

No. _____
To be assigned by the Court

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL A. BLANKENSHIP - PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA - RESPONDENT(S)

APPENDICES

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13083-H

MICHAEL A. BLANKENSHIP,

Petitioner - Appellant,

versus

WARDEN, FCC COLEMAN - MEDIUM,

Respondent - Appellee.

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

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Michael A. Blankenship has failed to pay the filing and docketing fees to the district court within the time fixed by the rules, effective January 11, 2018.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Gerald B. Frost, H, Deputy Clerk

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES COURT OF APPEALS
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No. 17-13083-H

MICHAEL A. BLANKENSHIP,

Petitioner-Appellant,

versus

WARDEN, FCC COLEMAN - MEDIUM,

Respondent-Appellee.

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

ORDER:

Michael Blankenship is a federal prisoner serving a life sentence, after a jury found him guilty in 1999 of conspiracy to possess with intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. § 846, and possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(b)(1)(B)(ii). This Court affirmed his convictions and sentences on direct appeal.

Blankenship filed the instant 28 U.S.C. § 2241 petition in May 2017, arguing that the government's notice of a § 851 enhancement and his enhancement as a career offender were unconstitutional, because the predicate offenses used to enhance his sentence no longer qualify, in light of *Mathis v. United States*, 136 S. Ct. 2243 (2016). He maintained that 28 U.S.C. § 2255 was an inadequate remedy because his claim previously was foreclosed by Circuit precedent.

The district court entered an order that pre-answer and *sua sponte* dismissed the § 2241 petition for lack of subject-matter jurisdiction, finding that Blankenship did not demonstrate that

he was able to challenge the validity of his sentence through a § 2241 petition, pursuant to *McCarthan v. Director of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076, 1081 (11th Cir. 2017) (*en banc*). Blankenship filed a notice of appeal and a motion for leave to appeal *in forma pauperis* ("IFP"), which the district court denied. He now seeks leave from this Court to proceed IFP.

Because Blankenship seeks leave to proceed on appeal IFP, his appeal is subject to a frivolity determination. *See* 28 U.S.C. § 1915(e)(2)(B). An 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).

Blankenship has not demonstrated a non-frivolous argument that the district court erred by concluding that it lacked jurisdiction to consider his claims under § 2241. We are bound by *McCarthan*, and *McCarthan* holds that adverse precedent does not render § 2255 inadequate. *See McCarthan*, 851 F.3d at 1086, 1089; 28 U.S.C. 2244(b)(2)(A). As a result, Blankenship cannot show that he may access the right to file a habeas petition under § 2241 through 28 U.S.C. § 2255(e).

Because Blankenship has not shown a non-frivolous argument on appeal, his motion for IFP status is DENIED. *See Napier*, 314 F.3d at 531 (11th Cir. 2002).

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

MICHAEL BLANKENSHIP,

Petitioner,

v.

Case No: 5:17-cv-223-Oc-10PRL

WARDEN, FCC COLEMAN - MEDIUM

Respondent.

ORDER

Petitioner, proceeding *pro se*, initiated this case by filing a Petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). Petitioner argues that he is entitled to relief because his sentence is unconstitutional under Mathis v. U.S., 136 S. Ct. 2243 (2016). Petitioner challenges his career offender status and "Title 21 U.S.C. § 851 status." Id.

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**. See also 28 U.S.C. § 2255(b). The Clerk is directed to enter judgment accordingly,

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