

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 *McCarthy 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

APPENDIX B

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

¹The 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