18, United States Code, Section 924(c)

FORFEITURE ALLEGATION

The allegations contained in Count 1 of this Indictment are hereby re-alleged. Upon conviction of the offense in Count 1 of this Indictment, defendant shall forfeit to the United States pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c) any and all firearms and ammunition involved in the commission of the offense(s), including but not limited to the following:

Taurus 9mm pistol, Model: PT111 G2, S/N: TJZ82022

Dated: June 14, 2017

A TRUE BILL:

s/ Grand Jury Foreperson

Grand Jury Foreperson

CLIFFORD D. JOHNSON
ACTING UNITED STATES ATTORNEY

s/ Joel Gabrielse
By: _____
Joel Gabrielse
Assistant United States Attorney

1 evidence in the case, you are convinced beyond a reasonable
2 doubt that Mr. Bishop is guilty as charged.

3 The Government has the burden of proving Mr. Bishop's
4 guilt beyond a reasonable doubt. This burden stays with the
5 Government throughout the case.

6 [REDACTED] charges Edward Bishop with using a
7 firearm during and in relation to a drug trafficking crime
8 [REDACTED] to find the Defendant guilty of this charge
9 [REDACTED] the Government must prove all -- it says both, but it should
10 [REDACTED] be all of the following elements beyond a reasonable
11 [REDACTED] doubt: first, that Mr. Bishop committed the crime of
12 [REDACTED] possession of marijuana with the intent to distribute, a
13 [REDACTED] violation of Section 21, United States Code -- or Title 21,
14 [REDACTED] United States Code, Section 841(a)(1), which constitutes
15 [REDACTED] Government to prove beyond a reasonable doubt that Mr. Bishop
16 [REDACTED] knowingly possessed marijuana, and that Mr. Bishop intended to
17 [REDACTED] distribute the substance to another person, and that Mr. Bishop
18 [REDACTED] knew the substance was some kind of a controlled substance;
19 second, that Mr. Bishop knowingly used a firearm during and in
20 [REDACTED] relation to that crime; and, third that the firearm was
21 [REDACTED] discharged.

22 If you find from your consideration of all the
23 [REDACTED] evidence that each of these elements has been proved beyond a
24 [REDACTED] reasonable doubt, then you should find Mr. Bishop guilty of
25 [REDACTED] that charge. If, on the other hand, you find your

COURT'S FINAL INSTRUCTIONS

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1 Something happened. I agree; we don't know what
2 happened in there. Did somebody try to rip somebody off? Did
3 somebody try to renegotiate the deal? Did somebody insult the
4 other person? We don't know. But while they're having that
5 meeting for marijuāna, somebody gets really angry, and somebody
6 starts shooting, and that somebody is Mr. Bishop. That's why
7 we're here.

8 We've put on the evidence in the case. We are
9 turning the case over to you and asking you to do your jobs,
10 and I'm asking that you find him guilty, circle that answer on
11 the verdict form, and come back here and be willing to make
12 that call.

13 Thank you.

14 THE COURT: Thank you, Mr. Gabrielse.

15 Ladies and gentlemen, I'm going to move to the
16 lectern for the remaining instructions.

17 A verdict form has been prepared for you. You will
18 take this form with you to the jury room. I'll put it here on
19 your screen. I'll try to.

20 At the top, you see the caption. It keeps wandering
21 back and forth here. At the top, you'll see the caption that
22 has the name of the case and the court. And below that, it
23 says: Verdict: As to Count 1, use and discharge of a firearm
24 in furtherance of a drug trafficking crime, we, the jury, find
25 the Defendant, Edward Bishop -- and then tells you to circle

1 (All comply.)

2 THE COURT: Ladies and gentlemen of the jury, have
3 you reached a verdict?

4 JUROR PRESLEY: Yes.

5 THE COURT: Ms. Presley, do you speak as the
6 presiding juror?

7 JUROR PRESLEY: Yes.

8 **THE COURT:** If you will hand the form to the court
9 security officer, he will deliver it to me for reading in open
10 Court.

11 JUROR PRESLEY: (Complies.)

12 THE COURT: Thank you.

13 The verdict reads: As to Count 1, use and discharge
14 of a firearm in furtherance of a drug trafficking crime, we,
15 the jury, find the Defendant, Edward Bishop, guilty.

16 Does the Defense wish the jury polled?

17 MR. WEMHOFF: Yes, Your Honor.

18 **THE COURT:** Ladies and gentlemen, I'm going to be
19 asking each of you a single question, and that will be whether
20 this is your verdict.

21 Ms. Collins, is this your verdict?

22 JUROR COLLINS: Yes.

23 THE COURT: Mr. Bailey, is this your verdict?

24 JUROR BAILEY: Yes.

25 THE COURT: Mr. Russell, is this your verdict?

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA

vs.

EDWARD BISHOP

CAUSE NO. 3:17-CR-55RM

VERDICT

As to Count 1 (use and discharge of a firearm in furtherance of a drug trafficking crime), we, the jury, find the defendant, Edward Bishop (circle one)

GUILTY

NOT GUILTY

Cynthia Purley
Presiding Juror

Dated: 12/12/17

Appendix "7"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDWARD BISHOP,

Petitioner,
v.

Case Number 21-11367
Honorable David M. Lawson

J. HEMINGWAY,

Respondent.

ORDER DIRECTING RESPONSE

On June 2, 2021, Edward Bishop filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, which he supplemented on July 12, 2021. The Court has reviewed the petition and finds that it warrants a response.

Accordingly, it is **ORDERED** that the respondent must respond to the petition for a writ of habeas corpus, as supplemented (ECF Nos. 1, 4), **on or before August 19, 2021**.

s/David M. Lawson _____
DAVID M. LAWSON
United States District Judge

Dated: July 29, 2021

Appendix "8"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDWARD BISHOP,

Petitioner, Case Number 21-11367
Honorable David M. Lawson

v.

JONATHAN HEMINGWAY,

Respondent.

**OPINION AND ORDER SUMMARILY DISMISSING
PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner Edward Bishop is a federal prisoner confined at the Federal Correctional Institution in Milan, Michigan. He has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 challenging a conviction for discharging a firearm during a drug transaction, which was entered by the United States District Court for the Northern District of Indiana. His petition does not state a claim for which relief can be granted, and it will be dismissed.

I.

Bishop was convicted following a jury trial in the United States District Court for the Northern District of Indiana of discharging a firearm during a drug transaction in violation of 18 U.S.C. § 924(c). He was sentenced to 120 months in prison. The conviction was affirmed on direct appeal. *United States v. Bishop*, 910 F.3d 335 (7th Cir. 2019).

Bishop then filed a motion to vacate sentence under 28 U.S.C. § 2255 in which he raised two of the claims that he brings in his present petition for a writ of habeas corpus. The motion to vacate sentence was denied. *Bishop v. United States*, No. 17-CR-55, 2019 WL 3531264 (N.D.

jurisdiction over an application for habeas under section 2241 if the petitioner could seek relief under section 2255, and either has not done so or has done so unsuccessfully.”). However, section 2255’s “savings clause” permits a petitioner to file a habeas corpus petition challenging his conviction under section 2241 rather than section 2255, but only if it appears that “the remedy” afforded under section 2255 “is inadequate or ineffective to test the legality of his detention.” *Hill*, 836 F.3d at 594 (quoting 28 U.S.C. § 2255(e)); *see also Charles v. Chandler*, 180 F.3d 753, 756 (6th Cir. 1999). Habeas corpus is not an “additional, alternative or supplemental remedy” to the motion to vacate, set aside, or correct the sentence. *Id.* at 758. The burden of showing that the remedy afforded under § 2255 is inadequate or ineffective rests with the petitioner; the mere fact that a prior motion to vacate sentence may have proven unsuccessful does not necessarily meet that burden. *In Re Gregory*, 181 F.3d 713, 714 (6th Cir. 1999).

The essence of the petition is that the offense of conviction is “non-existent” because the indictment confounds the “using or carrying . . . during . . .” language with the “possession . . . in furtherance of” language. *See United States v. Combs*, 369 F.3d 925, 932-33 (6th Cir. 2004). He argues that Sixth Circuit precedent permits him to challenge his conviction via section 2241. He is incorrect. Bishop cannot challenge his conviction or sentence in a section 2241 habeas petition because his case does not meet any exception under *Hill* that might qualify under the savings clause of section 2255.

First, the Sixth Circuit in *Hill* expressly limited its holding to a federal prisoner who sought to challenge his sentencing enhancement as a career offender under section 2241 via the section 2255(e) savings clause where a retroactive change in statutory interpretation by the Supreme Court indicated that a petitioner’s previous conviction could not be used as predicate offense for a career-offender enhancement. Bishop does not challenge any sentence enhancement as a career offender.

is unable to raise these claims again in a section 2241 habeas petition. *See Casey v. Hemingway*, 42 F. App'x 674, 676-77 (6th Cir. 2002).

III.

Because Bishop has not identified any basis for invoking the savings clause in 28 U.S.C. § 2255(e), the Court has no subject matter jurisdiction over the petition for a writ of habeas corpus submitted under 28 U.S.C. § 2241.

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: October 21, 2021

NOT RECOMMENDED FOR PUBLICATION

No. 21-1693

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 12, 2022
DEBORAH S. HUNT, Clerk

EDWARD BISHOP,)
Petitioner-Appellant,)
v.)
JONATHAN R. HEMINGWAY, Warden,) ON APPEAL FROM THE UNITED
Respondent-Appellee.) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) MICHIGAN
)
)

ORDER

Before: SUHRHEINRICH, GILMAN, and KETHLEDGE, Circuit Judges.

Edward Bishop, a pro se federal prisoner, appeals the judgment of the district court dismissing his 28 U.S.C. § 2241 habeas corpus petition. 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 2017, in the United States District Court for the Northern District of Indiana, Bishop was charged with the knowing “use[] and discharge[] [of] a firearm during and in relation to a drug-trafficking crime,” in violation of 18 U.S.C. § 924(c). As noted on the verdict form, the jury found him guilty of “use and discharge of a firearm in furtherance of a drug-trafficking crime.” He was sentenced to 120 months of imprisonment. The Seventh Circuit Court of Appeals affirmed.

