No. _____

17-6060

IN THE

SUPREME COURT OF THE UNITED STATES

In Re JAMES R. YOUNG — PETITIONER
(Your Name)

vs.

WARDEN, FCC COLEMAN-MEDIUM, — RESPONDENT(S)

ON PETITION FOR WRIT OF HABEAS CORPUS TO

THE SUPREME COURT OF THE UNITED STATES
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

MOTION OF APPLICATION REQUEST FOR "STAY" TO INDIVIDUAL JUSTICE CLARENCE THOMAS FOR THE ELEVENTH CIRCUIT

JAMES R. YOUNG
(Your Name)

Federal Correctional Complex Med.
PO Box 1032
(Address)

Coleman, Florida 33521-1032
(City, State, Zip Code)

(Phone Number)

IN THE SUPREME COURT OF THE UNITED STATES

IN RE JAMES R. YOUNG,
Applicant/Petitioner,

v.

Case No. 17-6060

WARDEN, FCC COLEMAN-MEDIUM,
Respondent.

November 30, 2017

MOTION OF APPLICATION REQUEST FOR "STAY"

Pursuant to the Clerk's order filed on November 20, 2017, and in accordance to Rule 23, Applicant Young, now files this Motion Of Application Request For "STAY", with the corrections made as ordered by the Clerk.

Pursuant to Rule 22, this Rule 23 "Motion Request For "STAY", is being filed as: "**1.** An application addressed to an individual Justice" [that Justice is: Justice Clarence Thomas for the Eleventh Circuit], and is being filed "with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief."

Further, in this "Motion Request For "STAY", pursuant to Rule 23 for "Stays"-

"**1.** A stay may be granted by a Justice as permitted by law.

"**2.** A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment. See 28 U.S.C. §2101(f).

As the applicant Party in this matter, Applicant Young, now humbly presents to [Justice Clarence Thomas], an application to "STAY" the enforcement of the judgment order issued on October 16, 2017, by this Court.

The purpose of this request is due to the fact that the pending review matters in [17-85 McCarthan v. Collins], are the intervening circumstances that now also directly apply to the circumstances that exist in Applicant's present case.

Applicant Young, like McCarthan, presents the "IDENTICAL" question in his case that is before this Court in: [17-85 - McCarthan v. Collins]["**Is a person in federal custody entitled to file an application for habeas corpus under 28 U.S.C. 2241 because a Section 2255 motion is "inadequate or effective" to permit him to**

raise a claim that his conviction or sentence is invalid under an intervening and retroactively applicable statutory-interpretation decision of this court?"].

It is, thus, due to [McCarthan] and this Court's retroactively applicable decision in Johnson, Welch, and James, concerning Florida burglaries, that **"intervening circumstances of a substantial or controlling effect"**, now exist in this case.

The relief sought in this matter of habeas complaint is not available from any other court or judge because of the Circuits' split on the proper judicial method to take in this matter.

Rule 23 then further demands that "**3.** An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof. An application for a **stay** shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion, if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set out specific reasons why a **stay** is justified.

Applicant Young, has sought relief in this present matter in both the District Court, and the Eleventh Circuit Court of Appeals, to no avail. See Attachments "B" & "C".

Applicant Young, now seeks to have the attached judgments by the lower courts, in connection with that of this Court on October 16, 2017 [Attachment "A"], "STAYED" pursuant to Rule 23 and the pending matters in [17-85 - McCarthan v. Collins], now before this Court.

This Court in [McCarthan v. Collins], has recently accepted the "IDENTICAL" issue of Constitutional due process violation, as that of outline and concern in Applicant Young's case. Applicant Young is now pending rehearing on his issue of motion now before this Court.

Applicant Young, has also filed a timely habeas corpus request on this matter in every court, and, thus, now has no other avenue available in which to seek relief from this present "Miscarriage of Justice", other than in this Court.

A denial of at least a merits review in this matter would establish that the habeas writ [even before this final Court], has effectively been extinguished from law, and leave Applicant Young, without a remedy to present his **now newly intervening state of "actual innocence"**, to any Court in the United States.

Applicant Young, therefore, requests a "STAY" be granted in this matter pending the outcome in [17-85 - McCarthan v. Collins], and that his Motion for Rehearing be held in abeyance for the same purpose and reason in this case.

A granting of "STAY" is reasonably justified in this case.

