

(A P P E N D I X)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

ARTHUR EDWARD WILLIAMSON, JR.,

Petitioner,

v.

Case No. 5:16-cv-693-Oc-10PRL

WARDEN, FCC COLEMAN – MEDIUM

Respondent.

ORDER DISMISSING CASE

Petitioner, acting *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 habeas relief pursuant to Rosemond v. United States, 134 S.Ct. 1240 (2014), which he claims applies retroactively to cases on collateral review. Id. Respondent requests dismissal of the petition for lack of jurisdiction. (Doc. 4.) Petitioner has filed a Reply. (Doc. 6.) Petitioner has also filed a Motion for Leave to Amend his Reply to the Response (Doc. 7.), which is hereby **GRANTED** to the extent that the Court has considered Petitioner's arguments within the Motion upon review of the case.

By Order dated July 31, 2017, the Court directed the Petitioner to show cause why this case should not be dismissed for lack of jurisdiction in light of McCarthan v. Director of Goodwill Industries-Suncoast, Inc., 851 F. 3d 1076, 1079 (11th Cir. 2017). (Doc. 8.) Petitioner responded to the Order. (Doc. 11.).

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, 851 F.3d at 1079 (quoting 28 U.S.C. § 2255(e). See also Bernard v. FCC Coleman Warden, 2018 WL 1430875 (11th Cir. April 24, 2017) (citing McCarthan, 851 F.3d at 1092-93) (unpublished).

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 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 23rd day of August, 2017.



UNITED STATES DISTRICT JUDGE

Copies: Petitioner, Counsel of Record

APPENDIX 2a

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

ARTHUR EDWARD WILLIAMSON, JR. ,

Petitioner,

v.

Case No: 5:16-cv-693-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

that pursuant to this Court's Order, entered August 23, 2017, this case is hereby
DISMISSED without prejudice for lack of jurisdiction.

Date: August 24, 2017

ELIZABETH M. WARREN,
CLERK

s/B. Davis
Deputy Clerk

Copy to:

Counsel of Record
Unrepresented Parties

UNITED STATES DISTRICT COURT
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WARDEN, FCC COLEMAN -
MEDIUM

Respondent.

ORDER

Before the Court is Petitioner's motion for leave to appeal *in forma pauperis*. (Doc. 16). Pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure, Petitioner's appeal is not taken in good faith and Petitioner will be required to pay the \$505.00 appellate filing and docketing fees. See also McIntosh v. United State Parole Comm., 115 F.3d 809, 812 (10th Cir. 1997) (Petitioner must demonstrate "the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal"). Petitioner has not identified any meritorious issues to raise on appeal.

Because the Court has certified that this appeal is not taken in good faith, any request to proceed *in forma pauperis* should be sent directly to the Eleventh Circuit Court of Appeals. See Fed. R. App. P. 24(a)(5). Petitioner's motion for leave to appeal *in forma pauperis* (Doc. 16) is **DENIED**.

IT IS SO ORDERED.

DONE AND ORDERED at Ocala, Florida, this 7th day of November 2017.



UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14622-J

ARTHUR EDWARD WILLIAMSON, JR.,

Petitioner-Appellant,

versus

FCC COLEMAN - MEDIUM WARDEN,

Respondent-Appellee.

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

ORDER:

Appellant's motion for leave to proceed on appeal *in forma pauperis* is DENIED because the appeal is frivolous. See *Pace v. Evans*, 709 F.2d 1428 (11th Cir. 1983).

/s/ William H. Pryor Jr.
UNITED STATES CIRCUIT JUDGE