

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-10520-G

MARCUS A. STEELE,

Petitioner-Appellant

versus

FCI COLEMAN LOW WARDEN,

Respondent-Appellee

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

Before: MARCUS and ROSENBAUM, Circuit Judges.

BY THE COURT:

Marcus Steele as filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated July 18, 2017, denying his motion for leave to proceed *in forma pauperis*. Steele's motion is DENIED because he has presented no new evidence or arguments of merit to warrant relief.

APPENDIX "B"

JUL 18 2017

David J. Smith IN THE UNITED STATES COURT OF APPEALS
Clerk

FOR THE ELEVENTH CIRCUIT

No. 17-10520-G

MARCUS A. STEELE,

Petitioner-Appellant

versus

FCI COLEMAN LOW WARDEN,

Respondent-Appellee

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

ORDER:

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

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

Appendix "C"

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA OCALA DIVISION

MARCUS A. STEELE, Petitioner,

v. Case No. 5:16-cv-346-Oc-10PRL WARDEN, FCC COLEMAN - LOW,

Respondent.

ORDER DISMISSING CASE

Petitioner, pro se, is a federal prisoner who initiated this case by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). Respondent requests dismissal of the petition for lack of jurisdiction. (Doc. 4.) Petitioner has filed a reply. (Doc. 6.) For the reasons discussed below, the petition is due to be dismissed because the Court lacks subject matter jurisdiction.

Background

Petitioner is a federal inmate currently incarcerated at the Coleman Correctional Complex within this district and division. In 2004, Petitioner pleaded guilty in the Northern District of Illinois to one count of distribution of 50 grams or more of cocaine base, in violation of 21 U.S.C. § 841(a)(1). United States v. Steele, Case No. 04-cr-265 (N.D. Ill.) Petitioner was designated a career offender pursuant to U.S.S.G. § 4B1.1, and according to his Presentence Investigation Report (Doc. 5), he faced a maximum sentence of life imprisonment; his guidelines range was 262 to 327 months imprisonment. (Id. at p. 12.) On July 30, 2004, he was sentenced to 262 months imprisonment. (Cr. Doc. 38.) Petitioner did not appeal. His subsequent motion to vacate his sentence pursuant to 28 U.S.C. § 2255 and motions for sentence reduction were denied. (Cr. Docs. 57-59.)

In 2016, Petitioner filed the instant federal habeas petition (Doc. 1), challenging the predicate convictions upon which the District Court based his career offender designation. He also alleges the U.S. Sentencing Guidelines are unconstitutionally vague.

Discussion

Typically, collateral attacks on the validity of a federal conviction or sentence must be brought under 28 U.S.C. § 2255. Sawyer v. Holder, 326 F.3d 1363, 1365 (11th Cir. 2003). However, § 2255(e), the "savings clause," permits a federal prisoner to file a petition pursuant to § 2241 if a § 2255 motion "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255 (e). The savings clause imposes a subject matter jurisdictional limit on petitions filed pursuant to § 2241. Williams v. Warden, 713 F.3d 1332, 1338 (11th Cir. 2013).

The United States Court of Appeals for the Eleventh Circuit has identified five requirements that a petitioner must satisfy in order to demonstrate that his prior § 2255 motion was inadequate or ineffective such that he can proceed with a § 2241 petition under the savings clause. Bryant v. Warden, 738 F.3d 1253 (11th Cir. 2013). Specifically, the petitioner must establish that: (1) throughout the petitioner's sentencing, direct appeal, and first § 2255 proceeding, Circuit precedent had specifically and squarely foreclosed the claim raised in the § 2241 petition; (2) after the petitioner's first § 2255 proceeding, the Supreme Court overturned that binding precedent; (3) that Supreme Court decision applies retroactively on collateral review; (4) as a result of that Supreme Court decision applying retroactively, the petitioner's current sentence exceeds the statutory maximum; and (5) the savings clause of § 2255(e) reaches his claim. Id. at 1274 (synthesizing the savings clauses tests discussed in Wofford v. Scott, 177 F.3d 1236 (11th Cir. 1999) and Williams, 713 F.3d at 1343).

Petitioner is not entitled to relief under the savings clause. His sentence does not exceed the statutory maximum. He faced a maximum sentence of life imprisonment. Petitioner's 262-month sentence does not exceed the statutory maximum, and he has pointed to no pertinent Supreme Court decision that applies retroactively on collateral review that would change that.

Accordingly, the petition is DISMISSED for lack of jurisdiction. 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 9th day of December 2016.

APPENDIX "D"