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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

TYRONE S. OAKS,)	1:14-cv-00703 LJO GSA HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATION
)	REGARDING PETITION FOR WRIT OF HABEAS
v.)	CORPUS
)	
PAUL COPENHAVER,)	
)	
Respondent.)	
)	
)	

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

Petitioner is currently incarcerated at the United States Penitentiary in Atwater, California. He challenges his 2008 conviction in the United States District Court for the District of Minnesota for violation of 18 U.S.C. §§ 922(g)(1), 924(e)(1). He states he appealed to the Eighth Circuit Court of Appeals and the appeal was denied. He states he then filed a motion pursuant to 28 U.S.C. § 2255 in the United States District Court for the District of Minnesota. The § 2255 motion was denied. He states he then filed a second motion under § 2255 but the motion was denied as successive. He filed a petition for relief in the Eighth Circuit, and the court denied the petition in full.

1 28 U.S.C. § 2255); see Hernandez, 204 F.3d at 864-65. The Ninth Circuit has recognized that it is a
2 very narrow exception. Ivy v. Pontesso, 328 F.3d 1057, 1059 (9th Cir.2003). The remedy under §
3 2255 usually will not be deemed inadequate or ineffective merely because a prior § 2255 motion was
4 denied, or because a remedy under that section is procedurally barred. See Aronson v. May, 85 S.Ct.
5 3, 5 (1964) (a court’s denial of a prior § 2255 motion is insufficient to render § 2255 inadequate.);
6 Tripati, 843 F.2d at 1162-63 (a petitioner's fears of bias or unequal treatment do not render a § 2255
7 petition inadequate); Williams v. Heritage, 250 F.2d 390 (9th Cir.1957); Hildebrandt v. Swope, 229
8 F.2d 582 (9th Cir.1956).

9 The Ninth Circuit has held that Section 2255 provides an ‘inadequate and ineffective’ remedy
10 (and thus that the petitioner may proceed under Section 2241) when the petitioner: (1) makes a claim
11 of actual innocence; and, (2) has never had an ‘unobstructed procedural shot’ at presenting the claim.
12 Stephens, 464 F.3d at 898. The burden is on the petitioner to show that the remedy is inadequate or
13 ineffective. Redfield v. United States, 315 F.2d 76, 83 (9th Cir.1963).

14 In this case, Petitioner is challenging the validity and constitutionality of his federal sentence
15 as imposed by the United States District Court for the District of Minnesota, rather than an error in the
16 administration of his sentence. Therefore, the appropriate procedure would be to file a motion
17 pursuant to § 2255 in the District of Minnesota, not a habeas petition pursuant to § 2241 in this Court.
18 Petitioner acknowledges this fact, but argues he should be allowed to pass through the savings clause
19 because his prior § 2255 motion was denied as successive. The argument is unavailing. As noted
20 above, the remedy under § 2255 usually will not be deemed inadequate or ineffective merely because
21 the remedy under that section is procedurally barred. Aronson, 85 S.Ct. at 5. In addition, Petitioner
22 states he presented his claims to the Eighth Circuit and the petition was denied. Therefore, Petitioner
23 fails to show that he has never had an unobstructed procedural opportunity to present his claims.

24 Moreover, Petitioner has failed to demonstrate that his claims qualify under the savings clause
25 of Section 2255 because Petitioner's claims are not proper claims of “actual innocence.” In the Ninth
26 Circuit, a claim of actual innocence for purposes of the Section 2255 savings clause is tested by the
27 standard articulated by the United States Supreme Court in Bousley v. United States, 523 U.S. 614
28 (1998). Stephens, 464 U.S. at 898. In Bousley, the Supreme Court explained that, “[t]o establish actual

1 innocence, petitioner must demonstrate that, in light of all the evidence, it is more likely than not that
2 no reasonable juror would have convicted him.” Bousley, 523 U.S. at 623 (internal quotation marks
3 omitted). Petitioner bears the burden of proof on this issue by a preponderance of the evidence, and he
4 must show not just that the evidence against him was weak, but that it was so weak that “no reasonable
5 juror” would have convicted him. Lorensen, 223 F.3d at 954. In this case, Petitioner does not assert
6 that he is factually innocent of the crime for which he was convicted. Rather, he takes issue with his
7 sentence. Under the savings clause, Petitioner must demonstrate that he is actually innocent of the
8 crime for which he has been convicted, not the sentence imposed. See Ivy, 328 F.3d at 1060;
9 Lorensen, 223 F.3d at 954 (to establish jurisdiction under Section 2241, petitioner must allege that he
10 is “‘actually innocent’ of the crime of conviction”); Edwards v. Daniels, 2006 U.S. Dist. LEXIS
11 94750, at *7, 2006 WL 3877525 (D.Or.2006) (“Petitioner's assertion that he is actually innocent of a
12 portion of his sentence does not qualify him for the ‘escape hatch’ of § 2255 because he must allege
13 that he is ‘legally innocent of the crime for which he has been convicted,’ not the sentence imposed.”),
14 *adopted by* Edwards v. Daniels, 2007 U.S. Dist. LEXIS 12356, 2007 WL 608115 (D.Or.2007).
15 Therefore, the instant § 2241 petition does not fit within the exception to the general bar against using
16 Section 2241 to collaterally attack a conviction or sentence imposed by a federal court. See Lorensen,
17 223 F.3d at 954 (declining to decide whether federal prisoners who are actually innocent may resort to
18 Section 2241 when relief is not available under Section 2255 because the petitioner had not shown
19 actual innocence); see also Stephens, 464 F.3d at 898-99 (concluding that, although petitioner satisfied
20 the requirement of not having had an “unobstructed procedural shot” at presenting his instructional
21 error claim under Richardson v. United States, 526 U.S. 813, 119 (1999), petitioner could not satisfy
22 the actual innocence requirement as articulated in Bousley and, thus, failed to properly invoke the
23 escape hatch exception of Section 2255); Harrison, 519 F.3d at 959 (“[A] motion meets the escape
24 hatch criteria of § 2255 ‘when a petitioner (1) makes a claim of actual innocence, and (2) has not had
25 an unobstructed procedural shot at presenting that claim.’”).

26 Accordingly, the Court concludes that Petitioner has not demonstrated that Section 2255
27 constitutes an “inadequate or ineffective” remedy for raising his claims. Section 2241 is not the
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1 proper statute for raising Petitioner's claims, and the petition should be dismissed for lack of
2 jurisdiction.

3 **RECOMMENDATION**

4 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas corpus
5 be DISMISSED with prejudice for lack of jurisdiction.

6 This Findings and Recommendation is submitted to the Honorable Lawrence J. O'Neill, United
7 States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304
8 of the Local Rules of Practice for the United States District Court, Eastern District of California.
9 Within thirty (30) days after being served with a copy, Petitioner may file written objections with the
10 Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
11 Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
12 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive
13 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14
15 IT IS SO ORDERED.

16 Dated: June 3, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE