In the

# United States Court of Appeals

## For the Seventh Circuit

No. 18-2967

SHANE T. WATKINS,

*Petitioner-Appellant*,

*v.*

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS,

*Respondent-Appellee*.[*]

Appeal from the United States District Court for the Central District of Illinois.
No. 1:18-cv-01183-JBM — **Joe Billy McDade**, *Judge*.

ARGUED APRIL 14, 2022 — DECIDED JUNE 16, 2022

[*] Before oral argument, the previous respondent—warden Steve Kallis—filed a motion to substitute parties. He noted that petitioner had been released from prison and had begun serving his term of supervised release in the Central District of Illinois. Accordingly, we have substituted the United States District Court for the Central District of Illinois as the respondent. See *Woodward v. United States District Court for the Eastern District of Michigan*, No. 17-3591 (7th Cir. Mar. 31, 2022) (substituting district court as respondent where petitioner was on supervised release).

Before SYKES, *Chief Judge*, and HAMILTON and SCUDDER, *Circuit Judges*.

HAMILTON, *Circuit Judge*. This appeal presents several challenging issues related to the "categorical approach" to federal recidivist sentencing enhancements and the availability of collateral relief from criminal convictions and sentences under 28 U.S.C. § 2241. As it turns out, however, we need not resolve these difficult questions because the case is moot.

Back in 2004, petitioner Shane T. Watkins was convicted under federal law of possessing crack cocaine with intent to distribute. He received a mandatory life sentence based on three prior convictions for "felony drug offenses." After multiple unsuccessful collateral attacks, Watkins filed this § 2241 petition. Invoking the Supreme Court's decision in *Mathis v. United States*, 579 U.S. 500 (2016), he argues that two of his prior convictions do not qualify as predicate felony drug offenses under 21 U.S.C. § 841(b)(1)(A), so his enhanced sentence was unlawful. Without contesting the merits of that argument, the government asserts, among other things, that Watkins has abused the writ of habeas corpus and that he does not meet the requirements to seek the habeas remedy provided in § 2241.

The problem for this appeal stems from good news for Watkins. Following enactment of the First Step Act of 2018, he applied for relief under that statute. He was resentenced to time served and released from prison. He is currently serving a reduced term of supervised release. Watkins says that a favorable decision on the merits here could lead to a further reduction in his supervised release term, but any help we might provide in that effort is too speculative to keep the case alive. We therefore vacate the judgment and remand with

instructions to dismiss the petition as moot. See *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950).

## I. *Factual and Procedural Background*

### A. *Initial Sentence and Appeal*

In 2004, a jury convicted Watkins under federal law for possessing more than fifty grams of crack cocaine with intent to distribute. Before trial, the government had filed a notice of intent under 21 U.S.C. § 851 to seek an enhanced sentence based in part on three prior drug convictions. One of those convictions was for possession of cocaine in violation of federal law. The other two were for possession of cocaine and delivery of cocaine in violation of the Illinois Controlled Substances Act, 720 ILCS 570/401(d) (1999). When Watkins was convicted in 2004, § 841(b) called for a mandatory life sentence for a defendant with two or more prior convictions for felony drug offenses. See 21 U.S.C. § 841(b)(1)(A) (2004); see also § 802(44) ("The term 'felony drug offense' means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State … that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.").

At sentencing, Watkins did not dispute that he had two such prior convictions. Judge McDade, who had presided at Watkins' trial, said that a life sentence for the offense was "horrific" and described the case as "a perfect example of one of the evils of mandatory minimums." As required by statute, however, the judge imposed the mandatory sentence of life in prison, as well as the mandatory minimum ten-year term of supervised release. Watkins appealed. He challenged the

partial denial of a pre-trial motion to suppress but did not challenge his sentence. This court affirmed. *United States v. Watkins*, 175 F. App'x 53, 58 (7th Cir. 2006).

B. *Collateral Relief Proceedings*

In 2007, Watkins filed a motion for relief under 28 U.S.C. § 2255. In an amended motion, he argued that he had received ineffective assistance of counsel and that one of his prior convictions should have been classified as a misdemeanor rather than as a felony drug offense. Judge McDade denied his motion in 2009.

Seven years later, the Supreme Court decided *Mathis v. United States*, 579 U.S. 500 (2016). As we have said, *Mathis* provided guidance on the "categorical approach for classifying prior convictions for purposes of recidivist sentencing enhancements." *Guenther v. Marske*, 997 F.3d 735, 739 (7th Cir. 2021). The categorical approach matters to defendants who have received enhanced sentences based on prior convictions because it is used to "determine whether [a] state conviction can serve as a predicate offense by comparing the elements of the state statute of conviction to the elements of the federal recidivism statute." *United States v. Elder*, 900 F.3d 491, 501 (7th Cir. 2018).

A few months after *Mathis* was decided, Watkins filed his first petition for a writ of habeas corpus under 28 U.S.C. § 2241. Relying on *Mathis*, he argued that his prior drug convictions did not qualify as controlled substance offenses under the Sentencing Guidelines, so the enhanced sentence he received was unlawful. Judge Shadid denied Watkins' petition. The judge first noted that Watkins' designation as a career offender under the Guidelines was "irrelevant" because

"his sentence was based on the statutory minimum sentence rather than the career offender guideline." In any event, the judge concluded, Watkins' three prior drug convictions all qualified as felony drug offenses, even after *Mathis*.

Watkins then filed this second § 2241 petition. This time, he asserted that his sentence was unlawful because the statutory enhancement was erroneous. Again citing *Mathis*, Watkins argued that his Illinois convictions did not qualify as felony drug offenses under the categorical approach because the Illinois drug statute under which he was convicted swept more broadly than federal law. He also asserted that a § 2241 petition was the proper vehicle for relief. A convicted petitioner seeking relief under § 2241 must show that

> (1) the claim relies on a statutory interpretation case, not a constitutional case, and thus could not have been invoked by a successive § 2255 motion; (2) the petitioner could not have invoked the decision in his first § 2255 motion and the decision applies retroactively; and (3) the error is grave enough to be deemed a miscarriage of justice.

*Franklin v. Keyes*, 30 F.4th 634, 643 (7th Cir. 2022), quoting *Chazen v. Marske*, 938 F.3d 851, 856 (7th Cir. 2019). Watkins argued that these conditions were satisfied because *Mathis*—a statutory interpretation case—had not been decided at the time he filed his § 2255 motion and because he had received an improper life sentence.

Judge McDade dismissed this second § 2241 petition. The judge invoked the abuse-of-the-writ doctrine, concluding that "any claim based on *Mathis* was available to Watkins when he

filed his first § 2241 petition in late 2016." And regardless, Judge McDade said, Watkins could not raise an independent *Mathis* claim in a § 2241 petition because *Mathis* did not create a new rule.

Watkins appealed. While his appeal was pending, Congress passed the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. As relevant here, section 404 of the Act allows defendants convicted of certain crack cocaine offenses to move for reduced sentences. See *United States v. Shaw*, 957 F.3d 734, 739–40 (7th Cir. 2020). Watkins filed such a motion in January 2019, almost fifteen years into his life sentence. Judge McDade resentenced him to time served and imposed a reduced eight-year term of supervised release.

In this appeal from the denial of his second § 2241 petition, Watkins argues that he was erroneously subjected to a mandatory life sentence and that the conditions for proceeding under § 2241 are satisfied. The government offers several reasons to reject the petition, arguing that the case is moot, that Watkins abused the writ, and that Watkins cannot pursue relief under § 2241. Because we agree that Watkins' case is moot, we do not decide the other issues.

II. *Mootness*

Article III of the Constitution limits the judicial power to "resolving live 'Cases' and 'Controversies,' rather than issuing advisory opinions." *E.F.L. v. Prim*, 986 F.3d 959, 962 (7th Cir. 2021), quoting U.S. Const. art. III, § 2. To invoke federal jurisdiction, therefore, a plaintiff must have "a 'personal stake' in the outcome of the action." *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 (2018), quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013). That requirement

extends to all stages of the litigation, "not merely … the time the complaint is filed." *Id.*, quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). If intervening circumstances deprive the plaintiff of a personal stake in the outcome, "the action can no longer proceed and must be dismissed as moot." *Genesis Healthcare*, 569 U.S. at 72. Courts have a "'constitutional obligation to resolve the question of mootness' and address it *sua sponte* if needed." *E.F.L.*, 986 F.3d at 962–63, quoting *United States v. Fischer*, 833 F.2d 647, 648 n.2 (7th Cir. 1987).

A case is moot "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013), quoting *Knox v. Service Employees International Union, Local 1000*, 567 U.S. 298, 307 (2012). Where the parties "have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Knox*, 567 U.S. at 307–08, quoting *Ellis v. Brotherhood of Railway, Airline & Steamship Clerks*, 466 U.S. 435, 442 (1984). But a potential injury that is "too speculative cannot serve as the source of a party's interest in a case." *United States v. Shorter*, 27 F.4th 572, 575 (7th Cir. 2022).

*Shorter* illustrates the limits of speculation when evaluating mootness. In that case, the defendant appealed the district court's denial of his motion for compassionate release. After the appeal was filed, the defendant was released from prison and placed on home confinement for the remainder of his sentence, with a three-year term of supervised release to follow. We held that the case was moot because the defendant's requested relief had been accomplished by his release to home confinement. That conclusion was not affected by the fact that the defendant "hypothetically could return to prison through a violation of the conditions of either his home confinement

or his supervised release." 27 F.4th at 576 (internal citation omitted). "Any chain of events leading to [the defendant's] potential return to the prison," we said, was "too speculative to provide him with a constitutionally cognizable stake in this case." *Id.*[1]

Nor was speculation sufficient to avoid mootness in *Eichwedel v. Curry*, 700 F.3d 275 (7th Cir. 2012). There, a habeas petitioner challenged the revocation of his good-conduct credits by the Illinois Department of Corrections. While the appeal was pending, his credits were restored and he began his term of supervised release. The petitioner said that the case was not moot because he could have applied for up to ninety days of good-time credits if his own credits had not been revoked. As a result, he could have been released ninety days earlier and completed his supervised release sooner. We rejected those arguments, concluding that the petitioner could point to only "the *possibility* that he *might* have served a shorter period of incarceration before beginning his period of supervised release." *Id.* at 279. From there, "prison authorities *might* have seen fit to grant him a reduction in the days he had to serve." *Id.* Those possibilities were "not sufficient to establish a continuing controversy." *Id.*

To picture any effective relief in this case, we would need to imagine a similarly attenuated chain of events built on escalating levels of speculation. First, as a preliminary matter, if we vacated Watkins' sentence, the district court would then

[1] Both parties in *Shorter* agreed that the case should be dismissed as moot, but defense counsel did not file a form signed by the defendant indicating that he had consented to dismissal. We therefore addressed the substance of the mootness issue. See *Shorter*, 27 F.4th at 575 & n.2.

have to resentence Watkins to twenty years' imprisonment—since that is the mandatory minimum he would have been subject to based on his predicate federal conviction alone. See 21 U.S.C. § 841(b)(1)(A) (2004). (The reduced mandatory minimum sentences under section 401 of the First Step Act did not automatically apply to already-sentenced defendants.) Watkins would then need to re-apply for relief under the First Step Act. The district court would then have to hold another First Step Act hearing, weigh the relevant factors, and conclude that Watkins was entitled to a reduced sentence even lower than the fifteen years he already served. Finally, one of two things would need to happen. Either the district court would have to exercise its considerable discretion under 18 U.S.C. § 3583(e) to reduce Watkins' term of supervised release to less than eight years or Watkins would have to violate his supervised release conditions and use the excess prison time he served as banked time against any new term of imprisonment.

At each step, Watkins can only speculate that he might benefit from a decision on the merits. Consider the new First Step Act hearing Watkins would receive after being resentenced to the twenty-year mandatory minimum, having already completed a reduced sentence of the fifteen years he had already served. In essence, Watkins is arguing that the district court might be inclined to impose a new reduced sentence even lower than fifteen years if it had a determination from this court that the original sentence was unlawful. But that is pure guesswork. At the original First Step Act hearing, the district court already exercised its discretion in considering a potential sentence reduction. See *United States v. McSwain*, 25 F.4th 533, 537 (7th Cir. 2022) (noting that First Step Act "establishes that the decision whether to reduce a

defendant's sentence, and by how much, is a decision committed to the discretion of the district court"); *United States v. Fowowe*, 1 F.4th 522, 527 (7th Cir. 2021) (emphasizing district court's "discretion in determining whether and how much to reduce a defendant's sentence" under First Step Act). The court then granted Watkins exactly what his attorney had requested: a reduced sentence of time served. A remote possibility that the court might go even lower—when it would not actually shorten Watkins' prison time—if we were to reach the merits is not enough to save the case from mootness. Cf. *United States v. Juvenile Male*, 564 U.S. 932, 937 (2011) (holding that a "possible, indirect benefit in a future lawsuit cannot save *this* case from mootness").

Even if Watkins could overcome that hurdle, his argument requires further speculation at the next step. He says that a new sentence lower than fifteen years might help him win a reduced term of supervised release. Under 18 U.S.C. § 3583(e), a defendant may move for early termination of supervised release. See, e.g., *United States v. Hassebrock*, 21 F.4th 494, 496 (7th Cir. 2021). The statute provides that a district court may "terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release … if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice." § 3583(e)(1). The court may do so, however, only after "considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)." § 3583(e). Given the wide discretion in consideration of the § 3553(a) factors, see, e.g., *United States v. Gibson*, 996 F.3d 451, 469 (7th Cir. 2021), the mere possibility that our decision might influence the court's determination on remand is not enough to keep the case alive. See *Phifer v. Clark*,

115 F.3d 496, 500 (7th Cir. 1997) ("[A]n event's potential influence on future discretionary decisions is insufficient to save a claim from mootness."), citing *Lane v. Williams*, 455 U.S. 624, 632–33 (1982).

Nor do we see why Watkins needs a decision on the merits from our court to prevail in a possible future § 3583(e) proceeding. There is no dispute that Watkins' sentence was improperly enhanced based on the Illinois convictions. In fact, the government has said in its brief that it would concede as much in any proceeding for early termination of supervised release under § 3583(e). Watkins responds that such a concession is not sufficient and that the district court has shown an "unwillingness" to revisit the conclusion that his prior convictions are felony drug offenses. The district court decision he refers to, however, was issued in August 2018—before all the cases Watkins relies on to argue that the relevant provision of the Illinois statute is categorically overbroad. See *United States v. Oliver*, 987 F.3d 794 (8th Cir. 2021); *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020); *United States v. De La Torre*, 940 F.3d 938 (7th Cir. 2019); *Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019).

This intervening case law, combined with the government's concession, should be more than enough to make clear in a § 3583(e) proceeding that Watkins was not properly subject to a mandatory life sentence. Whether that warrants a further reduction in Watkins' term of supervised release is a question for the district court to answer, but it is not a question that would be affected one way or the other by our deciding the merits here. Any ruling we issued would therefore amount to an advisory opinion in violation of "the oldest and most consistent thread in the federal law of justiciability."

*Flast v. Cohen*, 392 U.S. 83, 96 (1968) (citation omitted); see also *Muskrat v. United States*, 219 U.S. 346, 354 (1911) (discussing Supreme Court's refusal to issue advisory opinion in 1793).

Aside from relief under § 3583(e), Watkins argues, a new reduced sentence below fifteen years would allow him to receive "banked" time credit toward any prison sentence for any future violation of his supervised release conditions. He cites Bureau of Prisons regulations providing that "'[a]ny prior custody time spent in official detention after the date of offense that was not awarded to the original sentence or elsewhere shall be awarded to the revocation term' when a defendant is sentenced to a term of incarceration for violating his supervised release." *United States v. Jackson*, 952 F.3d 492, 498 (4th Cir. 2020)(alteration in original), quoting BOP Program Statement § 5880.28, *Sentence Computation Manual-CCCA of 1984* (1999) at 1-69.

Again, however, this argument is contingent on several different events occurring. Watkins admits that there are no revocation proceedings under way, so this potential benefit would become available only if he (1) received a sentence lower than fifteen years on remand; (2) violated his supervised release conditions; and (3) was sentenced to another term of incarceration, at which point his banked time could be awarded against the new term. That possibility is too far removed from the current proceedings to render this a live case or controversy under Article III. See *Shorter*, 27 F.4th at 576 (finding compassionate release appeal moot even though defendant hypothetically could have returned to prison upon future violation of supervised release conditions); cf. *Phifer*, 115 F.3d at 500 ("A habeas petition can play no role in

sheltering someone from his or her own possible future misconduct.").[2]

Resisting the government's arguments that any potential relief is too speculative, Watkins relies heavily on *Pope v. Perdue*, 889 F.3d 410 (7th Cir. 2018). But that case does not compel a different conclusion. There, the petitioner argued that the Bureau of Prisons had erroneously extended the length of his sentence. While his appeal proceeded, he was released from prison and began serving his term of supervised release. His release did not moot the case, however, because "a finding that Pope spent too much time in prison … would carry 'great weight' in a § 3583(e) motion" to reduce Pope's term of supervised release. *Id.* at 414, quoting *United States v. Johnson*, 529 U.S. 53, 60 (2000). Even though § 3583(e) had required the court to impose a minimum term of supervised release, we recognized that the court could terminate that term early if it was "satisfied that such action is warranted by the conduct of the defendant released and the interest of justice." *Id.*, quoting § 3583(e)(1).

This case differs from *Pope* because no finding by this court could establish that Watkins spent more time in prison than the law allowed. Recall that the government sought an enhanced sentence for Watkins based on three prior drug convictions: one federal conviction and two Illinois convictions. As noted above, even if the sentencing court had relied on

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[2] Watkins noted in his reply brief that he was then being held in county jail for allegedly possessing a stolen vehicle in violation of state law. At oral argument, his counsel reported that all charges had been dropped but that the government had filed a petition to revoke his supervised release. A few weeks later, however, the government moved to dismiss the petition to revoke, and the district court granted that motion.

only the federal conviction—which Watkins' § 2241 petition does not challenge—Watkins still would have faced a minimum of twenty years in prison. Under the First Step Act, however, he was released after serving fifteen years. This is not a case where we can find that the petitioner "spent too long in prison." *Pope*, 889 F.3d at 415.[3]

The judgment of the district court is VACATED, and the case is REMANDED with instructions to dismiss the petition as moot.

[3] For similar reasons, *United States v. Trotter*, 270 F.3d 1150 (7th Cir. 2001), also does not help Watkins. In that case, a favorable decision on the merits would have reduced the defendant's guideline range from 6–12 months to 4–10 months. *Id.* at 1152. But here, as Watkins concedes, his statutory range would remain the same even if we resolved the merits in his favor.