FILED
United States Court of Appeals
Tenth Circuit

September 29, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

TIMOTHY SEAN SCHEETZ,

Plaintiff - Appellant,

v.

A. CIOLLI, Warden,

Defendant - Appellee.

No. 22-1300
(D.C. No. 1:22-CV-01616-LTB-GPG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MORITZ**, **EID**, and **CARSON**, Circuit Judges.

Timothy Sean Scheetz is currently serving sentences for federal narcotics, firearms, and money-laundering convictions in the United States Penitentiary Administrative Maximum in Florence, Colorado. Proceeding pro se, he petitioned the United States District Court for the District of Colorado for a writ of habeas corpus under 28 U.S.C. § 2241. The district court dismissed Scheetz's application

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

for lack of statutory jurisdiction. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I

In 2000, a jury in the Eastern District of North Carolina convicted Scheetz of conspiracy to distribute and to possess with the intent to distribute Ecstasy and marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846, using a firearm in relation to the drug crime in violation of 18 U.S.C. § 924(c), and money laundering in violation of 18 U.S.C. § 1956. As part of the drug-trafficking conspiracy, Scheetz and other co-conspirators entered a home carrying firearms to try to recoup a debt from a prior drug sale. One of the co-conspirators shot and killed one of the occupants of the home. The district court sentenced Scheetz to life imprisonment on the drug-trafficking conviction, 240 concurrent months' imprisonment on the firearm conviction, and 60 consecutive months' imprisonment for money laundering.

> In sentencing Sheetz [to life imprisonment] on [the drug-trafficking conviction], the district court applied United States Sentencing Commission, *Guidelines Manual*, (USSG) § 2D1.1(d)(1), which directs the district court to apply USSG § 2A1.1, the first-degree murder Sentencing Guideline, in sentencing a defendant for a drug offense "[i]f a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States."

United States v. Scheetz, 293 F.3d 175, 186 (4th Cir. 2002) (quoting U.S. Sent'g Guidelines Manual (USSG) § 2D1.1(d)(1) (U.S. Sent'g Comm'n).

On direct appeal, Scheetz argued that the district court erred when it applied USSG § 2D1.1(d)(1) to impose a life sentence because the killing was not a

murder as defined in § 1111. The Fourth Circuit disagreed and affirmed the life sentence. See Scheetz, 293 F.3d at 187, 192. Scheetz subsequently filed an unsuccessful motion for habeas relief under 28 U.S.C. § 2255.

In 2022, Scheetz filed a § 2241 application in which he sought to collaterally attack the life sentence. Because § 2241 applications must be brought in the district of incarceration, Scheetz filed his application in federal district court in Colorado. But he also filed a motion to transfer his § 2241 application to the United States District Court for the Eastern District of North Carolina.

Scheetz explained that the sentencing court applied USSG § 2D1.1(d), leading it to apply the penalty from USSG § 2A1.1, which called for an offense level of 43 and a life sentence. See R. at 7. He further explained that "2A1.1 was only applicable to [him] because the court determined that the murder satisfied 2A1.1's 'death results' clause, which reads 'when death results from the commission of certain felonies.'" Id. He cited two cases decided after his direct appeal and his unsuccessful § 2255 habeas motion to argue he was now entitled to relief from the life sentence: Burrage v. United States, 571 U.S. 204 (2014),[1] and

[1] Burrage, 571 U.S. at 206, involved the application of 21 U.S.C. § 841(b)(1)(C), which directs courts to impose a mandatory minimum sentence of 20 years, and a maximum sentence of life in prison for certain drug-trafficking offenses "if death or serious bodily injury results from the use of [the specified controlled] substance," § 841(b)(1)(C). In Burrage, 571 U.S. at 218-19, the Supreme Court held that § 841(b)(1)(C) does not apply unless the drug supplied by the defendant is the "but-for cause" of the victim's death or injury.

Young v. Antonelli, 982 F.3d 914 (4th Cir. 2020).[2] Although he recognized that those cases involved different "death results" provisions where the death results from a drug overdose, he asserted that the rulings were not limited to overdose deaths and also applied to USSG § 2A1.1. See R. at 7. Based on Burrage and Young, Scheetz argued that the sentencing court had to make a specific finding as to which felony was the "but for" cause of death that satisfied the definition of felony murder in §§ 1111 and 2A1.1. See R. at 8. Further, he argued that Burrage and Young "make[] his [life] sentence a fundamental defect since he was sentenced under the 'death results' provision in 2A1.1," but the court never made a finding that his actions were the but-for cause of the victim's death. Id.

Scheetz also asserted that "2255 is inadequate and ineffective to test the legality of the plaintiff's detention because at the time of the plaintiff's first 2255 and direct appeal [Fourth] [C]ircuit precedent was unsettled." Id. He conceded that "while the plaintiff does not satisfy the 10th Cir's 'savings clause' test, plaintiff does satisfy the 4th Cir's version, as put for[th] in the 4th Cir decision United States v. Wheeler, 886 F.3d 415[] (4th Cir. 2018)." Id. "Due to the retroactive change represented by the 4th Cir's application of the language of Burrage to the Guidelines in Young v. Antonelli, according to 4th Cir's precedent plaintiff's sentence now presents an error sufficiently grave to be deemed a fundamental defect, which is a miscarriage of justice." Id. at 8–9.

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[2] In Young, 982 F.3d at 915–16, the Fourth Circuit expanded Burrage's interpretation of the "death results" provision of § 841(b)(1)(C) to include the "death results" provision in USSG § 2D1.1(a).

A magistrate judge ordered Scheetz to show cause why the application should not be dismissed for lack of jurisdiction because § 2255(e) prohibits courts from hearing § 2241 applications by sentenced and convicted prisoners except in narrow circumstances that appeared not to apply to Scheetz. After considering Scheetz's response, the judge found that Scheetz "failed to show cause why the § 2241 Application should not be dismissed for lack of jurisdiction because he has not shown that § 2255 provides an ineffective or inadequate remedy for his claim, as required to challenge the legality of detention under . . . § 2241." Id. at 29. The judge further recommended that the motion to transfer be denied.

Scheetz objected. The district court overruled the objection, adopted the magistrate judge's recommendation, dismissed the application without prejudice for lack of jurisdiction, denied the motion to transfer, and further denied Scheetz's motion to proceed without prepayment of fees on appeal. This appeal and renewed motion to proceed without prepayment of fees followed.

II

"We review the district court's dismissal of a § 2241 habeas petition de novo." Brace v. United States, 634 F.3d 1167, 1169 (10th Cir. 2011) (internal quotation marks omitted). Because Scheetz proceeds pro se, we construe his pleadings liberally. See id.

III

A federal prisoner may pursue habeas relief under two statutes. The first is § 2241. An application under § 2241 "typically attacks the execution of a sentence

rather than its validity and must be filed in the district where the prisoner is confined." Brace, 634 F.3d at 1169 (internal quotation marks omitted). Section 2241 does not limit the number of applications a prisoner may bring. See § 2241.

The second is § 2255, which Congress enacted "to distribute the work of collateral review more evenly among federal courts" by requiring prisoners to file in the court that convicted them. Hale v. Fox, 829 F.3d 1162, 1166 (10th Cir. 2016). A prisoner may generally bring only one § 2255 motion, id. at 1165, and may bring a second motion only with a certification from a circuit court that the motion contains:

> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
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> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h).

"A § 2255 motion is ordinarily the only means to challenge the validity of a federal conviction following the conclusion of direct appeal." Hale, 829 F.3d at 1165 (quoting Brace v. United States, 634 F.3d 1167, 1169 (10th Cir. 2011)). However, "in rare instances," the "saving[] clause" in § 2255(e) permits a prisoner to attack a conviction through a § 2241 habeas corpus application despite § 2255's general restrictions. Id. (internal quotation marks omitted) (first quoting Sines v. Wilner, 609 F.3d 1070, 1073 (10th Cir.2010); then quoting Brace, 634 F.3d at 1169). The saving clause provides:

> An application for a writ of habeas corpus [pursuant to § 2241] in behalf of a prisoner who is authorized to apply for relief by motion pursuant to [§ 2255], 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 also appears that the remedy by motion [pursuant to § 2255] is inadequate or ineffective to test the legality of his detention*.

28 U.S.C. § 2255(e) (emphasis added). "Thus, a federal prisoner may file a § 2241 application challenging the validity of his sentence only if § 2255 is inadequate or ineffective to test the legality of his detention." Hale, 829 F.3d at 1165 (internal quotation marks omitted). A § 2241 applicant "bears the burden of showing he satisfies § 2255(e)." Id. at 1170.

"Several Courts of Appeals found a workaround for those prisoners [who could not meet the requirements of § 2255(h)] in the saving clause." Jones v. Hendrix, 599 U.S. 465, 477 (2023).

> With minor differences in reasoning and wording, they held that § 2255 was "inadequate and ineffective" under the saving clause—and that § 2241 was therefore available—when [§ 2255(h)'s] second or successive restrictions barred a prisoner from seeking relief based on a newly adopted narrowing interpretation of a criminal statute that circuit precedent had foreclosed at the time of the prisoner's trial, appeal, and first § 2255 motion.

Id.

Scheetz conceded in his § 2241 application that he could not meet the Tenth Circuit's saving-clause test,[3] but he argued that he did meet the Fourth Circuit's test

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[3] In Prost v. Anderson, 636 F.3d 578, 590 (10th Cir. 2011) (Gorsuch, J.), we held that that § 2255(e) does not permit recourse to § 2241 for several reasons, including when "[l]egal error has occurred." Instead, we identified only two examples in which § 2255 was inadequate or ineffective: (1) when the sentencing

(the circuit in which he was convicted and sentenced). See R. at 8 (citing United States v. Wheeler, 886 F.3d 415, 428 (4th Cir. 2018)).[4]

After the district court dismissed Scheetz's § 2241 petition, the Supreme Court resolved the circuit conflict in Jones, in a manner contrary to the Fourth Circuit approach Scheetz advocated. The Supreme Court held that § 2255(e) "does not permit a prisoner asserting an intervening change in statutory interpretation to circumvent [the] restrictions on second or successive § 2255 motions by filing a § 2241 petition." 599 U.S. at 471. Instead, the saving clause is designed to "cover[] unusual circumstances in which it is impossible or impracticable for a prisoner to seek relief from the sentencing court" in a § 2255 motion. Id. at 474 (giving examples including the dissolution of the sentencing court). The Court thus abrogated the Fourth Circuit's approach because it is an improper "end-run around" § 2255(h)'s limitations on filing second or successive motions. Id. at 477. "The inability of a prisoner with a statutory claim to satisfy" § 2255(h)'s requirements, "does not mean that he can bring his claim in a habeas petition under the saving clause. It means that he cannot bring it at all." Id. at 480. In light of the Supreme Court's decision in Jones, the district court correctly concluded that it lacked

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court has been abolished, or (2) "when the application of § 2255(h)'s bar against a second or successive motion for collateral review would seriously threaten to render the § 2255 remedial process unconstitutional." Id. at 593.

[4] The Supreme Court recognized the Fourth Circuit as one of the courts that had adopted the "workaround," and the Tenth Circuit as one of the only courts that had not done so. See Jones, 599 U.S. at 477.

jurisdiction to consider Scheetz's habeas petition. We therefore affirm the judgment of the district court dismissing Scheetz's § 2241 application.

IV

Scheetz further argues that the district court erred when it denied his motion to transfer his § 2241 application to the United States District Court for the Eastern District of North Carolina (the sentencing court). According to Scheetz, the court should have transferred the application under 28 U.S.C. § 1404(a), which provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented."

The problem for Scheetz is that because he is incarcerated in Colorado, his § 2241 application had to be filed in the federal district court in Colorado. See Brace, 634 F.3d at 1169 (holding that a § 2241 application must be filed in the district where the prisoner is confined). Because Scheetz's § 2241 application could not "have been brought" in North Carolina, § 1404(a), the court properly denied the motion to transfer.

V

Scheetz filed a motion to proceed on appeal without prepayment of fees. "In order to succeed on his motion, an appellant must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." DeBardeleben v. Quinlan,

937 F.2d 502, 505 (10th Cir. 1991). Scheetz fails this test, and we deny the motion.

We deny Scheetz's "Motion For Status" as moot.

VI

The judgment of the district court is affirmed.

Entered for the Court

Joel M. Carson III
Circuit Judge