

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 07-2533

MARC PIERRE HALL,
Appellant

v.

WARDEN WILLIAMSON;
U.S. ATTORNEY GONZALES;
THOMAS MARINO

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(M.D. Pa. Civ. No. 06-cv-02456)
District Judge: Honorable James F. McClure, Jr.

Submitted For Possible Summary Action Under Third Circuit LAR 27.4 and I.O.P. 10.6
September 20, 2007

Before: MCKEE, FUENTES AND VAN ANTWERPEN, CIRCUIT JUDGES.

(Filed: October 4, 2007)

OPINION

PER CURIAM

Marc Pierre Hall, a federal inmate currently incarcerated at USP-Lewisburg in Pennsylvania, appeals pro se from an order of the United States District Court for the Middle District of Pennsylvania dismissing his habeas petition filed pursuant to 28 U.S.C.

§ 2241. We will affirm.

In December 1995, Hall was convicted by a jury sitting in the United States District Court for the Western District of North Carolina on charges of a narcotics law conspiracy in violation of 21 U.S.C. § 846, possession of a firearm and a destructive device in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1) and (2), and damage to real property affecting commerce in violation of 18 U.S.C. § 844(i). Hall was subsequently sentenced to life imprisonment on the § 846 conviction, a concurrent sentence of 480 months on the § 844(i) conviction, a consecutive sixty month sentence on one of the § 924(c) convictions and a consecutive life sentence on the other § 924(c) conviction. The Fourth Circuit Court of Appeals affirmed Hall's judgment of conviction and sentence on November 17, 1997, and the Supreme Court denied certiorari. See United States v. Hall, 129 F.3d 1261, 1997 WL 712885 (4th Cir. 1997)(table), cert. denied 524 U.S. 932 (1998).

Hall thereafter filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, based upon, inter alia, the Supreme Court's decision in Bailey v. United States, 516 U.S. 137 (1995), and jurisdictional challenges to the four counts on which he was found guilty. The District Court for the Western District of North Carolina dismissed Hall's § 2255 motion on October 10, 2001, after concluding that his Bailey claim had been rejected on direct appeal and that his jurisdictional challenges did not entitle him to relief. The Fourth Circuit Court of Appeals denied Hall's request for a certificate of appealability and dismissed the appeal on the reasoning of the District

Court. See United States v. Hall, 26 Fed. Appx. 357, 2002 WL 216431 (4th Cir. 2002). Once again, the Supreme Court denied certiorari. Hall v. United States, 537 U.S. 894 (2002).

Hall continued his quest for relief in the Fourth Circuit by seeking authorization to file a second or successive motion pursuant to 28 U.S.C. § 2255. Although the Fourth Circuit Court of Appeals denied Hall such authorization, it did so without prejudice to his right to file a habeas petition pursuant to 28 U.S.C. § 2241. See In re Hall, C.A. Nos. 02-260 and 02-267, slip order at 1 (4th Cir. Nov. 12, 2002). Hall did just that. While incarcerated at USP-Marion in Illinois, Hall filed a § 2241 petition on May 6, 2003 in the United States District Court for the Northern District of Illinois. That petition was subsequently transferred to the United States District Court for the Southern District of Illinois where it would ultimately be dismissed without prejudice on February 20, 2004, because it was unclear if Hall was still incarcerated, and, if so, where. See Hall v. United States, S.D. Ill. Civ. No. 03-cv-00451.

Hall continued seeking habeas relief by filing a petition pursuant to 28 U.S.C. § 2241 in the United States District Court for the District of Connecticut in March 2004. After concluding that Hall's amended § 2241 petition contained a claim that is properly raised in a § 2255 motion, the court construed Hall's petition as a second or successive § 2255 motion and transferred it to the United States District Court for the Western District of North Carolina for whatever action that court deemed appropriate. See Hall v. Choinski, Civ. No. 04-cv-00472, 2005 WL 2234504 (D.Conn. Sept. 13, 2005). Agreeing

with the construction of Hall's filing as a § 2255 motion, the Western District of North Carolina dismissed it without prejudice as an unauthorized successive § 2255 motion on October 25, 2005, see Hall v. United States, Civ. No. 05-cv-00425, and the Fourth Circuit Court of Appeals dismissed the subsequent appeal. Hall v. United States, C.A. No. 05-7793 (4th Cir. Mar. 14, 2006).

Not to be discouraged, Hall – who was once again incarcerated at USP-Marion – filed another § 2241 petition in the United States District Court for the Southern District of Illinois wherein he argued that the Supreme Court's decisions in Bailey and Jones v. United States, 529 U.S. 848 (2000), render his conviction under 18 U.S.C. § 844(i) “void as a ‘nonexistent’ federal crime.” The District Court rejected Hall's contention, concluding that his argument was without merit and did not provide him with a basis for relief under § 2241. Accordingly, the District Court summarily dismissed Hall's § 2241 petition with prejudice See Hall v. Bledsoe, Civ. No. 06-cv-00257, 2006 WL 2631985, *3 (S.D. Ill. Sept. 13, 2006). Hall's appeal of that decision was dismissed by the Fourth Circuit Court of Appeals. See Hall v. Bledsoe, C.A. Nos. 06-3709 and 06-3710.

