



1 Williams, Case No. 3:05-CR-00076-04-RRB (D. Alaska).<sup>1</sup> He was sentenced to concurrent terms of  
2 264 months and 240 months. Id.

3 Petitioner appealed to the Ninth Circuit Court of Appeals. In its order of September 26, 2007  
4 affirming judgment, the Ninth Circuit denied Petitioner's claims that there was insufficient evidence to  
5 convict him and that he was unconstitutionally sentenced on the basis of conduct for which he was  
6 acquitted. See United States v. Roberds, 249 Fed.Appx. 505, 507 (9th Cir. 2007).

7 On December 22, 2008, Petitioner filed a motion to vacate judgment pursuant to 28 U.S.C. §  
8 2255. See Williams, Case No. 3:05-CR-00076-04-RRB, Docket Entry 576. He raised numerous  
9 claims including, *inter alia*, allegations of ineffective assistance of counsel. Id., Docket Entry 577.  
10 During the course of those proceedings, Petitioner was represented by three different attorneys, and  
11 each attorney sought to withdraw from the case with Petitioner's permission. Id., Docket Entry 794.  
12 After those three attorneys had withdrawn, Petitioner represented himself and litigated the case pro se.  
13 Id., Docket Entries 793, 806. On January 31, 2012, the motion to vacate under § 2255 was denied.  
14 Id., Docket Entry 810. Petitioner filed a motion for reconsideration, and the motion was denied on  
15 June 20, 2012. Id., Docket Entries 813, 824, 826, 827.

16 Petitioner appealed to the Ninth Circuit Court of Appeals on March 12, 2012. Id., Docket  
17 Entry 815. The appeal was denied on July 25, 2012. Id., Docket Entry 828. On January 22, 2013,  
18 Petitioner filed a motion for relief from judgment, and the motion was denied on February 13, 2013.  
19 Id., Docket Entries 830, 832. Petitioner sought reconsideration, and reconsideration was denied. Id.,  
20 Docket Entries 839, 842, 844, 845. Petitioner again appealed to the Ninth Circuit and the appeal was  
21 denied. Id., Docket Entries 843, 848.

22 On January 28, 2014, Petitioner petitioned for writ of certiorari in the United States Supreme  
23 Court. Id., Docket Entry 856. The petition was denied on June 23, 2014. Id.

24 On November 6, 2015, Petitioner moved to reduce his sentence. Id., Docket Entry 880. On  
25 November 23, 2015, the District Court of Alaska granted the motion and reduced the sentence to 240  
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27 <sup>1</sup> The Court may take judicial notice of facts that are capable of accurate and ready determination by resort to sources  
28 whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333  
(9th Cir. 1993). Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n. 1  
(N.D.Cal.1978), *aff'd*, 645 F.2d 699 (9th Cir.).

1 months. Id., Docket Entry 883.

2 Petitioner now brings this habeas petition challenging his conviction. He claims his trial and  
3 appellate attorneys rendered ineffective assistance of counsel. He further alleges his post-conviction  
4 attorney was ineffective in failing to litigate the issues of ineffective assistance of trial and appellate  
5 counsel.

## 6 DISCUSSION

7 A federal prisoner who wishes to challenge the validity or constitutionality of his federal  
8 conviction or sentence must do so by way of a motion to vacate, set aside, or correct the sentence  
9 under 28 U.S.C. § 2255. Tripati v. Henman, 843 F.2d 1160, 1162 (9th Cir.1988); see also Stephens v.  
10 Herrera, 464 F.3d 895, 897 (9th Cir.2006), *cert. denied*, 549 U.S. 1313 (2007). In such cases, only the  
11 sentencing court has jurisdiction. Tripati, 843 F.2d at 1163. Generally, a prisoner may not collaterally  
12 attack a federal conviction or sentence by way of a petition for a writ of habeas corpus pursuant to 28  
13 U.S.C. § 2241. Grady v. United States, 929 F.2d 468, 470 (9th Cir.1991); Tripati, 843 F.2d at 1162;  
14 see also United States v. Flores, 616 F.2d 840, 842 (5th Cir.1980).

15 In contrast, a prisoner challenging the manner, location, or conditions of that sentence's  
16 execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241 in the district where  
17 the petitioner is in custody. Stephens, 464 F.3d at 897; Hernandez v. Campbell, 204 F.3d 861, 864-65  
18 (9th Cir.2000) (per curiam). "The general rule is that a motion under 28 U.S.C. § 2255 is the  
19 exclusive means by which a federal prisoner may test the legality of his detention, and that restrictions  
20 on the availability of a § 2255 motion cannot be avoided through a petition under 28 U.S.C. § 2241."  
21 Stephens, 464 F.3d at 897 (citations omitted).

22 Nevertheless, an exception exists by which a federal prisoner may seek relief under § 2241 if  
23 he can demonstrate the remedy available under § 2255 to be "inadequate or ineffective to test the  
24 validity of his detention." United States v. Pirro, 104 F.3d 297, 299 (9th Cir.1997) (quoting 28 U.S.C.  
25 § 2255); see Hernandez, 204 F.3d at 864-65. The Ninth Circuit has recognized that it is a very narrow  
26 exception. Ivy v. Pontesso, 328 F.3d 1057, 1059 (9th Cir.2003). The remedy under § 2255 usually  
27 will not be deemed inadequate or ineffective merely because a prior § 2255 motion was denied, or  
28 because a remedy under that section is procedurally barred. See Aronson v. May, 85 S.Ct. 3, 5 (1964)

1 (a court’s denial of a prior § 2255 motion is insufficient to render § 2255 inadequate.); Tripati, 843  
2 F.2d at 1162-63 (a petitioner's fears of bias or unequal treatment do not render a § 2255 petition  
3 inadequate).

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

9 In this case, Petitioner is challenging the validity and constitutionality of his conviction as  
10 imposed by the United States District Court for the District of Alaska, rather than an error in the  
11 administration of his sentence. Therefore, the appropriate procedure would be to file a motion  
12 pursuant to § 2255 in the District of Alaska, not a habeas petition pursuant to § 2241 in this Court.  
13 Petitioner acknowledges this fact, but argues the remedy under § 2255 is inadequate and ineffective.  
14 Petitioner’s argument is unavailing because he has had multiple unobstructed procedural opportunities  
15 to present his claim, and he does not present a claim of actual innocence.

16 First, as evidenced by the procedural history of this case, Petitioner has had numerous  
17 opportunities to present his claims to the sentencing court. In fact, the majority of the § 2255 motion  
18 concerned claims of ineffective assistance of trial and appellate counsel. See Williams, Case No.  
19 3:05-CR-00076-04-RRB, Docket Entries 577, 620. He also faults post-conviction counsel for failing  
20 to raise issues of ineffective assistance of counsel, but post-conviction counsel withdrew and Petitioner  
21 continued to litigate his case. Moreover, the petition and supplemental petition thoroughly addressed  
22 claims of ineffective assistance of counsel. Id. The petition set forth 102 grounds for relief, and the  
23 amended petition expounded on his claims of ineffective assistance of trial and appellate counsel. Id.

24 In addition, Petitioner has failed to demonstrate that his claims qualify under the savings clause  
25 of Section 2255 because his claims are not proper claims of “actual innocence.” In the Ninth Circuit, a  
26 claim of actual innocence for purposes of the Section 2255 savings clause is tested by the standard  
27 articulated by the United States Supreme Court in Bousley v. United States, 523 U.S. 614 (1998).  
28 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. Lorentsen, 223 F.3d at 954. In this case, Petitioner makes no claim  
6 of being factually innocent of drug conspiracy or maintaining a drug involved premises.<sup>2</sup> Rather, he  
7 takes issue with the performance of his defense and appellate counsel. Therefore, the instant § 2241  
8 petition does not fit within the exception to the general bar against using Section 2241 to collaterally  
9 attack a conviction imposed by a federal court. See Stephens, 464 F.3d at 898-99 (concluding that,  
10 although petitioner satisfied the requirement of not having had an “unobstructed procedural shot” at  
11 presenting his instructional error claim under Richardson v. United States, 526 U.S. 813, 119 (1999),  
12 petitioner could not satisfy the actual innocence requirement as articulated in Bousley and, thus, failed  
13 to properly invoke the escape hatch exception of Section 2255).

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

### 17 ORDER

18 The Court **DIRECTS** the Clerk of the Court to assign a United States District Judge to this  
19 case.

### 20 RECOMMENDATION

21 Accordingly, the Court **RECOMMENDS** that the Petition for Writ of Habeas Corpus be  
22 **DISMISSED** for lack of jurisdiction.

23 This Findings and Recommendation is submitted to the United States District Court Judge  
24 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 72-304 of the  
25 Local Rules of Practice for the United States District Court, Eastern District of California. Within  
26 twenty-one days after being served with a copy of this Findings and Recommendation, any party may

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28 <sup>2</sup> In fact, the Ninth Circuit determined on appeal that there was sufficient evidence to convict on both counts. See United States v. Roberds, 249 Fed.Appx. 505, 507 (9th Cir. 2007).

1 file written objections with the Court and serve a copy on all parties. Such a document should be  
2 captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the  
3 Objections shall be served and filed within ten court days (plus three days if served by mail) after  
4 service of the Objections. The Court will then review the Magistrate Judge's ruling pursuant to 28  
5 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time  
6 may waive the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir.  
7 1991).

8  
9 IT IS SO ORDERED.

10 Dated: July 20, 2018

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE