

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANTHONY DAWON TAYLOR,

Petitioner,

v.

JEFFREY KRUEGER,

Respondent.

On Petition For A Writ Of Certiorari To The United
States Court Of Appeals For The Seventh Circuit Following
The Denial And Affirmance Of A Petition For A Writ Of
Habeas Corpus Submitted Pursuant To 28 U.S.C. § 2241

APPENDIX

ANTHONY DAWON TAYLOR
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PETITIONER / PRO SE

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 17, 2017
Decided August 1, 2017

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 17-2031

ANTHONY DAWON TAYLOR,
Petitioner-Appellant,

Appeal from the United States District
Court for the Central District of Illinois.

v.

No. 1:17-cv-01143

JEFFREY KRUEGER,
Respondent-Appellee.

Joe Billy McDade,
Judge.

ORDER

A jury convicted Anthony Taylor of conspiracy to distribute and possession with intent to distribute crack cocaine, and two counts of distribution of crack cocaine. He was sentenced as a career offender under U.S.S.G. § 4B1.1 to 360 months' imprisonment and five years' supervised release. He completed his direct appeal and first § 2255 motion by 2002. *United States v. Taylor*, 116 F.3d 269 (7th Cir. 1997); *Taylor v. United States*, 287 F.3d 658 (7th Cir. 2002). In 2015 we authorized Taylor to file a second § 2255 motion based on *Johnson v. United States*, 135 S. Ct. 2551 (2015), arguing that his Illinois aggravated battery conviction was not a crime of violence under § 4B1.2. The district court, Judge Reagen, denied Taylor's petition after applying the elements test

articulated in *Mathis v. United States*, 136 S. Ct. 2243 (2016). We declined to issue a certificate of appealability. *Taylor v. United States*, No. 17-1219 (7th Cir. May 23, 2017).

While his request for a certificate of appealability was still pending, Taylor filed a motion under 28 U.S.C. § 2241 arguing that his aggravated battery conviction was not a crime of violence after *Mathis*. A different district court, Judge McDade, denied the motion, explaining that Taylor could not show § 2255 was an inadequate remedy because the *Mathis* question was resolved after a thorough discussion in Taylor's second § 2255.

Taylor now has filed a notice of appeal from the denial of his § 2241 petition and an application for a certificate of appealability. He argues that we did not authorize the district court to consider *Mathis* in the second § 2255 motion and that, according to *Holt v. United States*, 843 F.3d 720 (7th Cir. 2016), *Mathis* cannot be the subject of a second or successive petition. Therefore, he reasons, the question was not properly resolved by Judge Reagen and is still available for a § 2241 petition. But Judge McDade is correct: Judge Reagen applied the *Mathis* elements test in Taylor's second § 2255 motion, and Taylor is not entitled to a new opportunity to raise the same argument.

Accordingly, the district court judgment is AFFIRMED. Taylor's motion to proceed in forma pauperis is DENIED.

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF ILLINOIS
 PEORIA DIVISION**

ANTHONY DAWON TAYLOR,

Petitioner,

v.

JEFFREY KRUEGER

Respondent.

Case No. 1:17-cv-01143-JBM

ORDER & OPINION

This matter is before the Court on Petitioner Anthony Taylor's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. For the reasons set forth below, Petitioner's Petition (Doc. 1) is denied.

BACKGROUND

In 1996, a jury convicted Petitioner of conspiracy to distribute and possession with intent to distribute crack cocaine, and two counts of distribution of crack cocaine. *See Order (Doc. 12), Taylor v. United States*, No. 15-cv-1087-MJR (S.D. Ill. Sept. 29, 2016). Petitioner was found to be a career offender under the United States Sentencing Guidelines § 4B1.1 and was sentenced to a total of 360 months imprisonment and five years of supervised release. *Id.* In 1997, the United States Court of Appeals for the Seventh Circuit affirmed Petitioner's conviction. *Id.* at 2. In 1998, Petitioner filed his first petition to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, which was denied. *Id.* In 2002, the Seventh Circuit affirmed the denial of his § 2255 petition. *Id.*

In January 2015, Petitioner filed a motion in his criminal case to reduce his sentence under Amendment 782 to the United States Sentencing Guidelines, via 18 U.S.C. § 3582. *Id.* While the motion was pending, the United States Supreme Court decided *Johnson v. United States*, 135 S. Ct. 2551 (2015). *Id.* The district court allowed supplemental briefing on *Johnson*. The court then denied the Amendment 782 motion. *Id.* Within its order, the court noted that based on the record before it, *Johnson* did not provide a basis for a sentence reduction for Petitioner. *Id.* However, the court noted that the order would not preclude Petitioner from filing a *Johnson*-based § 2255 motion, if he received permission from the Court of Appeals. *Id.* at 3.

