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United States District Court
Central District Of California
Western Division

GLENN BOSWORTH,
Petitioner,
v.
FELICIA PONCE, Warden,
Respondent.

CASE NO. 2:18-CV-01795-ODW
(CR-09-00052 ODW)
ORDER DENYING §2241 PETITION

I. INTRODUCTION

On February 20, 2009 Bosworth plead guilty to Count 1 of the Information, charging him with violation of 18 USC §2422(b) Use of a facility of Interstate Commerce To Induce a Minor To Engage in Criminal Sexual Activity. After no fewer than nine continuances, on October 22, 2010, Bosworth was sentenced to nine years in prison with 20 years of supervision to follow. The government recommended a sentence of 57 months and made a 5K1.1 motion which was granted. U.S. Probation had recommended a sentence at the mandatory minimum of 10 years imprisonment.

1 The conviction and sentence were affirmed by the Ninth Circuit on February 22, 2012
2 [CCA 10-50530].

3 4 **II. FACTUAL BACKGROUND**

5 From November 28 until the date of his arrest on December 17, 2008, Defendant,
6 who used the screen name SeekingMissRight, engaged in a series of internet chats with
7 an undercover agent, who he believed to be the mother of a 12 year old girl. The
8 purpose of those communications, from the first day, was to induce the young girl's
9 mother to permit the Defendant to have sex with her child. Specifically, beginning on
10 November 28, 2008 defendant, by way of instant messaging, initiated a conversation
11 with an undercover FBI agent, operating from a Los Angeles based computer, in a chat
12 room entitled Special Interests – Open Minded Parent. During this initial conversation,
13 defendant told the FBI agent, whose screen name referenced status as a mother, that
14 he was looking for an "openminded mother" who would allow her daughter to
15 experience sex with an older man, noting that teen boys lacked the requisite sexual
16 experience to properly treat a young girl. Defendant further asked whether the
17 purported daughter, who was identified as nearly 13 years of age, was "developing" and
18 asked her bra size. He then sent a picture of himself and asked the mother to show the
19 picture to her daughter and to in turn send him a picture of the daughter .

20 In subsequent internet communications, defendant continued to discuss with the
21 mother how he wanted to meet to have sex with her daughter, claiming that he had two
22 sexual experiences with minors and reiterated his belief that there were lots of women
23 who want their daughters to learn about sex from experienced adult males rather than
24 teen boys. In addition, during one of these communications, he sent a picture of a nude
25 male, which he represented as a picture of himself.

26 As the discussions progressed, defendant arranged a December 9, 2008 meeting
27 with the female FBI agent who assumed the role of the mother, at an Orange county
28 mall, so that they each could develop a comfort level with the other before proceeding
with the sexual encounter. During this meeting, in which, the mother advised defendant

1 that her daughter was actually only 12 years old, but would be turning 13 in the near
2 future. During the ensuing conversation, defendant again made reference to a past
3 sexual experience he had had with a young child and further informed the mother that
4 he had child pornography back at this house. In the course of this meeting, the two
5 agreed to meet at a hotel in the immediate future for purposes of him having sex with
6 the child.

7 On December 9, 2008, defendant initiated another chat with the mother, and
8 then after requesting the daughter's screen name, he chatted with the daughter as well.
9 During the conversation with the daughter, defendant informed her that her mother
10 wanted her "to have a safe lover who will be good to you" and further asked if she had
11 talked to her mom about the conversations that he had been having with her regarding
12 future sex. Later, while chatting again with the mother, defendant noted his opinion that
13 the daughter seemed interested in having sex and asked the mother for a new picture
14 of the daughter, asking if the daughter would send him a topless photo of herself.

15 The following day, defendant and the mother resumed their internet chats,
16 with defendant discussing at length and in graphic detail the type of sex he intended to
17 have with the daughter and advised the mother that he would show the daughter
18 pictures of child pornography "to show her that other girls enjoy sex."

19 Over the course of the next several days, defendant and the mother had multiple
20 internet communications in which they agreed that the sexual encounter would take
21 place on December 18, 2008 in a Long Beach hotel. Defendant indicated that he would
22 bring the laptop containing the child pornography, overnight clothing, lotion, and a small
23 vibrator.

24 Defendant was arrested after he arrived at the hotel. The laptop he had brought
25 with him contained several pictures of child pornography. He brought with him
26 overnight clothing, lubricant, condoms, pills that claim to enhance penis size, gifts for
27 the daughter, and a small vibrator.

28

III. PROCEDURAL HISTORY

Petitioner discusses his sentencing hearing as though it was a single hearing, from which he has extracted snippets out of context in order to create a false representation of what actually occurred. For example, Petitioner attempts to create the impression that the Court made contradictory indications of its sentencing positions. In fact there were three substantive hearings spanning a period of time during which the Court, then newly retained counsel, would review the transcripts of the internet communications.

After numerous continuances the parties convened for sentencing on September 13, 2010. Petitioner appeared with his then attorney Mark Chambers. The court indicated its intention to reject Probations recommendation for a sentence at the ten year mandatory minimum, but instead would be inclined to impose a sentence at the low end of the range suggested by an adjusted offense level of 25 and a criminal history of I, or 57 - 71 months. During Petitioner's allocution he stated "I did try to turn my affections towards the agent who was the mother, and she encouraged me to go back to talking about the daughter. I was told to bring the things that I brought [to the hotel room.]" (Transcript of Sept. 13, 2010 sentencing hearing, at p. 18 of 28, DE-87.)

The Court expressed its concern that the issue of entrapment had been raised. It was ultimately agreed that sentencing would be continued until after the court could review the transcript of the chats to make a determination whether Petitioner had indeed been the victim of entrapment. The matter was continued to October 4, 2010. (Id. at p. 26 of 28.)

On October 4th Petitioner appeared with new counsel, Michael Khouri. While Mr. Khouri had indicated he was prepared to proceed with sentencing, he admitted that he had not reviewed the transcripts. The Court determined that he would not be able to adequately address the Court's concerns about matters stated in the transcript if he had not read them. The matter was again continued to the 29th to permit him to do so. It was at this hearing where the court suggested to Petitioner that he should come alone, stating to Mr. Khouri that "once you read the transcripts, you will understand that. Okay." (Transcript of Oct. 4, 2010, at p. 10 of 12, DE-88.) In general, the Court's

1 concerns sprung from references by Petitioner that in his view it would have been
2 advantageous had his daughter had a sexual encounter when she was a young girl and
3 that he knows of fathers who have had sex with their daughters.

4 **IV. LEGAL STANDARD**

5 28 U.S.C. §2255 provides in part that a prisoner in federal custody claiming that
6 the sentence he is serving was “imposed in violation of the Constitution or laws of the
7 United States, or that the court was without jurisdiction to impose such sentence, or
8 that the sentence was in excess of the maximum authorized by law, or is otherwise
9 subject to collateral attack, may move the court which imposed the sentence to vacate,
10 set aside or correct the sentence.” Id.

11 The prisoner has one year from the date of imposition of the sentence to move
12 the sentencing court for correction or vacation of the sentence. 28 U.S.C. § 2255(f). The
13 court may “entertain and determine such motion without requiring the production of
14 the prisoner at the hearing.” 28 U.S.C. §2255(c).

15 Here, no colorable claim could be made that the sentence imposed was in
16 violation of the Constitution, or that the court was without jurisdiction to impose such
17 a sentence, or that the sentence was in excess of the maximum authorized by law. As
18 a result, his 2255 motion was denied. Indeed, the sentence was affirmed by the Ninth
19 Circuit Court of Appeals.

20 28 U.S.C. §2241 provides in part that a prisoner in federal custody purportedly in
21 violation of the constitution or laws or treaties of the United States may seek a writ of
22 habeas corpus under section 2241. As a general rule a defendant’s exclusive
23 procedural vehicle for testing the legality of his detention is via a motion under 28
24 U.S.C.§ 2255. Absent authorization to do so, granted by the Circuit Court, a defendant
25 may not file successive §2255 applications. (See 2255(h).) Petitioner has already filed
26 an earlier 2255 motion on November 12, 2013 [See D.E.-116; cv-13-8352] Therefore he
27 is procedurally barred from making a successive application under §2255.

28 There is, however, an exception to the general rule. Under the so-called escape
hatch contained in 2255(e), a federal prisoner may proceed by way of a petition under

1 2241 if, and only if, the remedy under 2255 is “inadequate or ineffective to test the
2 legality of his detention. Section 2255(e) provides:

3 An application for a writ of habeas corpus in behalf of a
4 prisoner who is authorized to apply for relief by motion
5 pursuant to this section, shall not be entertained if it appears
6 that the applicant has failed to apply for relief, by motion,
7 to the court which sentenced him, or that such court has
8 denied him relief, unless it also appears that the remedy by
9 motion is inadequate or ineffective to test the legality of his
10 detention.

11 In order to Petitioner to fold himself within the protections of the escape hatch
12 of §2255(e) he must (1) make a claim of actual innocence; and (2) demonstrate that
13 he has not had an unobstructed procedural shot at presenting that claim. *Stephens*
14 *v. Herrera*, 464 F.3d 895, 898 (9th Cir. 2006). He fails to meet either test.

15 V DISCUSSION

16 A. ACTUAL INNOCENCE

17 Petitioner argues that he is actually innocent of the charge of conviction. This
18 claim apparently rests on his assertion that his recorded conversation(s) with FBI agents
19 after his arrest, were altered. He contends that several missing minutes of the tape
20 recorded statement(s) would establish that he had no interest in a sexual liaison with
21 the fictitious 12 year old girl.¹ He contends that he was at all times focusing his
22 advances on the age appropriate adult woman who was portraying the mother of the
23 alleged 12 year old girl, but who was in actuality an undercover FBI special agent.

24 In this Court’s April 28, 2014 Order denying his 2255 motion, the evidence belying
25 this assertion was conclusively set forth and will not be repeated here. Suffice it to say
26 that it is true that he expressed an interest in the “mother” on more than one occasion,

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28 ¹As has been repeatedly stated by the Court, contrary to Petitioner’s assertions, the recordings
of his interview with the FBI were not filed with the Court and the Court was unaware of their existence
at the time of sentencing.

1 but each time was rebuffed. At no time did the “mother” attempt to redirect his
2 attention to her “daughter.” Instead, Petitioner relentlessly pursued his designs on the
3 fictitious child, asking if the daughter was interested in sex, whether the mother thought
4 it was advantageous that her first sexual encounter should be with a man as opposed to
5 a teenaged boy, what her bra size was, commenting that he prefers his women to be
6 A-cups because they then look like little girls, he asked for nude pictures of the child,
7 sent a nude picture of an adult male, purportedly being himself and many many other
8 comments which left no doubt of his intentions toward the young girl. And to the extent
9 that he claims all he wanted to do was talk, he drove all the way from San Diego to a
10 hotel in Long Beach to meet the girl, armed with a laptop containing child pornography,
11 and a briefcase containing condoms, lubricants, night clothes, male enhancement pills
12 and a vibrator. Moreover, he provided the mother with a detailed description of
13 precisely what he envisioned during the encounter, and conversation was not a part of
14 it. He is not innocent of the charge. Through many days of on-line chats, plus a face to
15 face meeting with the mother, he left no doubt that he wanted to have sex with a 12
16 year old girl. He told the mother precisely what he would do to the girl when they finally
17 met, then he acted on his stated intention when he traveled over a hundred miles to
18 meet her at a Long Beach hotel room. Of all the things Petitioner may be, innocent isn’t
19 among them.

20
21 His only evidence of his innocence is a vague statement that there may be
22 missing portions of his recorded statements to FBI agents, and that those alleged
23 missing portions of recordings would have demonstrated that he was only interested in
24 the mother and it was the mother who steered him to the child. He also claims it was
25 the mother who suggested what he was to bring on the day of the encounter. It was
26 this claim which prompted the Court to review the transcripts. Those transcripts left
27 to room for doubt - reasonable or otherwise - of his intentions toward the young girl.
28 His assertions to the contrary are simply blatantly false. At best, his “evidence” can
best be described as an utter failure to demonstrate that “in light of all the evidence, it
is more likely than not that no reasonable jury would have convicted him” on the instant

1 offense. *Stevens*, 464 F.3d 898. Indeed the evidence of his guilt, which he conceded at
2 the time of his guilty plea, was overwhelming. Indeed, the court expressly found that
3 his guilty plea was supported by an independent factual basis to support each and every
4 element of the offense.

