

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

EMIL LONGNECK,	)	
	)	
Petitioner,	)	
v.	)	No. 2:12-cv-0247-WTL-MJD
	)	
J. F. CARAWAY,	)	
	)	
Respondent.	)	

**Entry Discussing Petition for Writ of Habeas Corpus**

Petitioner Longneck is confined within this District and seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241(c)(3). He challenges the validity of his conviction entered in the United States District Court for the District of Montana.

A motion pursuant to 28 U.S.C. § 2255 is the presumptive means by which a federal prisoner can challenge his conviction or sentence. *See Davis v. United States*, 417 U.S. 333, 343 (1974); *United States v. Bezy*, 499 F.3d 668, 670 (7th Cir. 2007). However, a petition challenging the conviction may be brought pursuant to 28 U.S.C. § 2241 only if § 2255 “would not . . . be[ ] adequate to test the legality of the conviction and sentence.” *Melton v. United States*, 359 F.3d 855, 858 (7th Cir. 2004); 28 U.S.C. § 2255(e).

A remedy via § 2255 is “inadequate or ineffective to test the legality of [the] detention” when a legal theory that could not have been presented under § 2255 establishes the petitioner's actual innocence. *In re Davenport*, 147 F.3d 605 (7th Cir. 1998). “A procedure for post-conviction relief can fairly be termed inadequate when it is so configured as to deny a convicted defendant any opportunity for judicial rectification of so fundamental a defect in his conviction as having been imprisoned for a nonexistent offense.” *Id.* at 611. It is the inmate's burden to show that a § 2241 remedy is the proper one. *Jeffers v. Chandler*, 253 F.3d 827, 830 (5th Cir. 2001). “The essential point is that a prisoner is entitled to one unencumbered opportunity to receive a decision on the merits.” *Potts v. United States*, 210 F.3d 770 (7th Cir. 2000).

Following Longneck's direct appeal, he filed a motion for relief pursuant to 28 U.S.C. § 2255. That motion was denied on May 23, 2007. The claim in the habeas

petition was considered and rejected in the § 2255 action. That motion provided Longneck with all the opportunity the law contemplates. His motion was denied. He is not entitled to use § 2241 for another bite at the apple.

Longneck has sought relief pursuant to 28 U.S.C. § 2241 under circumstances which do not permit or justify the use of that remedy. His petition for a writ of habeas corpus is therefore **denied**. Judgment consistent with this Entry shall now issue.

**IT IS SO ORDERED.**

Date: 11/27/2012



Hon. William T. Lawrence, Judge  
United States District Court  
Southern District of Indiana

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