On September 18, 2015, the Seventh Circuit authorized Petitioner to file a second § 2255 motion based on *Johnson*. *Id.* Petitioner did so and in it, Petitioner argued that his aggravated battery conviction did not have an element of violent force and therefore could not count as a crime of violence. *Id.* Petitioner also argued that his burglary conviction did not meet the criteria for federal burglary. *Id.*

On September 26, 2016, the court denied the second § 2255 motion. *Id.* at 20. The court found that Petitioner's burglary conviction clearly counted as a predicate offense for career offender purposes. *Id.* at 10. Then the court examined whether Petitioner's Illinois aggravated battery conviction was a proper predicate offense. *Id.* The court analyzed Petitioner's predicate offense under *Mathis v. United States*, 136 S. Ct. 2243 (2016), and found that Petitioner's aggravated battery conviction was a crime of violence for career offender purposes. *Id.* at 11-17. Therefore, because both of Petitioner's convictions qualified as crimes of violence for career offender purposes, the court denied Petitioner's § 2255 motion. On October 27, 2016, Petitioner filed a

motion for reconsideration. *See* Motion (Doc. 14), *Taylor v. United States*, No. 15-cv-1087-MJR (S.D. Ill. Oct. 27, 2016). On January 23, 2017, the court denied Petitioner's motion for reconsideration. *See* Order (Doc. 20), *Taylor v. United States*, No. 15-cv-1087-MJR (S.D. Ill. Jan. 23, 2017). On February 1, 2017, Petitioner filed a notice of appeal. *See* Notice of Appeal (Doc. 25), *Taylor v. United States*, No. 15-cv-1087-MJR (S.D. Ill. Sept. 29, 2016). The appeal is still proceeding.

On April 10, 2017, Petitioner filed this Petition for Writ of Habeas Corpus pursuant to 21 U.S.C. § 2241. (Doc. 1). Petitioner argues that under *Mathis*, his prior conviction for aggravated battery under 720 Ill. Comp. Stat. 5/12-4(b)(8) can no longer qualify as a career offender predicate offense. (Doc. 1 at 7).

LEGAL STANDARDS

The Court, in its discretion, applies the Rules Governing Section 2254 Cases in the United States District Courts to this case. *See* Rules Governing Section 2254 Cases in the United States District Courts, R 1(b).¹ This includes Rule 4, which requires that the Court “promptly examine” the Petition and dismiss it if it “plainly appears . . . that the petitioner is not entitled to relief.” Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court has examined the Petition and concludes that Petitioner is not entitled to relief.

Federal prisoners like Petitioner who wish to collaterally attack their convictions or sentences ordinarily must do so under 28 U.S.C. § 2255. *Brown v. Rios*, 696 F.3d 638, 640 (7th Cir. 2012). They may petition under 28 U.S.C. § 2241 only in

¹ *See also Poe v. United States*, 468 F.3d 473, 477 n.6 (7th Cir. 2006); *Hudson v. Helman*, 948 F. Supp. 810, 811 (C.D. Ill. 1996) (holding Rule 4 takes precedence over the deadlines in 28 U.S.C. § 2243 and gives court discretion to set deadlines).

the rare circumstance in which the remedy provided under § 2255 “is inadequate or ineffective to test the legality of his detention.” *See* 28 U.S.C. § 2255(e) (which is often referred to as “the Savings Clause”). The mere fact that Petitioner’s claim would be a second or successive § 2255 motion does not render § 2255 inadequate or ineffective. *See In re Davenport*, 147 F.3d 605, 609-10 (7th Cir. 1998).