5 If further evidence of guilt is necessary, there is Petitioner's own admission of his
6 guilt at his change of plea hearing. He signed a written plea agreement where he
7 expressly admitted his guilt to Count 1 of the Information, charging him with violation
8 of 18 USC §2422(b) Use of a Facility of Interstate Commerce To Induce a Minor To
9 Engage in Criminal Sexual Activity. The elements of the charge were recited to him and
10 he had no questions. The prosecutor recited the facts that the government would be
11 prepared to prove in the event the matter proceeded to trial and he admitted that he
12 had done the things the prosecutor recited; that he was pleading guilty because he did
13 the things charged in the information. He stated, under oath, that he was pleading guilt
14 because he was guilty. To now, over seven years later, profess his innocence rings
15 hollow at best.

16 B. HE HAS ALREADY HAD AN UNOBSTRUCTED PROCEDURAL SHOT AT PRESENTING HIS
17 CLAIMS.

18 Clearly Petitioner had unobstructed opportunities to raise each of his claims prior
19 to the instant §2241 Petition and indeed he has done so. Each time his claims of error
20 have been rejected as legally and factually frivolous. Here, he claims to have been
21 blocked in his efforts to raise these claims previously, which simply is not true. He calls
22 the court's attention to what he calls the Court's "conditional order" of April 28, 2014.
23 (See Pet. at p.3). To proceed under §2241 he must demonstrate that the legal basis for
24 his claim did not arise until after he had exhausted his direct appeal and his first §2255
25 motion. See *Marrero v. Ives*, 682 F.3d 1190, 1192-93 (9th Cir 2012). Not only did the
26 so-called "conditional order" not erect an obstruction to his ability to raise each of the
27 issues he now raises, but these are not claims that first arose after he had exhausted
28 his direct appeal and his first §2255 motion. Indeed, he has raised all of these claims
repeatedly.

1 In addition, the Order in question dealt with what he repeatedly refers to as a
2 closed sentencing hearing. The Court made it clear that the sentencing hearing was not
3 closed to the public, for indeed, he requested that his pastor be allowed into the
4 courtroom and he was invited in and he addressed the Court. The court made it clear
5 that the sole concern was having his daughter in the courtroom while discussions would
6 likely occur about his desires to have sex with children. From some of the statements
7 captured in the transcripts of his on-line chats, it appeared that he would have liked to
8 have had sex with his own daughter. Conceding that the Court should not have been
9 concerned with Petitioner's relationship with his daughter or the potential damage to
10 that relationship upon his daughter learning these disturbing facts about her father, the
11 court offered to hold a new sentencing hearing at which anyone he wished to attend
12 could be present. The only thing necessary was for him to advise the court of a date
13 convenient to all concerned. At that hearing, his sentence would be vacated and he
14 would be resentenced. He was given 60 days to advise the court of the date for the
15 resentencing. He failed to do so. Instead , he filed a number of unrelated motions
16 during that 60 day time period, but in none of them did he offer a proposed date for
17 resentencing. He claims that those unrelated filings satisfied the Court's directive to
18 inform the Court of a date convenient for his family to attend a resentencing. That is
19 simply false.

20 As previously noted, he filed a §2255 motion on November 12, 2013 wherein he
21 raised a claim of inadequate assistance of counsel, a Sixth Amendment claim that his
22 right to an open sentencing hearing had been violated and the alleged *Brady* violation.
23 (See DE-116.) In addition to the §2255 motion, he filed Notices of Appeal contesting
24 what he viewed as an illegal sentence on October 28, 2010 (DE-83); a Notice of Appeal
25 addressing issues beyond those addressed in his §2255 motion on May 21, 2014 (DE-
26 128); a Notice of Appeal from the denial of his recusal motion filed on September 4,
27 2014 (DE-141); a Notice of Appeal from rejection of his request to be permitted to
28 withdraw his guilty plea filed on September 29, 2014 (DE-145); a Notice of Appeal from

1 the denial of his motion to be transferred to MDC-LA for resentencing filed on January
2 16, 2015 (DE-160); a Notice of Appeal from the denial of his motion to withdraw his
3 guilty plea and for the appointment of counsel filed on June 22, 2015 (DE-171); an
4 Amended Notice of Appeal re DE-171 filed September 14, 2015; and a Notice of Appeal
5 from the rejection for filing of documents due to discrepancies filed June 9, 2016 (DE-
6 190.)

7 Clearly he has had an unobstructed procedural shot at raising his claims, each
8 time he filed a Notice of Appeal. Thus, he fails both prongs of the “escape hatch” and
9 is not entitled to proceed pursuant to §2241.

10 C. THIS PETITION IS TIME BARRED WERE HE TO PROCEED UNDER §2255

11 Assuming Petitioner now wishes his petition to be construed as a successive 2255
12 motion, and assuming he is able to secure certification from the Ninth Circuit to bring
13 a second §2255 motion, which is unlikely, far more than one year has elapsed since his
14 conviction. It would therefore be time barred. See §2255(f).

15 Under the statute, the 1-year time period runs from the latest of:

- 16 1. The date on which the judgment of conviction becomes final;
- 17 2. The date on which the impediment to making a motion is removed;
- 18 3. The date on which the right asserted was initially recognized by the
19 Supreme Court;
- 20 4. The date on which the facts supporting the claim presented could have been
21 discovered.

22 Clearly more than one year has lapsed since his 2010 conviction and sentencing.
23 Our attention is called to no impediment which prevented him from seeking relief
24 earlier. Indeed he did seek the same relief in his §2255 motion filed November 12, 2013.
25 (See DE-117.) This §2241 Petition is in reality a second §2255 motion. Consequently
26 the facts supporting the claim presented were known at least as early as November
27 2013. That is when Petitioner knew of his injury and the facts causing that injury.
28

1 It is also worth noting that Petitioner sets forth each and every claim in his so-called
2 placeholder Motion for New Trial filed February 19, 2015 (DE-159). The 1-year statute
3 of limitations has long run. (See *Avila v. Willits Environmental Remediation*, 633 F.3d
4 828, 841-42 (9th Cir 2011.)

5 D. WAIVER

6 As part of his plea agreement, Petitioner expressly waived his right to appeal his
7 conviction on any and all grounds save and except the ground that his guilty plea was
8 involuntary. He makes no claim that his instant conviction was not voluntary and of
9 his free will. Such waivers are and must be enforced. *United States v. Reves*, 774 F.3d
10 562, 566 (9th Cir. 2014.) The court therefore rejects this claim on this additional
ground.

11 E. THE SENTENCE IMPOSED WAS LEGAL AND WITHIN THE STATUTORY MAXIMUM

12 Not only is the sentence of 108 months within the statutory maximum of life
13 imprisonment, it is below the mandatory minimum of ten (10) years. (See 18 USC
14 §2422(b).) Petitioner makes a number of claims challenging the legality of his
15 sentence, all of which are specious. For example, he is apparently of the view that
16 the Court is somehow bound by the sentencing recommendations of the government.
17 Courts are not rubber stamps for the prosecution and it is ludicrous to suggest
18 otherwise. Equally absurd is Petitioner's contention that he was improperly placed
19 in Criminal History category 1 based on 0 criminal history points.. He suggests that
20 he more properly belongs in Criminal History category 0. This, and his remaining
21 assertions, do not merit a response.

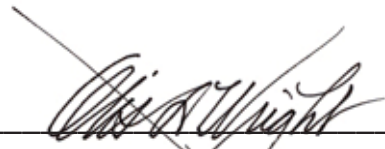
22 VI. CONCLUSION

23 Because this Petition is not cognizable under §2241 in that Petitioner fails to
24 satisfy the double prongs of §2255(e) this court is without jurisdiction to provide the
25 remedy he seeks. He would also fail in an attempt to have this petition entertained
26 under §2255 because it would be an impermissible second such motion without
27 having first secured permission from the Circuit Court.
28

1 One additional comment, primarily to put to rest just one of many blatant
2 falsehoods which liberally pepper each of Petitioner's filings. In virtually every filing
3 Petitioner claims that his sentencing was witnessed by former gang members of
4 Homeboy Industries, who sat behind the defense table and apparently had full access
5 to the secured spaces off the courtroom. It is also claimed that the Court discussed
6 Petitioner's sentence with these "former gang members." Petitioner apparently failed
7 to notice they were all wearing suits, were well groomed and were conspicuously
8 devoid of facial or other tattoos or any other indicia of gang affiliation. The reason for
9 their presence is simple. They were judicial law clerks and part of the Court's
10 chambers staff. Hopefully, this will put an end to the disparaging remarks directed
11 their way.

12 For all the above reasons, the Petition is **DENIED**.

13 DATED: March 13, 2018



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16 Otis D. Wright, II
17 United States District Judge
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