UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

SHANE T. WATKINS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 18-cv-1183
	)	
J E KRUEGER,	)	
	)	
Respondent.	)	

ORDER & OPINION

This matter is before the Court on a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1) filed by Shane T. Watkins. The petition has been fully briefed. For the reasons stated below, the petition is DISMISSED WITH PREJUDICE.

DISCUSSION

The Court will only briefly discuss Watkins' background because it is clear, without diving into the merits, that he cannot bring this petition. On April 22, 2004, a grand jury indicted Watkins with knowingly possessing more than 50 grams of a substance and mixture containing cocaine base (crack) with intent to distribute, in violation of 21 U.S.C. § 841(a)(1)(A) and § 841(b)(1)(A). *United States v. Watkins*, 04-cr-10037 (C.D. Ill. 2005) (Docs. 1, 38). On May 3, 2004, the Government filed a notice pursuant to 21 U.S.C. § 851 of its intent to use evidence of Watkins' prior convictions to enhance his sentence. *Id.* (Doc. 6). The convictions noticed by the Government were a (1) 1996 conviction for possession of a controlled substance with intent to deliver in Macon County, Illinois, (2) 1998 conviction for delivery of a controlled substance in

Peoria County, Illinois, and (3) 2001 conviction of possession of a controlled substance in the Central District of Illinois. *Id.* On December 8, 2004, a jury found Watkins guilty. *Id.* (Doc. 43). Watkins was sentenced to mandatory life imprisonment based on his prior felony convictions. His conviction and sentence were affirmed on appeal. *United States v. Watkins*, 175 F. App'x 53, 54 (7th Cir. 2006).

On November 18, 2016, Watkins filed his first Petition for Writ Habeas Corpus Under 28 U.S.C. § 2241. *Watkins v. Krueger*, 16-cv-1447 (C.D. Ill. 2018). In relevant part, he argued that under *Mathis v. United States*, 136 S.Ct. 2243 (2016), his prior drug convictions no longer qualify as "controlled substance offenses," and therefore may not serve as predicate offenses to support a mandatory life sentence. *Id.* (Doc. 1 at 12).

On January 18, 2018, Judge Shadid denied Watkins' petition, noting that challenges to an erroneous career offender designation are not cognizable on collateral review. *Id.* (Doc. 18 at 3). Furthermore, Judge Shadid held that Watkins' prior convictions satisfy the broad definition of "felony drug offense" under 21 U.S.C. § 802(44) and therefore were properly used to enhance Watkins' sentence. *Id.*

Now, Watkins attempts to file another § 2241 petition raising the same *Mathis* claim. Watkins argues that *Mathis* means his prior Illinois narcotic drug offenses no longer qualify as "felony drug offenses" under § 802(44). As previously explained, Judge Shadid disagreed and held that Watkins' prior convictions satisfy 802(44)'s definition of "felony drug offense." Watkins does not get to re-litigate the issue before this Court simply because he disagrees with Judge Shadid's determination.

Furthermore, to the extent Watkins attempts to raise new arguments based

on *Mathis*, the Government raises the affirmative defense of abuse of writ. A petitioner abuses the federal writ of habeas corpus "by raising a claim in a subsequent petition that he could have raised in his first, regardless of whether the failure to raise it earlier stemmed from a deliberate choice." *McCleskey v. Zant*, 499 U.S. 467, 489 (1991). By filing the instant petition, Watkins is abusing the writ of habeas corpus because any claim based on *Mathis* was available to Watkins when he filed his first § 2241 petition in late 2016. His petition must therefore be dismissed with prejudice. *Arnaout v. Marberry*, 351 F. App'x 143, 145 (7th Cir. 2009) (second habeas petition was an abuse of writ and thus properly dismissed with prejudice).

In any event, Watkins cannot bring an independent *Mathis* claim in a § 2241 petition. Federal prisoners who wish to collaterally attack their convictions or sentences ordinarily must do so under 28 U.S.C. § 2255. *Brown v. Rios*, 696 F.3d 638, 640 (7th Cir. 2012). Federal inmates may file a petition under 28 U.S.C. § 2241 only in the rare circumstance in which the remedy provided under § 2255 "is inadequate or ineffective to test the legality of his detention." *See* 28 U.S.C. § 2255(e) (often referred to as "the Savings Clause").

Section 2255 is inadequate or ineffective only if the following three requirements are met: "(1) the petitioner must rely on a [Supreme Court] case of statutory interpretation (because invoking such a case cannot secure authorization for a second § 2255 motion); (2) the new rule must be previously unavailable and apply retroactively; and (3) the error asserted must be grave enough to be deemed a miscarriage of justice, such as the conviction of an innocent defendant." *Davis v. Cross,* 863 F.3d 962, 964 (7th Cir. 2017).

The Seventh Circuit suggested in *Dawkins v. United States*, 829 F.3d 549, 551 (7th Cir. 2016), that an "independent claim based on *Mathis*" could be brought, "if at all, in a petition under 28 U.S.C. § 2241." (emphasis added). Yet, the Supreme Court in *Mathis* explicitly held that its longstanding precedent resolved the case, and that *Taylor v. United States*, 495 U.S. 575, 600-01 (1990) "set out the essential rule governing ACCA cases more than a quarter century ago." *Mathis*, 136 S.Ct. at 2251.

While this Court has held that independent *Mathis* claims cannot be brought in a § 2241 petition because *Mathis* is not a new rule, *Robinson v. Krueger*, No. 17-01187, 2017 WL 2407253, at *5 (C.D. Ill. June 2, 2017); *Cox v. Kallis*, No. 17-1243, 2018 WL 2994378, at *3 (C.D. Ill. June 14, 2018), *reconsideration denied*, No. 17-1243, 2018 WL 3232771 (C.D. Ill. July 2, 2018), district courts in the Seventh Circuit are admittedly split on the issue, *compare Wadlington v. Werlich*, No. 17-CV-449, 2017 WL 3055039, at *3 (S.D. Ill. July 17, 2017) (reasoning that *Mathis* satisfied the first two requirements to bring a § 2241 petition); *and Winters v. Krueger*, No. 217CV00386, 2018 WL 2445554, at *2 (S.D. Ind. May 31, 2018) (same); *with Neff v. Williams*, No. 16-CV-749, 2017 WL 3575255, at *2 (W.D. Wis. Aug. 17, 2017) (*Mathis* "merely reaffirmed its 1990 holding in *Taylor*").

In line with the Supreme Court's language in *Mathis* and this Court's prior decisions in *Robinson* and *Cox*, the Court concludes that *Mathis* is not a new rule and therefore cannot satisfy the second requirement for filing a § 2241 petition.

CONCLUSION

For the reasons stated above, Watkins' Second Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Doc. 1) is DISMISSED WITH PREJUDICE.

Entered this 24th day of August, 2018.

s/ Joe B. McDade
JOE BILLY McDADE
United States Senior District Judge