In *Davenport*, the Seventh Circuit articulated three conditions that a petitioner must meet in order to invoke the Savings Clause on the basis of a change in law. *Id.* at 610-612. These conditions were recently summarized in *Brown v. Caraway*, 719 F.3d 583 (7th Cir. 2013), another case in which a petitioner brought a § 2241 petition based upon a Supreme Court decision interpreting the residual clause of the ACCA. First, a prisoner “must show that he relies on a statutory-interpretation case rather than a constitutional case;” second, he “must show that he relies on a retroactive decision that he could not have invoked in his first § 2255 motion;” and third, “[the] sentence enhancement [must] have been a grave enough error to be deemed a miscarriage of justice corrigible therefore in a habeas corpus proceeding.” *Id.* at 586 (citations omitted) (internal quotation marks omitted).

DISCUSSION

Petitioner’s § 2241 fails because he cannot meet the second *Davenport* requirement, in order to invoke the Savings Clause. The second *Davenport* requirement requires Petitioner to show that he relies on a retroactive decision that he could not have invoked during his first § 2255 motion. Petitioner is unable to meet this requirement because *Mathis* was invoked during his authorized second § 2255 motion. Judge Reagan spends almost ten pages addressing Petitioner’s conviction

under a *Mathis* analysis. See Order (Doc. 12), *Taylor v. United States*, No. 15-cv-1087-MJR (S.D. Ill. Sept. 29, 2016). Petitioner could have, and actually did, invoke his claims during a previous § 2255. Therefore, Petitioner cannot meet the *Davenport* requirements to invoke the Savings Clause and cannot bring a § 2241 petition.

CONCLUSION

For these reasons, the Court finds Petitioner is not entitled to relief pursuant to 28 U.S.C. § 2241. Thus, Petitioner's Petition (Doc. 1) is DENIED pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. IT IS SO ORDERED.

Entered this _19th_ day of April, 2017.

s/ Joe B. McDade
JOE BILLY McDADE
United States Senior District Judge

States, 135 S. Ct. 2551 (2015). *Id.* The court denied Petitioner's second § 2255. *Id.* at 20. In doing so, Judge Reagan analyzed whether Petitioner's prior Illinois conviction for aggravated battery still qualified as a predicate offense for a career offender designation. *Id.* As part of his analysis, Judge Reagan applied *Mathis v. United States*, 136 S. Ct. 2243 (2016). In *Mathis*, the United States Supreme Court declared that if a state statute sets out a single, or "indivisible," set of elements to define a crime, then a court must use the categorical approach to determine if the state statute's elements match the elements of the federal generic crime. 136 S. Ct. at 2248. If the state statute lists alternative elements, and is therefore "divisible," a court may use the "modified categorical approach." *Id.* at 2250. The "modified categorical approach" allows a court to consult a limited class of documents to determine which crime and what elements were used to convict an offender. *Id.*

In order to determine whether Petitioner had a *Johnson* claim, Judge Reagan dedicated almost ten pages of his opinion to performing a *Mathis* analysis to determine whether Petitioner's prior conviction was a proper career offender predicate offense. *See* Order (Doc. 12), *Taylor v. United States*, No. 15-cv-1087-MJR (S.D. Ill. Sept. 29, 2016). Specifically, Judge Reagan applied *Mathis* to Petitioner's 1994 Illinois conviction for aggravated battery. *Id.* at 15. Judge Reagan determined that the Illinois statute was divisible. *Id.* He then consulted Petitioner's documents to determine that Petitioner was convicted under the "causes bodily harm" prong of the Illinois statute, which qualifies as a crime of violence for career offender purposes. *Id.* at 17. Because Judge Reagan determined that Petitioner's prior aggravated battery conviction was a crime of violence and, therefore, a proper predicate offense

for Petitioner's career offender status, Judge Reagan denied Petitioner's second § 2255 motion.

On April 10, 2017, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). Petitioner argued that under *Mathis*, his prior conviction for aggravated battery under 720 Ill. Comp. Stat. 5/12-4(b)(8) could no longer qualify as a crime of violence for career offender status. (Doc. 1 at 7). This Court denied the Petition because Petitioner failed to meet the second *Davenport* requirement. (Doc. 2 at 4). In *In re Davenport*, the United States Court of Appeals for the Seventh Circuit established three requirements for a petitioner to invoke the Savings Clause of 28 U.S.C. § 2255(e), which allows petitioners bring a § 2241 petition instead of a § 2255 motion. 147 F.3d 605, 609-10 (7th Cir. 1998). The second requirement is that the petitioner must show that he relies on a retroactive decision that he could not have invoked on his first § 2255. Because Judge Reagan applied *Mathis* to conclude that Petitioner's prior aggravate battery conviction was a proper predicate offense, this Court found that Petitioner could not show that he relied on a case that he could not invoke during his previous § 2255 motion. (Doc. 2 at 4).

On April 27, 2017, Petitioner filed this Motion to Alter or Amend Judgment pursuant to Federal Rule of Civil Procedure 59(e). (Doc. 4). Petitioner argues that he could not have invoked *Mathis* during his previous petition because the Government argued that he lacked jurisdiction to raise it during a § 2255 claim. (Doc. 4 at 2). Petitioner also argues that Judge Reagan held that he could not decide Petitioner's *Mathis* claim. (Doc. 4 at 2). Therefore, Petitioner argues that his claim should still be cognizable as a § 2241 claim.

LEGAL STANDARDS

A request to alter or amend judgment filed pursuant to Rule 59(e) may only be granted if a movant clearly establishes that the court made a manifest error of law or fact, or presents newly discovered evidence. *LB Credit Corp. v. Resolution Trust Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1995). A manifest error is the “wholesale disregard, misapplication, or failure to recognize controlling precedent.” *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (internal quotation marks omitted). A movant may not advance in a Rule 59(e) motion arguments he should have raised before judgment was entered. *Sigsworth v. City of Aurora, Ill.*, 487 F.3d 506, 512 (7th Cir. 2007).

DISCUSSION

Petitioner does not assert that the Court made a manifest error of law or fact; nor does Petitioner present newly discovered evidence. In ruling on his § 2255 motion, Judge Reagan performed a *Mathis* analysis of Petitioner’s prior conviction; in fact, he performed the same type of analysis that Petitioner is asking this Court to do in his § 2241 petition. The purpose of the Savings Clause is to allow a petitioner to seek relief when “limitations prevent the prisoner from obtaining relief” *In re Davenport*, 147 at 608. It is not to provide petitioners a second bite at the apple if they do not like the interpretation the first judge provided. In determining Petitioner’s § 2255 *Johnson* claim, Judge Reagan performed the exact *Mathis* analysis that Petitioner is currently asking this Court to perform. The Court declines to give Petitioner a second bite at the apple. Therefore, Petitioner has failed to show that he was unable to invoke *Mathis* during his previous § 2255.

Furthermore, the Court finds it irrelevant Petitioner's argument that the Government asserted that Petitioner could not present a *Mathis* argument, because what the Government argues is not the relevant inquiry. Furthermore, the Court finds that Judge Reagan did not hold that Petitioner could not bring a *Mathis* claim, as Petitioner so asserts. Rather, Judge Reagan states that "to the extent that [Petitioner's] motion to reconsider could be construed as mounting a fresh collateral attack on his criminal judgment, it would constitute a successive § 2255 proceeding which he did not obtain authorization from the Court of Appeals to pursue." *See* Order (Doc. 20), *Taylor v. United States*, No. 15-cv-1087-MJR (S.D. Ill. Sept. 29, 2016).

Petitioner has failed to present new evidence or that Petitioner has committed a manifest error of law or fact in determining that Petitioner failed to show that he was unable to invoke *Mathis* in his previous § 2255 motion. Petitioner disagrees with the *Mathis* analysis performed during his Johnson § 2255 motion; however, disagreement is not proof of an inability to invoke the case, sufficient to satisfy the *Davenport* requirements.

CONCLUSION

IT IS THEREFORE ORDERED that Petitioner's Motion for Reconsideration Pursuant to Federal Rules of Civil Procedure Rule 59 (Doc. 4) is DENIED.

Entered this __1st__ day of May, 2017.

s/Joe B. McDade

JOE BILLY McDADE
United States Senior District Judge

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 12, 2017

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 17-2031

ANTHONY DAWON TAYLOR,
Petitioner-Appellant,

Appeal from the United States District
Court for the Central District of Illinois.

v.

No. 1:17-cv-01143

JEFFREY KRUEGER,
Respondent-Appellee.

Joe Billy McDade,
Judge.

ORDER

On consideration of petitioner-appellant Anthony Dawon Taylor's petition for rehearing and rehearing en banc, filed on August 28, 2017, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition.

Accordingly, the petition for rehearing and rehearing en banc filed by petitioner-appellant Anthony Dawon Taylor is DENIED.

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