Lewis v. English

2018 | Cited 0 times | D. Kansas | March 9, 2018

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS DETRIC LEWIS, Petitioner,

v. CASE NO. 18-3044-JWL N. C. ENGLISH, Warden, USP-Leavenworth, Respondent. MEMORANDUM AND ORDER This matter is a petition for habeas corpus filed under 28 U.S.C. § 2241. Petitioner, a prisoner in federal custody at USP-Leavenworth, proceeds pro se. Petitioner challenges his designation as a career offender. The Court has screened his Petition (Doc. 1) under Rule 4 of the Rules Governing Habeas Corpus Cases, foll. 28 U.S.C. § 2254, and dismisses this action without prejudice for lack of statutory jurisdiction. Background Petitioner was sentenced to 188 months imprisonment in the U.S. District Court for the Northern District of Texas (Dallas Division) on March 25, 2011, after pleading guilty to conspiracy to distribute a controlled substance. Lewis v. United States, 2013 WL 6869471, at *1 (N.D. Tex. Dec. 30, 2013). See United States v. Lewis, Petitioner then filed a § 2255 motion, asserting that he received ineffective assistance of counsel. Lewis, 2013 WL 6869471. 2255 motion was denied and Petitioner sought permission to file a second or successive § 2255 motion in the Fifth Circuit Court of Appeals, challenging his sentence as a career offender. Case No. 16-10799 (5th Cir. 2016). The Fifth Circuit denied the motion, finding that nly a decision by the Supreme Court may serve as the basis for granting authorization, § 2255(h)(2), and Lewis has not made the

requisite showing with respect to Mathis or Johnson. Id. at Doc. 00513727534. Plaintiff again filed a motion for authorization to file a successive § 2255 motion. Case No. 17-10389 (5th Cir. 2017). repetitive of, or similar to, claims raised in his previous motion, and warning Petitioner that future

frivolous filings would result in the imposition of sanctions. Id. at Doc. 00514013884. Petitioner then filed a motion under Fed. R. Civ. P. 60(b) in his underlying criminal case, seeking relief again under Mathis v. United States, 136 S. Ct. 2243 (2016). On September 19, 2017, the court adopted the motion should be construed as an unauthorized successive § 2255 motion and transferred to the Fifth Circuit. United States v. Lewis, No. 3:10-cr-40-D (03), 2017 WL 4155279 (N.D. Tex. Sept. 19, 2017). Petitioner then sought to withdraw the transferred motion. See Case No. 17-10389, Doc. 00514260890. Petitioner then filed the instant petition under 28 U.S.C. § 2241. Petitioner invokes the savings clause of § 2255(e), arguing that § 2255 is inadequate or ineffective to test the legality of his detention. Analysis The Court must first determine whether § Sandlain v. English, 2017 WL 4479370 (10th Cir. Oct. 5, 2017) (unpublished) (finding that

whether Mathis is retroactive goes to the merits and the court must first decide whether § 2241 is the proper vehicle to bring the claim) (citing Abernathy v. Wandes, 713 F.3d 538, 557 (10th Cir. 2013)). A federal prisoner seeking release from allegedly illegal confinement may file a motion to

28 U.S.C. § 2255(a). A motion under § 2255 must be filed in the district where the petitioner was convicted and sentence imposed. Sines v. Wilner, 609 F.3d 1070, 1073 (10th Cir. 2010). Generally, the motion remedy under 28 U.S.C. § 2255

Hale v. Fox, 829 F.3d 1162, 1165 (10th Cir. 2016), cert. denied sub nom. Hale v. Julian, 137 S. Ct. 641 (2017). However, 2255(e), a federal prisoner may file an application for habeas corpus under 28 U.S.C. § 2241 in the district of confinement if the petitioner demonstrates that the remedy provided by § 28 U.S.C. § 2255(e).

-Mathis overruling of Ford, the then-controlling precedent that foreclosed the claim he brought on direct appeal. See United States v. Tanksley, 848 F.3d 347 (5th Cir.), supplemented by 854 F.3d 284 (5th Cir. 2017). on 481.112(a) does not count as

The Tenth Circuit relied on Prost v. Anderson, 636 F.3d 578 (10th Cir. 2011), 1

to reject a similar argument in Sandlain. 2

In Prost, the Tenth Circuit held that Prost was free to raise and test his argument in his initial § 2255 motion, despite contrary circuit authority at the time. The Tenth Circuit held 2255 remedy itself, not the failure to use it or to prevail

1 Prost. This Court is bound by Tenth Circuit precedent. United States v. Spedalieri see also Leatherwood v. Allbaugh, 861 Barnes v. United States, 776 F.3d 1134, 1147 (10th Cir. 2015)).

2 Sandlain claimed § 2255 was inadequate or ineffective to challenge his sentence because Sixth Circuit law at the time he filed his initial § 2255 motion precluded him from raising an ineffective assistance of counsel claim based on llenge the use of the modified categorical approach to determine the means, rather than the elements, of his prior conviction under Mich. Comp. Laws § Sandlain, 2017 WL 4479370, at *2.

under it, that is determinative. To invoke the savings clause, there must be something about the initial § 2255 procedure that itself is inadequate or ineffective for testing Prost, 636 F.3d at 589. The Tenth Circuit noted that Prost was free to raise his argument in his

initial § 2255 motion, and the fact that his argument may have been foreclosed by erroneous circuit precedent was not enough to invoke the savings clause of § 2255(e). Id savings the possibility of an erroneous result the denial of relief that should have been granted does not render the procedural

mechanism Congress provided for bringing that claim (whether it be 28 U.S.C. §§ 1331, 1332, 2201, 2255, or otherwise) an inadequate or ineffective remedial vehicle for testing its merits within the plain Id. (emphasis in original). The petitioner has the burden to show that the remedy under §2255 is inadequate or ineffective. Hale, 829 F.3d at 1179. Like the petitioners in Sandlain and Prost, Petitioner has ecedent, nothing prevented him from raising the argument in his initial § 2255 motion and then challenging any Sandlain, 2017 WL 4479370, at *3. The 2255 motion, found that Petitioner had not made a prima facie showing under § 2255(h), 3

citing In re Lott, 838 F.3d 522, 523 (5th Cir. 2016) (per curiam). If § a meritorious second or successive challenge to his conviction subsection (h) would become a

nullity, Prost, 636 F.3d at 586; see also Hale, 829 F.3d at 1174 3 28 U.S.C. § 2255(h) provides that: (h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain (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 (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

2255(h), he cannot, under Prost, satisfy § 2255(e), and § 2241 review must be denied. Petitioner also claims that § 2255 is inadequate or ineffective because he is actually innocent, not of his underlying crime, but of his career offender sentence enhancement. However, a petitioner can only est y bringing forward new exculpatory

Sandlain, 2017 WL 4479370, at *4 (citing Hale, 829 F.3d at 1171). The Court finds that the savings clause of § 2255(e) does not apply and therefore the Court lacks statutory jurisdiction. Accordingly, IT IS THEREFORE ORDERED BY THE COURT that the petition is dismissed without prejudice.

IT IS SO ORDERED. Dated in Kansas City, Kansas, on this 9 th

day of March, 2018.

S/ John W. Lungstrum JOHN W. LUNGSTRUM UNITED STATES DISTRICT JUDGE