Respectfully submitted,

Date: November 30, 2017

James R. Young

JAMES R. YOUNG 10205-017
Federal Correctional Complex-Med.
P.O. Box 1032
Coleman, Florida 33521

EXHIBIT "A"

Copy Of Supreme Court Denial Order From October 16, 2017

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 16, 2017

Mr. James R. Young
Prisoner ID #10205-017
FCC Coleman-Medium
P.O. Box 1032
Coleman, FL 33521

Re: In Re James R. Young
No. 17-6060

Dear Mr. Young:

The Court today entered the following order in the above-entitled case:

The petition for a writ of habeas corpus is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

EXHIBIT "B"

Copy Of Eleventh Circuit Court Denial Order From September 13, 2017

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12130-K

JAMES R. YOUNG,

Petitioner-Appellant,

versus

FCC COLEMAN—MEDIUM WARDEN,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

James R. Young is a federal prisoner serving a 262-month sentence after being found guilty by a jury in 1994 of unlawful possession of a firearm, in violation of 18 U.S.C. §§ 922(g) and 924(e). During trial, the government presented evidence showing that Young had gained possession of that firearm by previously stealing it during the course of a burglary. He was sentenced as an armed career criminal under the Sentencing Guidelines, U.S.S.G. § 4B1.4(b)(3)(A).

As background, Young has filed numerous post-conviction motions. In 2000, Young filed his first motion to vacate his sentence, pursuant to 28 U.S.C. § 2255, which was dismissed as untimely. We denied his subsequent applications for leave to file second or successive § 2255 motions in 2005 and 2006. In 2008, the district court denied Young's motion to correct illegal sentence upon determining that it was an impermissibly successive § 2255 motion, and we

dismissed his appeal in that proceeding for failure to prosecute. Next, in 2010, Young filed a petition for habeas corpus, pursuant to 28 U.S.C. § 2241, arguing that he was actually innocent of his armed-career-criminal sentence enhancement because he did not have the three requisite predicate convictions. The district court dismissed his petition, concluding that he was not entitled to proceed under the saving clause of § 2255(e), and we affirmed. Then, in 2015, Young filed a successive § 2255 motion, claiming that he was entitled to relief under the U.S. Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). The district court dismissed the motion for lack of jurisdiction, and we dismissed his appeal. Finally, in 2016, he submitted to this Court four different applications to file successive *Johnson*-based § 2255 motions. We denied the first three and dismissed the final application as statutorily barred.

In December 2016, Young filed the instant *pro se* § 2241 petition, claiming that his sentence was invalid because a Florida burglary conviction could no longer serve as a predicate crime of violence to support his armed-career-criminal sentence enhancement under *Johnson v. United States*, 135 S. Ct. 2551 (2015), *Mathis v. United States*, 136 S. Ct. 2243 (2016), and *United States v. Esprit*, 841 F.3d 1235 (11th Cir. 2016). The district court dismissed Young's § 2241 petition for lack of jurisdiction, concluding that under § 2255(e) and *McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017) (*en banc*), Young was not permitted to bring such a challenge to his sentence under § 2241. Young now seeks leave to proceed *in forma pauperis* ("IFP") in this Court.

As an initial matter, because Young is a federal prisoner, he does not need a certificate of appealability in order to appeal the district court's dismissal of his § 2241 petition. *See Sawyer v. Holder*, 326 F.3d 1363, 1364 n.3 (11th Cir. 2003). However, because Young seeks IFP status, his appeal is subject to a frivolity determination. *See* 28 U.S.C. § 1915(e)(2)(B). "[A]n action is

frivolous if it is without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation omitted).

Generally, a federal prisoner collaterally attacks the validity of his federal conviction and sentence by filing a motion to vacate under § 2255. *Sawyer*, 326 F.3d at 1365. Nevertheless, the "saving clause" provision of § 2255 permits a federal prisoner, under limited circumstances, to file a habeas petition pursuant to § 2241. *See* 28 U.S.C. §§ 2241(a), 2255(e) (providing that a prisoner may file a habeas petition under § 2241 if "the remedy by [§ 2255] motion is inadequate or ineffective to test the legality of his detention"). In *McCarthan*, we concluded that the saving clause permits federal prisoners to proceed under § 2241 only when: (1) "challeng[ing] the execution of his sentence, such as the deprivation of good-time credits or parole determinations"; (2) "the sentencing court [was] unavailable," such as when the sentencing court itself has been dissolved; or (3) "practical considerations (such as multiple sentencing courts) might prevent a petitioner from filing a motion to vacate." 851 F.3d at 1092-93.

When a prisoner has previously filed a § 2255 motion to vacate, he must apply for and receive permission from the court of appeals before filing a second or successive § 2255 motion. 28 U.S.C. §§ 2244(b), 2255(h). The saving clause of § 2255(e) does not allow access to § 2241 whenever a claim is barred by the rule against second or successive § 2255 motions. *McCarthan*, 851 F.3d at 1092. Consequently, a petitioner who has filed a previous § 2255 motion that has been denied may not circumvent the restriction on successive § 2255 motions simply by filing a petition under § 2241. *Id.* at 1091-92.

Here, Young clearly challenged the validity of his sentence, and, thus, his claim generally should have been brought in a § 2255 motion to vacate. Young has already brought several unsuccessful § 2255 motions between 2000 and 2015, and, thus, he needed to file an application

requesting permission to file a second or successive § 2255 motion with this Court. Young has yet to receive permission from this Court—and we have denied or dismissed his four prior *Johnson*-based successive applications—and he is not permitted to use § 2241 to circumvent § 2255(h)'s restrictions on second or successive motions.

Moreover, Young has failed to invoke § 2255(e)'s saving clause, as: (1) he is not challenging the execution of his sentence, (2) the sentencing court is not unavailable in the sense that it has been dissolved, and (3) practical considerations do not prevent him from filing a § 2255 motion. *See McCarthan*, 851 F.3d at 1092-93. Because Young has presented no non-frivolous argument on appeal, his motion to proceed on appeal IFP is DENIED.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

EXHIBIT "C"

Copy Of District Court Denial Order
[Doc. 25]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

JAMES R. YOUNG,

Petitioner,

v. Case No. 5:16-cv-737-Oc-10PRL

WARDEN, FCC COLEMAN - MEDIUM,

Respondent.

ORDER DISMISSING CASE

Petitioner, *pro se*, is a federal prisoner proceeding on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). Respondent requests dismissal of the petition for lack of jurisdiction. (Doc. 11). Petitioner filed a Reply to the Response. (Doc. 14). Petitioner argues that his sentence is invalid because the Florida burglary statute has been declared inapplicable under the residual clause and "the enumerated offense clause," and cannot serve as a predicate offense under the Armed Career Criminal Act (ACCA). (Doc. 1). Petitioner argues that he is entitled to relief under Johnson v. United States, 576 U.S. ___, 135 S.Ct. 2551 (2015) and Mathis v. United States, 136 S.Ct. 2243 (2016).[1]

Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that "[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action." See also Rule 12, Rules Governing Section 2255 Proceedings. Recently, sitting en banc the Eleventh Circuit overruled prior precedent and held that 28 U.S.C. § 2241 is not available to challenge the

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[1]The Court notes that Petitioner applied to the Eleventh Circuit Court of Appeals to file a successive motion pursuant to §2255 based on the decision in Johnson. On January 17, 2017, the Court of Appeals found that Petitioner raised his Johnson claim in five previous applications and dismissed the application.

validity of a sentence except upon very narrow grounds not present in this case. McCarthan v. Director of Goodwill Industries-Suncoast, Inc., 851 F.3d 1076, 1079 (11th Cir. 2017) (en banc) (quoting 28 U.S.C. § 2255(e). Bernard v. FCC Coleman Warden, No. 15-13344 (11th Cir. April 24, 2017) (citing McCarthan, 851 F.3d at 1092-93).

Thus, pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts (directing *sua sponte* dismissal if the petition and records show that the moving party is not entitled to relief), this case is **DISMISSED**. See also 28 U.S.C. § 2255(b). The **Clerk** is directed to enter judgment accordingly, terminate any pending motions and close the file.

IT IS SO ORDERED.

DONE AND ORDERED at Ocala, Florida, this 28th day of April 2017.

UNITED STATES DISTRICT JUDGE

No. _____

17-6060

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE JAMES R. YOUNG — PETITIONER
(Your Name)

VS.

WARDEN, FCC COLEMAN-MEDIUM — RESPONDENT(S)

STATEMENT OF CERTIFICATION BY A PRO SE PETITIONER

In this Petitioner's Statement Of Certification in accordance to the requirements of Supreme Court Rule 23, Petitioner would simply like to certify Pro se, that his Application Request for "STAY" is solely being made in accordance to "**intervening circumstances of a substantial or controlling effect**", and for no other purpose request for review. The pending matters in McCarthan are intervening and controlling.

Petitioner also would like to establish by certification of statement, that his filing of "Request for Rehearing" is also being done in good faith and not for any purpose of delay.

The names and addresses of those served are as follows:

Solicitor General of the United States, Room 5616
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2017

James R. Young
(Signature)