

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

SEAN WILLIAM LEE

— PETITIONER

(Your Name)

VS.

C.V. RIVERA, Warden

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eighth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sean William Lee #20178-076

(Your Name)

FCC Forrest City - Low, P.O. Box 9000

(Address)

Forrest City, AR 72336

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- I. Under 28 U.S.C. § 2255(e), the "savings clause," what constitutes "inadequate or ineffective" with regard to seeking relief under 28 U.S.C. § 2241 when a petitioner is "in custody in violation of the Constitution or laws or treaties of the United States?"

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LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 1st, 2017.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS:

There are no Constitutional provisions implicated by this case.

STATUTORY PROVISIONS:

This case involves the statutory interpretation as to what constitutes a motion that is "inadequate or ineffective to test the legality of his detention" as stated in 28 U.S.C. § 2255(e) the "Savings clause."

28 United States Code, Section 2255(e)

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it appears that the remedy by by motion is inadequate or ineffective to test the legality of his detention.

28 United States Code, Section 2241

- (c) The writ of habeas corpus shall not extend to a prisoner unless -
- (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
 - (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment, or decree of a court or judge of the United States; or
 - (3) He is in custody in violation of the Constitution or laws or treaties of the United States; or
 - (4) He, being a citizen of a foreign state domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, under color thereof, the validity and effect of which depend upon the law of nations; or
 - (5) It is necessary to bring him into court to testify or for trial.

STATEMENT OF THE CASE

Sean William Lee ("Lee"), Petitioner, is a federal prisoner housed at FCI Forrest City, Arkansas, Serving a 188-month sentence imposed June 16, 2006 in the U.S. District Court for the Western District of Tennessee, Western Division. Lee plead guilty in 2005 to one count of using a computer/telephone system in an attempt to persuade a female minor to engage in sexual activity rendered illegal under Tennessee Code Annotated, Section 39-13-506. The sentence imposed was based in part upon a finding solely delineated in the PSR that Lee had four prior convictions in Tennessee state court for the offense of attempted aggravated sexual battery in violation of Tennessee Code Annotated, Section 39-13-504. This erroneous factual finding based solely on the facts contained within the PSR resulted in a significant increase in Lee's sentence under 18 U.S.C. § 2246 and U.S.S.G. § 4B1.5.

Based on this Court's important holdings in *Descamps v. United States*, and more recently, *Mathis v. United States*, Lee filed a 28 U.S.C. § 2241 habeas corpus motion in the U.S. District Court for the Eastern District of Arkansas, Eastern Division arguing that, because of *Descamps* and *Mathis*, both statutory interpretation cases that Lee could not invoke in a first-time § 2255 motion, relief was due as Lee's 188-month "repeat offender" sentence under § 2246 was invalid as a matter of law. His State of Tennessee prior offenses did not categorically qualify as "repeat offender" predicates.

For the purpose of jurisdiction, Lee invoked the "savings clause" of 28 U.S.C. § 2255(e) believing that § 2255 was an "inadequate or ineffective" remedy to test the legality of his detention. The district court ultimately "dismissed without prejudice" Lee's § 2241 motion. See Appendix B - Proposed Findings and Recommendation. On March 31, 2017, in a subsequent order and Judgment, the District Court adopted the proposed findings and recommendation. Appendix B - Order and Judgment.

Lee timely appealed to the Eighth Circuit Court of Appeals . On September 1st, 2017 with Eight Circuit panel summarily affirmed the judgment of the district court without opinion. See Appendix A. As the Eight Circuit and other Courts of Appeal do not have a clearly defined standard resulting in a circuit split as to what constitutes "inadequate or ineffective" under the "savings clause" of § 2255(e), Lee seeks intervention of this Court to determine Congressional intent with regard to what constitutes an "inadequate or ineffective" remedy required to invoke the "savings clause."

REASONS FOR GRANTING THE PETITION

The Petitioner filed a 28 U.S.C. § 2241 habeas corpus motion in the United States District Court for the Eastern District of Arkansas, believing a motion under 28 U.S.C. § 2255 to his sentencing court would preclude review. Simply, Petitioner cannot meet the stringent AEDPA standard required to file a second or successive § 2255 Motion. As such, his only remedy was to seek "savings clause" review by invoking 28 U.S.C. § 2255(e). The § 2241 court "dismissed without prejudice" Petitioner's motion asserting that it did not have jurisdiction to entertain the motion and that Petitioner had not proven that a § 2255 motion to his sentencing court was an "inadequate or ineffective" remedy to test the legality of his detention. But the § 2241 court readily admits that the "inadequate or ineffective" test is not defined. The court further held that a motion under § 2241 by a prisoner can only be used to challenge the "execution of the sentence or the conditions of confinement." [App. B at 3]. In drafting her "report and recommendation," the magistrate judge states:

While courts have not thoroughly defined what is meant by "inadequate or ineffective," recent cases from our sister circuits make clear that more is required than demonstrating that there is a procedural barrier to bring a § 2255 motion.

She further noted that "Lee bears the burden of showing § 2255 relief inadequate or ineffective." Id.

Lastly, the magistrate judge states: "Lee's true impediment is not the inadequacy or inefficacy [sic] of § 2255; it is the apparent absence of any case announcing a new rule of constitutional law affecting Lee, made retroactively applicable on collateral review by the Supreme Court." [App. B at 4]. And, "What is clear is that Lee has not shown § 2255 relief is inadequate or inefficient,[sic] thereby enabling him to raise his current claims in a § 2241 petition before this court." Id.

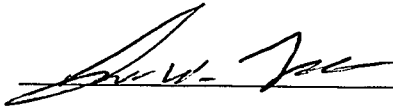
In the absence of guidance from this Honorable Court, Petitioner respectfully asks this Court to define what constitutes "inadequate or ineffective" with regard to seeking relief under 28 U.S.C. § 2255(e), the "savings clause." Particularly when a petitioner, such as here, cannot meet the demanding standard under AEDPA regarding second or successive § 2255 petitions, but is still imprisoned or "in custody in violation of the Constitution or laws or treaties of the United States." § 2241(c)(3). In essence, what is an "adequate or effective" remedy which allows a Petitioner to seek relief under the "savings clause?"

The granting of this petition would not be an empty exercise as there are thousands of prisoners who would otherwise qualify for relief if not for the lack of definition as to what constitutes "inadequate or ineffective" under § 2255(e) and the split among the circuits as to what this phrase actually means. This Court is respectfully asked to intervene and resolve this split.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11/20/2017