

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-1697

SHAWN DAVIS,
Appellant

v.

TROY LEVI, WARDEN, CUSTODIAN-FDC-PHILA.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Civil Action No. 08-cv-0798
(Honorable R. Barclay Surrick)

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
June 30, 2008

Before: SCIRICA, Chief Judge, ALDISERT and GARTH Circuit Judges.

(Filed: July 25, 2008)

OPINION OF THE COURT

PER CURIAM.

Shawn Davis, who is currently confined at the Federal Detention Center in Philadelphia, appeals the denial of his petition for a writ of habeas corpus submitted under 28 U.S.C. § 2241. Because the appeal does not present a substantial question, we

will summarily affirm the judgment of the District Court. See 3d Cir. L.A.R. 27.4 and I.O.P. 10.6.

In 2007, following a jury trial in the United States District Court for the Eastern District of Pennsylvania, Davis was found guilty of possession with the intent to distribute controlled substances and possession of a firearm in furtherance of a drug trafficking crime. On February 19, 2008, while awaiting sentencing, he filed a habeas petition pursuant to 28 U.S.C. § 2241, in which he claimed that authorities lacked probable cause to arrest and search him on March 28, 2006. On February 28, 2008, the District Court issued an order denying the petition, concluding that Davis' claims were not cognizable under § 2241. Davis now appeals that decision. We have jurisdiction over the appeal under 28 U.S.C. §§ 1291 and 2253(a), and we exercise plenary review over the District Court's denial of the petition. See Okereke v. United States, 307 F.3d 117, 119 (3d Cir. 2002).

Generally, a challenge to a federal conviction must be brought in a motion to vacate under 28 U.S.C. § 2255. See Okereke, 307 F.3d at 120. A prisoner may proceed under § 2241 only where the remedy provided under § 2255 is inadequate or ineffective to test the legality of his confinement. See § 2255(e); Cradle v. United States ex rel. Miner, 290 F.3d 536, 538 (3d Cir. 2002). "A § 2255 motion would be inadequate or ineffective only if the petitioner can show that a limitation of scope or procedure would

prevent a § 2255 proceeding from affording him a full hearing and adjudication of his wrongful detention claim.” Okereke, 307 F.3d at 120.

Because Davis is unable to show that a § 2255 motion is an inadequate or ineffective vehicle for the constitutional claims raised in his petition, we conclude that the District Court correctly determined that it lacked authority to entertain those claims in the context of a § 2241 proceeding. Even if it were appropriate to construe Davis’ petition as a motion under § 2255, the motion would be subject to dismissal as premature because it was filed prior to sentencing and direct appeal. See Kapral v. United States, 166 F.3d 565, 570-72 (3d Cir. 1999).

For the foregoing reasons, we conclude that the appeal does not present a substantial question. We will therefore summarily affirm the judgment of the District Court pursuant to 3d Cir. L.A.R. 27.4 and I.O.P. 10.6.