

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**August 13, 2021**

**Christopher M. Wolpert**  
**Clerk of Court**

MICHAEL JACKSON,  
  
Petitioner - Appellant,  
  
v.  
  
WARDEN, USP-LEAVENWORTH,  
  
Respondent - Appellee.

No. 21-3011  
(D.C. No. 5:20-CV-03292-JWL)  
(D. Kan.)

**ORDER AND JUDGMENT\***

Before **BACHARACH, MURPHY, and CARSON**, Circuit Judges.

Mr. Michael Jackson was convicted of unlawfully possessing a firearm after a felony conviction. *See* 18 U.S.C. § 922(g)(1). For sentencing, a 15-year minimum prison term would be mandatory if Mr. Jackson had at least three prior convictions for violent felonies. 18 U.S.C. § 924(e)(1). A felony could be considered violent if it fell within a list of

\* We conclude that oral argument would not materially help us to decide the appeal, so we have decided the appeal based on the record and the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

particular crimes or qualified under the so-called “residual clause.”

18 U.S.C. § 924(e)(2)(B).

In Missouri, Mr. Jackson had six prior convictions for second-degree burglary and one prior conviction for first-degree burglary. So the court had to consider whether the burglary convictions involved violent felonies. The court answered “yes” based on existing precedent (*United States v. Sykes*, 844 F.3d 712, 716 (8th Cir. 2016))<sup>1</sup> and applied the 15-year minimum prison sentence.

After the sentencing, however, the applicable precedent changed. *See United States v. Naylor*, 887 F.3d 397, 406–07 (8th Cir. 2018) (en banc). Relying on this change in the law, Mr. Jackson argues that the sentencing court shouldn’t have considered second-degree burglary a violent felony. If he’s right, the sentencing court had no obligation to impose the 15-year mandatory minimum.

Mr. Jackson thus sought habeas relief under 28 U.S.C. § 2241. The federal district court denied habeas relief, reasoning that Mr. Jackson’s sole remedy lay in a motion to vacate the sentence under 28 U.S.C. § 2255. We affirm.

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<sup>1</sup> After Mr. Jackson was convicted of unlawfully possessing a firearm, the Supreme Court vacated that precedent. *See United States v. Sykes*, 138 S. Ct. 1544 (2018).

Mr. Jackson has previously filed a motion to vacate under § 2255, arguing that “[h]e cannot file a second or successive Section 2255 petition because he is not claiming newly discovered evidence or relying on an intervening constitutional decision.” Appellant’s Opening Br. at 6; *see* 28 U.S.C. § 2255(h). He is instead relying on the change in precedent as a basis to pursue habeas relief under 28 U.S.C § 2241. But he can pursue habeas relief under § 2241 only if a remedy under § 2255 “is inadequate or ineffective to test the legality of his detention.” 28 U.S.C. § 2255(e).

Section 2255 is not “inadequate or ineffective” simply because contrary precedent existed when Mr. Jackson made his initial motion. *Abernathy v. Wanders*, 713 F.3d 538, 547–48 (10th Cir. 2013). To the contrary, § 2255 would be inadequate or ineffective only if Mr. Jackson never had an opportunity to raise the issue in a challenge to the conviction or sentence. *Prost v. Anderson*, 636 F.3d 578, 584–85 (10th Cir. 2011); *see also Cleaver v. Maye*, 773 F.3d 230, 233 (10th Cir. 2014) (upholding the denial of habeas relief because the petitioner could not show that he had lacked the opportunity to present the issue in the § 2255 proceedings).

Mr. Jackson concedes that “Tenth Circuit precedent holds that Section 2255 is not ‘inadequate or ineffective’ when an inmate would have been *allowed* to file a challenge to his conviction or sentence, even if that claim was bound to be rejected on the basis of on-point, binding circuit precedent at the time, and even if that precedent is subsequently

overturned as erroneous.” Appellant’s Opening Br. at 6–7 (emphasis in original). Recognizing this precedent, Mr. Jackson seeks only an opportunity to challenge it. But he recognizes, as we do, that one panel cannot overrule another panel. *United States v. White*, 782 F.3d 1118, 1126–27 (10th Cir. 2015).

We thus apply our existing precedent, concluding that habeas relief under § 2241 is unavailable because Mr. Jackson had an earlier opportunity to seek a remedy under § 2255 for his challenge to the existence of three or more convictions for violent felonies. Given this conclusion, we affirm the denial of habeas relief.

Entered for the Court

Robert E. Bacharach  
Circuit Judge