UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARK LYNN,	**:**	
Petitioner	**:**	
	:	**No. 1:17-CV-01021**
v.	**:**	
	:	**(Judge Kane)**
S. SPAULDING,	**:**	
Respondent	**:**	

MEMORANDUM

I. BACKGROUND

On June 13, 2017, the Court received and filed a petition for writ of habeas corpus submitted pursuant to 28 U.S.C. § 2241 from pro se Petitioner Mark Lynn, a federal inmate presently confined at the Allenwood Federal Correctional Institute in White Deer, Pennsylvania. (Doc. No. 1.)

Petitioner challenges the United States District Court for the Eastern District of Virginia's resentencing Order of September 10, 2010, in which the Court sentenced Petitioner to a term of 360 months of imprisonment upon finding that he qualified under the career offender guidelines, U.S.S.G. 4B1.1 and 4B1.2 because he had at least two qualifying prior convictions that supported the career offender enhancement. (Id.) Citing Mathis v. United States, 136 S. Ct. 2243 (2016), and Holt v. United States, 843 F.3d 720 (7th Cir. 2016), Petitioner argues that he was improperly given an enhanced sentence under the Sentencing Guidelines because his prior New York conviction of attempted second degree robbery is not a crime of violence. (Id.)

A review of the petition, as well as PACER, the online national index providing public access to court electronic records, reveals that Petitioner previously filed a motion to vacate, set aside, and correct sentence pursuant to 28 U.S.C. § 2255 in the District Court for Eastern District

of Virginia. It appears that Petitioner now seeks habeas relief in this Court pursuant to the "savings clause" of § 2255.

The petition will be given preliminary consideration pursuant to Rule 4 of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254, as made applicable to § 2241 cases by Rule 1 thereof.[1] For the reasons set forth below, the petition will be dismissed summarily.

II. DISCUSSION

It is well settled that a federal criminal defendant's conviction and sentence are subject to collateral attack in a proceeding before the sentencing court pursuant to 28 U.S.C. § 2255. See, e.g., United States v. Addonizio, 442 U.S. 178, 179 (1979). Indeed, to challenge the validity of a sentence, a federal prisoner must file a § 2255 motion in the sentencing court, "a court already familiar with the facts of the case." See Boumediene v. Bush, 553 U.S. 723, 774–75 (2008); see also Swain v. Pressley, 430 U.S. 372, 378 (1977) ("[Section] 2255 created a new postconviction remedy in the sentencing court and provided that a habeas corpus petition may not be entertained elsewhere."); Brown v. Mendez, 167 F. Supp. 2d 723, 726 (M.D. Pa. 2001) ("As a general rule, a § 2255 motion 'supersedes habeas corpus and provides the exclusive remedy' to one in custody pursuant to a federal court conviction.") (quoting Strollo v. Alldredge, 463 F.2d 1194, 1195 (3d Cir. 1972) (per curiam)).

Conversely, a federal prisoner may challenge the execution of his sentence, such as a claim concerning the denial or revocation of parole, or the loss of good-time credits, by filing a § 2241 petition in the district court for the federal judicial district where the prisoner is in custody.

[1] Rule 4 states in pertinent part that "[t]he clerk must promptly forward the petition to judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition . . . ."

See 28 U.S.C. § 2241(a); Rumsfeld v. Padilla, 542 U.S. 426, 443–44 (2004); Coady v. Vaughn, 251 F.3d 480, 485 (3d Cir. 2001).

However, if the petitioner shows "that a § 2255 motion 'is inadequate or ineffective to test the legality of his detention,' . . . [he may] resort to § 2241 to challenge the validity of the conviction or sentence." Brown, 167 F. Supp. 2d at 726; see also 28 U.S.C. § 2255(e); Litterio v. Parker, 369 F.2d 395, 395 (3d Cir. 1966) (per curiam) ("It is firmly established that the remedy available to a federal prisoner under 2255 is exclusive in the absence of a showing that such remedy 'is inadequate or ineffective to test the legality of [the prisoner's] detention.'"). This "safety valve" provision is strictly enforced, and has been held to apply where a petitioner asserts a claim of actual innocence grounded on a theory that he has been detained for conduct subsequently decriminalized due to an intervening and retroactive change in law and where the petitioner "[has] had no prior opportunity to challenge his conviction and c[an] not satisfy the stringent standard for filing a second or successive § 2255 motion." Long v. Fairton, 611 F. App'x 53, 55 (3d Cir. 2015) (citations omitted); United States v. Tyler, 732 F.3d 241, 246 (3d Cir. 2013); In re Dorsainvil, 119 F.3d 245, 251–52 (3d Cir. 1997)). The burden is on the habeas petitioner to demonstrate inadequacy or ineffectiveness. See In re Dorsainvil, 119 F.3d at 251-52.

"Critically, § 2255 is not inadequate or ineffective merely because the petitioner cannot satisfy § 2255's timeliness or other gatekeeping requirements." Long, 611 F. App'x at 55; see Tripati v. Henman, 843 F.2d 1160, 1162 (9th Cir. 1988), cert. denied, 488 U.S. 982 (1988); Cradle v. United States, 290 F.3d 536, 538 (3d Cir. 2002) ("Section 2255 is not inadequate or ineffective merely because the sentencing court does not grant relief, the one-year statute of limitations has expired, or the petitioner is unable to meet the stringent gatekeeping requirements

of the amended § 2255."). "It is the inefficacy of the remedy, not a personal inability to utilize it, that is determinative . . . ." Garris v. Lindsay, 794 F.2d 722, 727 (D.C. Cir. 1986), cert. denied, 479 U.S. 993 (1986).

Here, Petitioner challenges the imposition of his sentence, not its execution. Therefore, to proceed under § 2241, he must demonstrate that a § 2255 motion "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e). Petitioner has not met this burden, as he has not established the inefficacy of a second or successive § 2255 motion in challenging his sentencing enhancement. See Parker v. Warden FCI-Schuylkill, No. 3:CV-17-765, 2017 WL 2445334, at *3 (M.D. Pa. June 6, 2017) ("P[etitioner] has also not shown that he was unable to present his claims in a successive § 2255 proceeding . . . . [Additionally], challenges to career offender status are not properly raised under § 2241."). Specifically, Petitioner makes "no allegation that he is actually innocent of the . . . crime for which he was convicted; he asserts only that his sentence was improper." Mikell v. Recktenwald, 545 F. App'x 82, 84 (3d Cir. 2013).[2] Petitioner's issues with his sentencing, however, do "not make § 2255 inadequate or ineffective." Gardner v. Warden Lewisburg USP, 845 F.3d 99, 103 (3d Cir. 2017) (citing Okereke, 307 F.3d at 120-21). As Petitioner has not adequately demonstrated that § 2255 is an inadequate or ineffective mechanism through which to test the legality of Petitioner's sentencing enhancement, his § 2241 petition will be dismissed for lack of jurisdiction without prejudice to any right he may have to obtain pre-authorization from the appropriate United States Court of Appeals before filing a second or subsequent § 2255 motion in the sentencing court.

[2] Petitioner attempts to rely on Mathis, ostensibly for the proposition that his prior New York conviction for attempted robbery no longer qualifies as a crime of violence predicate offense for enhancing his sentence as a career offender under the United States Sentencing Guidelines § 4B.1. Notably, however, Mathis has not been deemed retroactive on collateral review. Holt v. United States, 843 F.3d 720, 722 (7th Cir. 2016) ("Mathis has not been declared retroactive by the Supreme Court – nor is it a new rule of constitutional law.").

III. CONCLUSION

Based on the foregoing, the petition (Doc. No. 1), will be **DISMISSED WITHOUT PREJUDICE** to the Petitioner's right to file a § 2255 motion in the sentencing court, subject to the pre-authorization requirements of 28 U.S.C. §§ 2244 and 2255(h), as they may apply. Because Petitioner is not detained by virtue of a process issued by a state court and the petition is not brought pursuant to § 2255, no action by this Court with respect to a certificate of appealability is necessary.

An appropriate Order follows.