

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

EDWIN T. LIMBRICK,)	
)	
Petitioner,)	
)	
-vs-)	Case No. CIV-17-0605-F
)	
BRYAN M. ANTONELLI, Warden,)	
)	
Respondent.)	

ORDER

Petitioner Edwin T. Limbrick, who is confined at the Federal Correctional Institution in El Reno, Oklahoma, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner appears *pro se* and his pleadings are liberally construed.


Magistrate Judge Gary M. Purcell issued a Report and Recommendation (doc. no. 6, the Report), recommending the court dismiss this action without prejudice for lack of jurisdiction. The Report explains that petitioner previously sought relief attacking the legality of his conviction or sentence under 28 U.S.C. § 2255, and that such relief was denied by the sentencing court (the United States District Court for the Eastern District of Texas). The Report notes that a federal prisoner may resort to § 2241 to contest his conviction only in the rare circumstance that the prisoner satisfies § 2255(e)'s savings clause. As the Report explains, if a petitioner's argument challenging the legality of his sentence could have been tested in a § 2255 motion, then the prisoner cannot use § 2255(e)'s savings clause to bring a § 2241 action. The Report addresses petitioner's arguments that Rosemond v. United States, ___ U.S. ___, 134 S. Ct. 1240 (2014), and Johnson v. United States, ___ U.S. ___, 135 S. Ct. 2551 (2015), provide a basis for relief under § 2241. As the Report

states, even if petitioner could show that these cases could be retroactively applied to his 1996 convictions and sentences on collateral review, he has not shown that the remedy afforded by § 2255 is inadequate or ineffective because petitioner could present claims based on those cases in a second or successive § 2255 motion addressed to the sentencing court. The Report concludes that petitioner has not satisfied § 2255(e)'s savings clause and that he is precluded from proceeding under § 2241, requiring dismissal of this action.

Petitioner objects to the Report (doc. no. 7), arguing he is entitled to bring this § 2241 challenge under the savings clause of § 2255(e). The court has reviewed petitioner's objections *de novo*, including but not limited to petitioner's reliance on Rosemond and Johnson. Having done so, the court finds that the Report's detailed analysis addresses the objected to matters, that the conclusions stated in the Report are correct, and that there is no reason to set out any further analysis here.

Petitioner's objections to the Report are **DENIED**. The Report and Recommendation of Magistrate Judge Purcell is **ACCEPTED, ADOPTED** and **AFFIRMED**. As recommended in the Report, this action is **DISMISSED** without prejudice for lack of jurisdiction.

IT IS SO ORDERED this 28th day of July, 2017.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE