

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 KENNETH ROSHAUN REID,

10 Petitioner,

11 v.

12 S. LAKE,

13 Respondent.

Case No. 1:19-cv-00244-AWI-EPG-HC

FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS

14
15 Petitioner Kenneth Roshaun Reid is a federal prisoner proceeding *pro se* with a petition
16 for writ of habeas corpus pursuant to 28 U.S.C. § 2241. In the instant petition, Petitioner
17 challenges his conviction and sentence imposed by the United States District Court for the
18 District of South Carolina. As this Court does not have jurisdiction to entertain the instant
19 petition pursuant to the savings clause of 28 U.S.C. § 2255(e), the undersigned recommends
20 dismissal of the petition without prejudice to Petitioner filing any appropriate motion for
21 sentence reduction in the sentencing court.

22 **I.**

23 **BACKGROUND**

24 Petitioner is currently incarcerated at the United States Penitentiary in Atwater,
25 California, serving a sentence imposed in 2005 by the United States District Court for the
26 District of South Carolina for a drug conspiracy offense involving crack cocaine. (ECF No. 1 at
27 1–3).¹ On February 19, 2019, Petitioner filed the instant petition for writ of habeas corpus. (ECF

28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 No. 1). Petitioner challenges his “crack cocaine sentence on count 1” pursuant to the First Step
2 Act. (Id. at 1). Petitioner also asserts an actual innocence claim on the basis that guilt must be
3 established by a jury’s determination as to what drug quantity was attributable and reasonably
4 foreseeable to the individual defendant in all conspiracy cases. (Id.).

5 II.

6 DISCUSSION

7 A. Jurisdiction Under 28 U.S.C. § 2241

8 A federal court may not entertain an action over which it has no jurisdiction. Hernandez
9 v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000) (per curiam). Thus, a district court must address
10 the threshold question whether a petition was properly brought under § 2241 or § 2255 in order
11 to determine whether the district court has jurisdiction. Id. A federal prisoner who wishes to
12 challenge the validity or constitutionality of his federal conviction or sentence must do so by
13 moving the court that imposed the sentence to vacate, set aside, or correct the sentence under 28
14 U.S.C. § 2255. Alaimalo v. United States, 645 F.3d 1042, 1046 (9th Cir. 2011). “The general
15 rule is that a motion under 28 U.S.C. § 2255 is the exclusive means by which a federal prisoner
16 may test the legality of his detention, and that restrictions on the availability of a § 2255 motion
17 cannot be avoided through a petition under 28 U.S.C. § 2241.” Stephens v. Herrera, 464 F.3d
18 895, 897 (9th Cir. 2006) (citations omitted).

19 Nevertheless, a “savings clause” or “escape hatch” exists in § 2255(e) by which a federal
20 prisoner may seek relief under § 2241 if he can demonstrate the remedy available under § 2255
21 to be “inadequate or ineffective to test the validity of his detention.” Alaimalo, 645 F.3d at 1047
22 (internal quotation marks omitted) (quoting 28 U.S.C. § 2255); Harrison v. Ollison, 519 F.3d
23 952, 956 (9th Cir. 2008); Hernandez, 204 F.3d at 864–65. The Ninth Circuit has recognized that
24 it is a very narrow exception. See Ivy v. Pontesso, 328 F.3d 1057, 1059 (9th Cir. 2003). The
25 remedy under § 2255 usually will not be deemed inadequate or ineffective merely because a
26 prior § 2255 motion was denied, or because a remedy under § 2255 is procedurally barred. Id.
27 The burden is on the petitioner to show that the remedy is inadequate or ineffective. Redfield v.
28 United States, 315 F.2d 76, 83 (9th Cir. 1963).

1 A petitioner may proceed under § 2241 pursuant to the savings clause when the petitioner
2 “(1) makes a claim of actual innocence, and (2) has not had an ‘unobstructed procedural shot’ at
3 presenting that claim.” Stephens, 464 F.3d at 898 (citing Ivy, 328 F.3d at 1060). With respect to
4 the first requirement, in the Ninth Circuit a claim of actual innocence for purposes of the § 2255
5 savings clause is tested by the standard articulated by the Supreme Court in Bousley v. United
6 States, 523 U.S. 614 (1998). Stephens, 464 F.3d at 898. In Bousley, the Supreme Court
7 explained that “[t]o establish actual innocence, petitioner must demonstrate that, in light of all
8 the evidence, it is more likely than not that no reasonable juror would have convicted him.” 523
9 U.S. at 623 (internal quotation marks and citation omitted). Furthermore, “actual innocence
10 means factual innocence, not mere legal insufficiency.” Id.

11 Regardless of how Petitioner labels his claim, Petitioner does not in fact demonstrate that
12 he is factually innocent of a drug conspiracy offense. Rather, the crux of Petitioner’s argument
13 appears to be that he received an enhanced sentence that he would not have received had the jury
14 made a specific drug quantity finding.² However, the Ninth Circuit has “not yet resolved the
15 question whether a petitioner may ever be actually innocent of a noncapital *sentence* for the
16 purpose of qualifying for the escape hatch.” Marrero v. Ives, 682 F.3d 1190, 1193 (9th Cir.
17 2012).

18 Based on the foregoing, the Court finds that Petitioner has failed to establish a cognizable
19 claim of actual innocence for purposes of qualifying to bring a § 2241 habeas petition under the
20 savings clause of § 2255(e).

21 **B. First Step Act of 2018**

22 Petitioner also challenges his “crack cocaine sentence on count 1” pursuant to the First
23 Step Act of 2018. (ECF No. 1 at 1). Section 404 of the First Step Act provides:

24 *A court that imposed a sentence for a covered offense may, on*
25 *motion of the defendant, the Director of the Bureau of Prisons, the*

26 ² The Court notes, however, that on direct appeal the Fourth Circuit stated that Petitioner “did not receive a
27 heightened sentence under § 841(b)(1)(A) or (b)(1)(B), but rather a 20-year sentence under § 841(b)(1)(C),” which
28 does not require a specific drug quantity determination. United States v. Reid, 523 F.3d 310, 316 (4th Cir. 2008).
See United States v. Sanchez-Cervantes, 282 F.3d 664, 669 (9th Cir. 2002), as amended (Mar. 15, 2002) (“If the jury
convicted the defendant of a drug violation, even with no finding of a particular drug quantity, a sentence of twenty
years or less would not violate Apprendi.”).

1 attorney for the Government, or the court, impose a reduced
2 sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010
3 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the
4 covered offense was committed.

5 First Step Act of 2018, Pub. L. No. 115-391, § 404(b), 132 Stat. 5194 (2018) (emphasis added).

6 However, whether section 404 of the First Step Act is applicable and entitles Petitioner to a
7 reduced sentence is a question to be resolved by the court that imposed Petitioner's sentence
8 rather than this Court.

9 III.

10 RECOMMENDATION

11 Based on the foregoing, the undersigned HEREBY RECOMMENDS that the petition for
12 writ of habeas corpus be DISMISSED without prejudice to Petitioner filing any appropriate
13 motion for sentence reduction in the sentencing court.

14 This Findings and Recommendation is submitted to the assigned United States District
15 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
16 Rules of Practice for the United States District Court, Eastern District of California. Within
17 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file
18 written objections with the court and serve a copy on all parties. Such a document should be
19 captioned "Objections to Magistrate Judge's Findings and Recommendation." The assigned
20 United States District Court Judge will then review the Magistrate Judge's ruling pursuant to 28
21 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
22 time may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d
23 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24 IT IS SO ORDERED.

25 Dated: April 1, 2019

26 /s/ Eric P. Groj
27 UNITED STATES MAGISTRATE JUDGE
28