United States v. Bishop, 910 F.3d 335 (7th Cir. 2018).

Bishop thereafter filed a 28 U.S.C. § 2255 motion to vacate, arguing that he could not be charged under § 924(c) without also being charged with a predicate drug offense. Given this premise, he asserted that his indictment was defective, counsel was ineffective for failing to

challenge the indictment, he was actually innocent of the crime charged, insufficient evidence supported his conviction, and the jury instructions constructively amended the indictment. The trial court denied the motion to vacate. The Seventh Circuit denied a certificate of appealability. *Bishop v. United States*, No. 20-1321, 2020 WL 8921410 (7th Cir. Sept. 11, 2020) (order).

In 2021, Bishop filed a motion with the Seventh Circuit for leave to file a second or successive § 2255 motion, again challenging his indictment and the sufficiency of the evidence. In that motion, he argued that discharging a firearm *during and in relation to* a drug-trafficking crime and discharging a firearm *in furtherance of* a drug-trafficking crime are not the same offense and that, although he was indicted for the former, he was convicted of the latter. The Seventh Circuit denied the motion. *Bishop v. United States*, No. 21-2057 (7th Cir. June 14, 2021).

Bishop, who is currently housed in the Federal Correctional Institute in Milan, Michigan, filed this § 2241 habeas petition while his motion for leave was pending in the Seventh Circuit. The petition raised two claims: (1) he was convicted of a “non-existent offense” instead of the offense for which he was indicted, and (2) the verdict form constructively amended the indictment. He asserted that he should be allowed to proceed under § 2241 via the “savings clause” of § 2255(h) because his remedy under § 2255 was inadequate or ineffective. Relying on the exception announced in *Hill v. Masters*, 836 F.3d 591, 595 (6th Cir. 2016), he argued that his petition was based on the Supreme Court case of *Bailey v. United States*, 516 U.S. 137 (1995), and Sixth Circuit cases, which are retroactive cases of statutory interpretation that could not have been invoked in his initial § 2255 motion.

The district court concluded that Bishop could not challenge his conviction under § 2241. The district court also concluded that Bishop had raised his current claims in his initial § 2255 motion to vacate and that claim preclusion prevented him from relitigating them.

On appeal, Bishop argues that the district court erred by concluding that he is not entitled to proceed under § 2241. Bishop claims that he meets the requirements set forth in *Hill* because he relies on the retroactively applicable Supreme Court decision in *Bailey*, as well as on Sixth Circuit cases that involve new rules of statutory interpretation.

We review de novo the district court's dismissal of Bishop's § 2241 petition. *Urbina v. Thoms*, 270 F.3d 292, 295 (6th Cir. 2001). "Section 2255 is the primary avenue for relief for federal prisoners protesting the legality of their sentence, while § 2241 is appropriate for claims challenging the execution or manner in which the sentence is served." *United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001). Under the "savings clause" of § 2255, however, a federal prisoner may challenge his conviction or sentence under § 2241 if the remedy available under § 2255 is "inadequate or ineffective to test the legality of his detention." *Charles v. Chandler*, 180 F.3d 753, 756 (6th Cir. 1999) (per curiam) (quoting 28 U.S.C. § 2255(e)). Section 2255 is not inadequate or ineffective simply because § 2255 relief has been denied, the petitioner is procedurally barred from pursuing relief under § 2255, or the petitioner has been denied permission to file a second or successive § 2255 motion. *Wooten v. Cauley*, 677 F.3d 303, 307 (6th Cir. 2012).

We have applied the savings clause in only two situations. The first involves "claims of actual innocence based upon Supreme Court decisions announcing new rules of statutory construction unavailable for attack under § 2255." *Reminsky v. United States*, 523 F. App'x 327, 328-329 (6th Cir. 2013) (per curiam). The second is when a sentence is invalid in light of "(1) a case of statutory interpretation, (2) that is retroactive and could not have been invoked in the initial § 2255 motion, and [the petitioner can show] (3) that the misapplied sentence presents an error sufficiently grave to be deemed a miscarriage of justice or a fundamental defect." *Hill*, 836 F.3d at 595.

The district court did not err by concluding that Bishop cannot proceed under § 2241 because he cited no new case of statutory interpretation. *Bailey* was decided more than twenty years before Bishop was convicted. The Sixth Circuit cases upon which Bishop relies also predate his conviction and, in any event, circuit decisions "cannot, as a matter of law, establish § 2255's inadequacy." *Hueso v. Barnhart*, 948 F.3d 324, 332 (6th Cir. 2020).

No. 21-1693

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We therefore **AFFIRM** the judgment of the district court.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 21-1693

EDWARD BISHOP,

Petitioner-Appellant,

v.

JONATHAN R. HEMINGWAY, Warden,

Respondent-Appellee.

FILED
Apr 12, 2022
DEBORAH S. HUNT, Clerk

Before: SUHRHEINRICH, GILMAN, and KETHLEDGE, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.

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