

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
(at LONDON)

TIMOTHY L. HOLLOWAY,

Petitioner,

V.

J. GILLEY, WARDEN,

Respondent.

Civil Action No. 6:23-CV-134-CHB

MEMORANDUM OPINION
AND ORDER

*** **

Petitioner Timothy L. Holloway is a federal prisoner currently confined at the United States Penitentiary-McCreary (“USP-McCreary”) in Pine Knot, Kentucky. Proceeding without counsel, Holloway has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 [R. 1] and has paid the requisite filing fee [R. 4]. Accordingly, this matter is before the Court for an initial screening pursuant to 28 U.S.C. § 2243. *See Alexander v. Northern Bureau of Prisons*, 419 F. App’x 544, 545 (6th Cir. 2011).¹

In his § 2241 petition, Holloway challenges his 1997 conviction for various firearm and methamphetamine offenses on the basis of his actual innocence. [R. 1]; *see also United States v. Holloway*, 2:96-cr-13-2 (M.D. Tenn. 1996). Holloway relies on *United States v. Descamps*, 133 S. Ct. 2276 (2013), and *United States v. Mathis*, 136 S. Ct. 2243 (2016), to argue his prior conviction no longer qualifies as a predicate offense. [R. 1, p. 8–11]. He also relies on *Kisor v. Wilke*, 139 S. Ct. 2400 (2017), to argue the United States Sentencing Commission exceeded the

¹ Upon this preliminary screening, a petition will be denied “if it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (applicable to § 2241 petitions pursuant to Rule 1(b)).

scope of its authority when it defined a “controlled substance offense” in the United States Sentencing Guidelines Manual and commentary. *Id.* at 4, 6–8. Holloway states that while he never filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255, that remedy would nonetheless be inadequate or ineffective to test the legality of his conviction because he is relying upon decisions of statutory interpretation. *Id.* at 4.

Upon review, Holloway’s § 2241 petition must be dismissed for lack of subject-matter jurisdiction. While 28 U.S.C. § 2241 “grants federal courts the authority to issue writs of habeas corpus to prisoners whose custody violates federal law,” section 2441’s applicability is severely restricted by 28 U.S.C. § 2255, which “serves as the primary means for a federal prisoner to challenge his conviction or sentence.” *See Taylor v. Owens*, 990 F.3d 493, 495 (6th Cir. 2021). As Holloway himself seems to recognize, a federal prisoner generally may not use a § 2241 petition to challenge the legality of his conviction or enhancement of his sentence but must instead file a motion under § 2255 in the court that sentenced him. *See United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001) (explaining the difference between a § 2255 motion and § 2241 petition). However, since the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a federal prisoner may not “file a second or successive § 2255 motion based solely on a more favorable interpretation of statutory law adopted after his conviction became final” *Jones v. Hendrix*, 143 S. Ct. 1857, 1863 (2023). This presents a challenge for petitioners like Holloway, who seek to rely upon decisions of statutory, rather than constitutional, significance.

Prior to the United States Supreme Court’s decision in *Jones v. Hendrix*, many federal courts (including the Sixth Circuit Court of Appeals) allowed a federal prisoner to challenge his conviction or sentence in a § 2241 petition via the “saving clause” of 28 U.S.C. § 2255(e), which authorizes a habeas petition if it appears the remedy afforded by 28 U.S.C. § 2255 is “inadequate

or ineffective” to test the legality of the prisoner’s detention. *See* 28 U.S.C. § 2255(e). For example, in the Sixth Circuit, a petitioner could satisfy the saving clause by showing “that he had no prior reasonable opportunity to bring [his] argument in his earlier section 2255 proceedings . . . by identifying a Supreme Court decision that post-dates his original section 2255 proceedings, adopts a new interpretation of the statute of conviction, and supports his innocence claim.” *Taylor v. Owens*, 990 F.3d 493, 499 (6th Cir. 2021) (cleaned up). Although Holloway indicates he never filed a § 2255 petition, he maintains § 2255 would be an inadequate or ineffective remedy. Therefore, Holloway is by default attempting to rely upon the “saving clause” of § 2255(e) to bring his claims in this § 2241 proceeding.

Unfortunately for Holloway, the Supreme Court recently held in *Jones* that “the saving clause does not authorize such an end-run around the AEDPA.” *Jones*, 143 S. Ct. at 1868. According to the high court, the inability of a prisoner with a statutory claim to satisfy the two limited conditions specified by § 2255(h) “in which Congress has permitted federal prisoners to bring second or successive collateral attacks on their sentences . . . does not mean that he can bring his claim in a habeas petition under the saving clause. It means that he cannot bring it at all.” *Id.* at 1869.

In light of *Jones*, a federal prisoner may no longer seek relief from his conviction or sentence based upon a favorable change in statutory interpretation in a § 2241 petition filed via the saving clause of § 2255(e). The saving clause is a jurisdictional bar that a petitioner must clear prior to bringing a challenge to his conviction or sentence in a § 2241 proceeding. *Taylor*, 990 F.3d at 499–500. Because *Jones* makes clear that Holloway is unable to clear this hurdle, his § 2241 petition will be dismissed for lack of subject-matter jurisdiction. *Id.*

Accordingly, it is hereby **ORDERED** as follows:

1. Holloway's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 [R. 1] is **DISMISSED** for lack of subject-matter jurisdiction;
2. This action is **DISMISSED** and **STRICKEN** from the Court's docket; and
3. A corresponding Judgment will be entered this date.

This the 25th day of July, 2023.



Claria Horn Boom

CLARIA HORN BOOM,
UNITED STATES DISTRICT COURT JUDGE
EASTERN AND WESTERN DISTRICTS OF
KENTUCKY