

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-7693

DARRELL HARRIS,**Petitioner - Appellant,****v.****WARDEN HUDGINS,****Defendant - Appellee.**

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. John Preston Bailey, District Judge. (1:20-cv-00096-JPB-JPM)

Submitted: April 26, 2022

Decided: April 29, 2022

Before AGEE and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Darrell Harris, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darrell Harris, a federal prisoner, appeals the district court's order denying relief on his 28 U.S.C. § 2241 petition in which he sought to challenge his conviction by way of the savings clause in 28 U.S.C. § 2255. Pursuant to § 2255(e), a prisoner may challenge his conviction and sentence 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 the district court's order. *Harris v. Hudgins*, No. 1:20-cv-00096-JPB-JPM (N.D.W. Va. Nov. 15, 2021). 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

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg**

DARRELL LAMONT HARRIS,

Petitioner,

v.

Civil Action No. 1:20-CV-96
Judge Bailey

WARDEN HUDGINS, Warden
U.S.P. Hazelton,

Respondent.

ORDER DISMISSING CASE

Pending before this Court on initial review is petitioner Darrell Lamont Harris' Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1]. For the reasons stated below, the petition will be dismissed.

On July 9, 2013, a federal grand jury, in a one-count Indictment, charged Harris with interference with commerce by robbery. . . . On January 6, 2014, the jury trial commenced. On January 8, 2014, after the close of all evidence in the case, Harris moved for a judgment of acquittal pursuant to Fed. R. of Crim. P. 29. The Court denied the motion. Following deliberations, which began on January 8, 2014 and ended on January 9, 2014, the jury returned its verdict. The jury found Harris guilty of one count of interference with commerce by robbery, as charged in the one-count Indictment.

On April 8, 2014, the Court entered judgment against Harris and sentenced him to 240 months of imprisonment. Harris appealed. On appeal, Harris argued that the Court “erred in denying his motion for a judgment of acquittal under Fed. R. Crim. P. 29, because the Government presented insufficient evidence to sustain his conviction.” *United States v. Harris*, 593 F. App’x 189, 190 (4th Cir. 2014). The United States Court of Appeals for the Fourth Circuit found no error and affirmed Harris’s conviction. *Id.* at 191.

United States v. Harris, 2018 WL 3614968, at *2–3 (E.D. Va. July 27, 2018) (Payne, J.).

Mr. Harris then filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence, raising the following claims for relief:

Claim One: Counsel provided ineffective assistance by:

- (a) “failing to file any pretrial motions” or “pretrial discovery,” “failing to conduct any pretrial investigations,” and “not properly prepar[ing],” resulting in unacceptable strategic decisions;
- (b) “refus[ing] to file a pretrial motion to dismiss federal indictment on grounds that the government violated [Harris’s] Fifth Amendment Due Process Rights against pre-indictment delay”;
- (c) “refusing to file pretrial suppression motion to suppress the in-court [and] out-[of-]court identification of the prosecutor[’]s two key witnesses”;
- (d) “refus[ing] to file pretrial motion to dismiss federal indictment on grounds that prior dismissal of all [state] charges against [Harris] for the April 28, 2012

offense ... should have constitutionally barred the federal government from later bringing charges against [Harris] for the same April 28, 2012 offense."

Claim Two: "[Harris] was denied a fair trial for the following reasons with regard to prosecutorial misconduct[:]"

(a) "Fifth Amendment Double Jeopardy violation, (vindictive prosecution) (selective prosecution)";

(b) "Intentional distortion of evidence/ *Brady* violation in that the prosecution withheld exculpatory evidence."

Claim Three: "The evidence adduced in the trial of this case was insufficient as a matter of fact and law to sustain the resulting conviction."

Claim Four: "Appellate counsel rendered ineffective assistance [by] failing to present on appeal evidence to support [Harris's] claim that the subsequent federal indictment against him should have been constitutionally barred from re-prosecution due to the prior dismissal of all [state] charges."

Claim Five: "The trial of this case [wa]s representative of a sham prosecution."

United States v. Harris, 2018 WL 3614968, at *1 (E.D. Va. July 27, 2018) (Payne, J).

In a thorough and thoughtful opinion, Judge Robert Payne denied the motion and denied a certificate of appealability. Mr. Harris appealed the ruling, and the Fourth Circuit dismissed the appeal on the basis that the District Judge did not issue a certificate of appealability and that reasonable jurists would not find that the district court's assessment of the constitutional claims is debatable or wrong. ***United States v. Harris***. 773 F.App'x 742 (4th Cir. 2019).

In this Court, the petitioner presents the same grounds as presented above. Accordingly, each of the above grounds is simply a restatement and rehash of the grounds reviewed and rejected by the Eastern District of Virginia and the Fourth Circuit.

This motion is frivolous. Issues fully considered on direct appeal may not be recast under the guise of a collateral attack. **Boeckenhaupt v. United States**, 537 F.2d 1182 (4th Cir. 1976), cert. denied, 429 U.S. 863 (1976). See also **United States v. Rush**, 99 F.App'x. 489 (4th Cir. 2004).

Furthermore, this case is not an appropriate § 2241 matter. 28 U.S.C. §§ 2241 and 2255 each create a mechanism by which a federal prisoner may challenge his or her detention. However, the two sections are not interchangeable. Prisoners seeking to challenge the validity of their convictions or sentences are required to proceed under § 2255 in the district court of conviction. **Rice v. Rivera**, 617 F.3d 802, 807 (4th Cir. 2000); **In re Vial**, 115 F.3d 1192, 1194 (4th Cir. 1997).

Under § 2255, a prisoner may move the sentencing court “to vacate, set aside or correct” his sentence if he claims it “was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a).

A petition for writ of habeas corpus pursuant to § 2241, on the other hand, is intended to address the execution of a sentence, rather than its validity, and is to be filed in the district where the prisoner is incarcerated. Examples of an appropriate use of § 2241 include “actions challenging the computation of parole, computation of good time

or jail credits, prison disciplinary actions, or imprisonment allegedly beyond the expiration of a sentence.” ***Anderson v. Pettiford***, 2007 WL 15777676 (D. S.C. May 31, 2007) (internal citations omitted).

While the terms of § 2255 expressly prohibit prisoners from challenging their convictions and sentences through a habeas corpus petition under § 2241, in limited circumstances, when a § 2255 is an “inadequate or ineffective remedy,” § 2255’s savings clause permits petitioners to bring a collateral attack pursuant to 28 U.S.C. § 2241. ***In re Vial***, 115 F.3d at 1194, n.5; ***In re Jones***, 226 F.3d 328, 333 (4th Cir. 2000). However, “[i]t is beyond question that § 2255 is not inadequate or ineffective merely because an individual is unable to obtain relief under that provision,” including because of a procedural bar. ***Id.***

When contesting a conviction, a petitioner bears the burden of demonstrating that the § 2255 remedy is inadequate or ineffective, and the standard is an exacting one. In the Fourth Circuit, a petitioner asserting “actual innocence” may establish “that § 2255 is inadequate or ineffective to test the legality of a conviction” if he can prove:

(1) at the time of conviction, settled law of this circuit or of 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 gate-keeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, at 333–34.

In this case, the petitioner has failed to demonstrate any change in the substantive law which would deem the petitioner's conduct to no longer be criminal. His attempt to utilize § 2241 is improper.

For the reasons stated above, Darrell Lamont Harris' Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1] is **DENIED**.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** a certificate of appealability, finding that the petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: November 15, 2021.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE