

No. 18 - \_\_\_\_\_

---

---

IN THE  
Supreme Court of the United States

\_\_\_\_\_  
**BRIAN PETER ZATER,**

Petitioner – Appellant,

vs.

**WARDEN, FCC COLEMAN – MEDIUM,**

Respondent – Appellee.

---

**PETITION FOR A WRIT OF CERTIORARI**  
to the U.S. Court of Appeals  
for the Eleventh Circuit

---

**APPENDIX**

---

Brian P. Zater #96904-071  
FCC Coleman Medium  
P.O. Box 1032  
Coleman, FL 33521-1032  
**Pro Se**

February 7, 2018

---

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 17-12990-G

---

BRIAN P. ZATER,

Petitioner-Appellant,

versus

WARDEN, FCC COLEMAN - MEDIUM,

Respondent-Appellee.

---

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

---

ORDER:

Brian P. Zater's motion for leave to proceed on appeal *in forma pauperis* is DENIED because the appeal is frivolous. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

/s/ Charles R. Wilson  
UNITED STATES CIRCUIT JUDGE

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

**BRIAN P. ZATER,**

**Petitioner,**

**v.**

**Case No: 5:16-cv-639-Oc-10PRL**

**WARDEN, FCC COLEMAN -  
MEDIUM**

**Respondent.**

---

**JUDGMENT IN A CIVIL CASE**

**Decision by Court.** This action came before the Court and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED**

Pursuant to the Court's order entered on June 19, 2017, the Petition for Writ of Habeas Corpus is dismissed without prejudice for a lack of jurisdiction.

ELIZABETH M. WARREN,  
ACTING CLERK

s/E. Norvell, Deputy Clerk

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

**BRIAN P. ZATER,**

**Petitioner,**

**v.**

**Case No: 5:16-cv-639-Oc-10PRL**

**WARDEN, FCC COLEMAN -  
MEDIUM**

**Respondent.**

---

**ORDER DISMISSING CASE**

Petitioner, *pro se*, is a federal inmate proceeding on a Second Amended Petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 17). Respondent requests dismissal of the petition for lack of jurisdiction. (Doc. 15). Petitioner claims (1) that the Fourth Circuit Court of Appeals misapplied the federal gatekeeping standards set out in 28 U.S.C. § 2244 when denying his application to file a successive motion pursuant to 28 U.S.C. 2255, (2) that armed bank robbery is not categorically a crime of violence nor is it a crime of violence under §924(c)(3)(B)'s residual clause therefore his conviction is invalid, and (3) that he is entitled to relief under the "saving clause" of 28 U.S.C. § 2255(e). (Doc. 17).

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 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** without prejudice for a lack of jurisdiction. 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 19th day of June, 2017.



---

**UNITED STATES DISTRICT JUDGE**

Copies: *Pro Se* Parties, Counsel of Record

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 17-12990-G

---

BRIAN P. ZATER,

Petitioner-Appellant,

versus

WARDEN, FCC COLEMAN - MEDIUM,

Respondent-Appellee.

---

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

---

Before HULL and WILSON, Circuit Judges.

BY THE COURT:

Brian P. Zater has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's October 25, 2017, order denying his motion for leave to appeal *in forma pauperis*. Upon review, Zater's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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