

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 14, 2023

Christopher M. Wolpert
Clerk of Court

JONATHON R. SWAN,
Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,
Respondent - Appellee.

No. 22-8075
(D.C. No. 1:22-CV-00224-SWS)
(D. Wyo.)

JONATHON RAY SWAN,
Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,
Respondent - Appellee.

No. 22-8076
(D.C. No. 1:22-CV-00219-SWS)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **HARTZ, TYMKOVICH, and MATHESON**, Circuit Judges.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Jonathon Swan, a prisoner currently in custody in Lompoc, California, and proceeding pro se,¹ appeals the district court’s dismissal, without prejudice, of two 28 U.S.C. § 2241 petitions. We consolidated the appeals and, exercising jurisdiction under 28 U.S.C. § 1291, we now affirm the judgments of the district court.

In the United States District Court for the District of Wyoming, a jury convicted Mr. Swan of possessing with intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii), and of carrying a firearm while committing a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A)(i). The district court imposed a sentence of 210 months’ imprisonment on the drug charge and a consecutive 60 months’ imprisonment on the firearm charge. A panel of this court affirmed the convictions and sentence on direct appeal. *See United States v. Swan*, 829 F. App’x 304, 304 (10th Cir. 2020). Mr. Swan later filed a motion to vacate under 28 U.S.C. § 2255. The district court denied the motion, and this court denied Mr. Swan’s request for a certificate of appealability and dismissed the case.

Mr. Swan then filed two substantively identical petitions under § 2241 in the District of Wyoming. In each, he challenged “[t]he validity of [his] conviction after several due process violations that are also Constitutional Right violations.”

¹ Because Mr. Swan proceeds pro se, we construe his arguments liberally, but we “cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

R. (22-8075) at 4; R. (22-8076) at 4. The district court, in two separate orders, dismissed the petitions on the basis that attacks on the validity of a federal sentence are not properly brought under § 2241. *See Leatherwood v. Allbaugh*, 861 F.3d 1034, 1041 (10th Cir. 2017). And, because § 2241 petitions “must be brought in the district where the prisoner is confined,” *Hale v. Fox*, 829 F.3d 1162, 1165 (10th Cir. 2016) (internal quotation marks omitted), the district court concluded it lacked jurisdiction to consider the petitions. It declined to transfer the petitions to the United States District Court for the Central District of California or to construe them as brought under § 2255.²

On appeal, Mr. Swan reiterates the underlying substantive basis for his challenges to the validity of his convictions. But he does not address the determinations of the district court that he could not bring his petitions under § 2241, that it lacked jurisdiction, and that it would not be in the interests of justice to transfer the petition. We therefore “decline[] to consider” any such argument. *Bistline v. Parker*, 918 F.3d 849, 869 (10th Cir. 2019).

We affirm the judgments of the district court. We also deny Mr. Swan’s motions to proceed without prepayment of costs for failure to show “the existence of

² As the district court noted, before bringing a second or successive § 2255 motion, Mr. Swan must first obtain authorization from this court. *See* 28 U.S.C. § 2244(b)(3)(A).

a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991).

Entered for the Court

Timothy M. Tymkovich
Circuit Judge