After Hall was transferred to USP-Lewisburg, he filed yet another habeas petition pursuant to 28 U.S.C. § 2241, this time in the United States District Court for the Middle District of Pennsylvania. In his petition, Hall claimed that: 1) the Supreme Court's decisions in Bailey and Jones render 18 U.S.C. § 844(i) a nonexistent federal crime under the “active employment” criteria; 2) the statutory provisions set forth at 21 U.S.C. §§ 841(a) & (b) were ineffective laws at the time of his trial; and 3) his arrest was without

probable cause. Hall's § 2241 petition was assigned to a Magistrate Judge who issued a Report recommending that it be dismissed. The Magistrate Judge concluded that, with respect to his second and third claims, Hall had not established that he satisfies the safety-valve language of § 2255, i.e., that the remedy by a § 2255 motion is inadequate or ineffective to test the legality of his detention. With respect to his first claim, the Magistrate Judge concluded that, to the extent the claim was based on Bailey, petitioner had presented the claim on direct appeal and in his initial § 2255 motion. Insofar as Hall's claim was based on Jones, the Magistrate Judge determined that the claim could arguably be raised in a § 2241 petition, see Report at 12, citing Martin v. Perez, 319 F.3d 799, 805 (6th Cir. 2003), but that Hall had previously presented such a claim in the § 2241 petition that was filed in and disposed of on the merits by the United States District Court for the Southern District of Illinois just three months prior to the instant filing.

Over Hall's objections, the District Court adopted the Magistrate Judge's Report and dismissed his § 2241 petition. The District Court agreed with the Magistrate Judge's conclusion that § 2255 is not "inadequate or ineffective" with respect to Hall's second and third claims since he had an unobstructed procedural opportunity to raise these claims on direct appeal and in his first § 2255 motion. The District Court rejected Hall's contention that he was not challenging his conviction and sentence, but instead was attempting to initiate a lawsuit concerning the enforcement of his sentence. The District Court further noted that Hall had not objected to the Magistrate Judge's conclusion that he had previously presented his Bailey claim on direct appeal and in his initial § 2255

motion, and that, in any event, the conclusion was correct. Finally, as to his claim under Jones, the District Court concluded that Hall was barred from presenting this argument in a second § 2241 petition by 28 U.S.C. § 2244(a)¹ given the disposition of that claim by the United States District Court for the Southern District of Illinois in September 2006. While the District Court acknowledged that the District Court for the Southern District of Illinois did not specifically discuss Hall's claim under Jones in its written decision, the claim was nonetheless presented in Hall's § 2241 petition which was disposed of on the merits. This timely appeal followed.

We have jurisdiction pursuant to 28 U.S.C. § 1291, and will summarily affirm the District Court's order of dismissal. As the District Court properly concluded, a § 2255 motion is the presumptive means for a federal prisoner to challenge the validity of a conviction or sentence, unless such a motion would be "inadequate or ineffective to test the legality of his detention." Okereke v. United States, 307 F.3d 117, 120 (3d Cir. 2002); 28 U.S.C. § 2255 ¶ 5. A § 2255 motion is inadequate or ineffective only when "some limitation of scope or procedure" prevents a movant from receiving an adjudication of his claim. Cradle v. United States ex rel. Miner, 290 F.3d 536, 538 (3d

¹ Section 2244(a) states:

No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

Cir. 2002). Section 2255 is not inadequate or ineffective merely because a prior motion has been unsuccessful or a petitioner is unable to meet the stringent gatekeeping requirements for filing a second or successive § 2255 motion. Okereke, 307 F.3d at 120-21. See also Cradle, 290 F.3d at 539.

The “safety valve” provided under § 2255 is extremely narrow and has been held to apply in unusual situations, such as those in which a prisoner has had no prior opportunity to challenge his conviction for a crime later deemed to be non-criminal because of an intervening change in the law. See Okereke, 307 F.3d at 120 (citing In re Dorsainvil, 119 F.3d at 251). Such is not the case here. As the District Court properly concluded, with the exception of his claim advanced pursuant to the Supreme Court’s decision in Jones v. United States, 529 U.S. 848 (2000), Hall had the opportunity to (and, at least with respect to his Bailey claim, did in fact) raise his claims on direct appeal and in his initial § 2255 motion. The exception identified in In re Dorsainvil is, thus, simply inapplicable as to these claims and Hall may not seek relief under § 2241.

We likewise agree with the District Court’s conclusion that § 2241 is not an avenue available to Hall for the presentation of his Jones claim given the merits disposition rendered by the United States District Court for the Southern District of Illinois on his § 2241 petition raising that same claim. See Zayas v. INS, 311 F.3d 247, 255 (3d Cir.2002) (§ 2244(a) is a “finality provision which applies to any habeas application challenging ‘the detention of a person pursuant to a judgment of a court of the United States,’ and hence embraces, without textual limitation, habeas applications

brought under ... under § 2241"). See also Chambers v. United States, 106 F.3d 472, 475 (2d Cir.1997) (dismissing petitioner's § 2241 petition under 28 U.S.C. § 2244(a) because a previous § 2241 petition raising the same claims had "already been decided on its merits"); Valona v. United States, 138 F.3d 693, 695 (7th Cir.1998); Triestman v. United States, 124 F.3d 361, 373 n. 17 (2d Cir.1997); George v. Perrill, 62 F.3d 333 (10th Cir.1995).

Because the § 2241 petition was properly dismissed and no substantial question is presented by this appeal, the District Court's order of dismissal entered on May 15, 2007 will be affirmed. See Third Circuit LAR 27.4 and I.O.P. 10.6. We will further deny Hall's motions seeking to stay this appeal and requesting a complete copy of the District Court record, including transcripts, free of charge. Hall originally requested that the appeal be stayed while he pursued an application in the Supreme Court. Aside from the fact that Hall has failed to demonstrate that a stay is warranted, he has stated in a recent submission that the Supreme Court Clerk returned his documents to him and it appears he now wishes to proceed with his appeal in this Court. With respect to his request for a copy of the entire District Court record, Hall is simply mistaken in his belief that his in forma pauperis status entitles him to as much. Finally, given our disposition of the appeal and Hall's failure to demonstrate that transcripts are needed, we will deny that request as well.