UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Robert Charles Willis, Civ. No. 20-975 (PAM/DTS)

Petitioner,

v. **ORDER**

United States of America,

Defendant.

This matter comes before the Court on the Report and Recommendation (R&R) of United States Magistrate Judge David T. Schultz dated August 17, 2020. The R&R recommends denying Willis's Petition and dismissing this action without prejudice.

This Court must review de novo any portion of an R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); D. Minn. L.R. 72.2(b). The R&R liberally construed Willis's sparse Petition and determined he did not show that 28 U.S.C. § 2241 is an appropriate vehicle for what are quintessential § 2255 claims. Willis buttresses the R&R's conclusion by arguing in his objection that he should have been granted a certificate of appealability as to his previous § 2255 challenges concerning ACCA predicate felonies for sentencing purposes. (Docket No. 3 at 2-5.) Any arguments for a certificate of appealability or requests for permission to a file a second or successive § 2255 claim must be directed to the sentencing court and corresponding appellate court. 28 U.S.C. §§ 2253(c)(1)(B), 2255(h).

Willis also attempts to salvage his § 2241 claims by arguing actual innocence. (Id. at 6-7.) But Willis's own arguments undercut this contention because he does not truly

assert actual innocence but instead argues he should be re-sentenced. (Id. at 7-9.) This assertion necessarily excludes the possibility of actual innocence. See Bousley v. United States, 523 U.S. 614, 623 (1998) (noting "'actual innocence' means factual innocence, not mere legal insufficiency"). Accordingly, Willis has not shown why § 2255 is an inadequate or ineffective remedy, thereby barring this Court from considering his Petition. 28 U.S.C. § 2255(e).

Accordingly, **IT IS HEREBY ORDERED that**:

1. The R&R (Docket No. 2) is **ADOPTED**;

2. Petitioner Robert Charles Willis's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Docket No. 1) is **DENIED** and this matter is **DISMISSED without prejudice**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 11, 2020

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge