

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-4235

ANTONIO R. WASHINGTON,

Appellant,

v.

SUSAN GERLINSKI, Warden

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 01-cv-01175)
District Judge: Honorable Thomas I. Vanaskie

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)
and for Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
June 5, 2003

Before: Barry, Ambro and Becker, Circuit Judges

(Filed: June 24, 2003)

OPINION

PER CURIAM

Appellant Antonio Washington, a federal prisoner incarcerated at the Allenwood Low Security Correctional Institution at White Deer, Pennsylvania, appeals the order of the United States District Court for the Middle District of Pennsylvania denying his petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. According to Washington's petition, in 1990, he was convicted in the United States District Court for the District of Columbia of two counts of possession with intent to distribute less than one gram of cocaine, in violation of 21 U.S.C. §§ 841. The sentencing court applied the career offender provision of section 4B1.1 of the United States Sentencing Guidelines and sentenced Washington to a term of imprisonment of 262 months. The United States Court of Appeals for the District of Columbia Circuit affirmed the conviction. Washington then filed an unsuccessful motion to vacate sentence under 28 U.S.C. § 2255 in the sentencing court.

In June 2002, Washington filed the section 2241 petition at issue in this matter, alleging that his sentence violates Apprendi v. New Jersey, 530 U.S. 466 (2000), which held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Apprendi, 530 U.S. at 490. Specifically, Washington asserted that his sentences are illegal and unconstitutional because the jury determined neither the drug quantity nor the fact of his prior convictions. In a supplement to his petition, Washington contended that the small amount of cocaine in his case and the absence of a determination

of the drug quantity by the jury implicated the sentencing provision of 21 U.S.C. § 844(a); he claimed that, applying the rule of lenity, he should have been sentenced under the lesser penalty of that statute instead of under section 841(b)(1)(C). The District Court summarily denied the petition, holding that section 2255 did not provide an “inadequate or ineffective” remedy for Washington such that he could pursue his claims in a section 2241 habeas petition. Washington appeals.

Because this appeal presents “no substantial question,” we will summarily affirm. 3d Cir. LAR 27.4 and I.O.P. 10.6. It is well-established that a prisoner’s claims challenging the legality of his conviction and sentence must ordinarily be raised in a motion under section 2255. See In re Dorsainvil, 119 F.3d 245, 249 (3d Cir. 1997). Such claims may not be raised in a section 2241 petition except where the remedy under section 2255 would be “inadequate or ineffective.” 28 U.S.C. § 2255; Dorsainvil, 119 F.3d at 251. Section 2255 is not inadequate or ineffective merely because the sentencing court has previously denied relief, or because a petitioner is unable to meet the stringent gatekeeping requirements for filing a second or successive section 2255 motion under the Antiterrorism and Effective Death Penalty Act of 1996. See id. Indeed, we recently held that section 2255 is not inadequate or ineffective for individuals to raise Apprendi claims. Okereke v. United States, 307 F.3d 117, 120-121 (3d Cir. 2002).

We will affirm the order of the District Court.