

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>ELISTON F. GEORGE,</b>	)	
	)	
Petitioner,	)	Case No. 7:14CV00279
	)	
v.	)	<b>OPINION</b>
	)	
<b>HAROLD W. CLARKE,</b>	)	By: James P. Jones
	)	United States District Judge
Respondent.	)	

*Eliston F. George, Pro Se Petitioner.*

The petitioner, an inmate proceeding pro se, brings this Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241. The petitioner asserts that, based on falsified evidence, he was wrongly convicted in 1978 in the District Court of the Virgin Islands, a local or territorial court, now named Superior Court, on charges of first-degree murder and possession of a deadly weapon and sentenced to life in prison.<sup>1</sup> After review of the record, I must summarily dismiss the defendant’s petition without prejudice.<sup>2</sup>

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<sup>1</sup> The petition indicates that the petitioner is currently incarcerated under this sentence at Keen Mountain Correctional Center in Oakwood, Virginia, within the jurisdiction of this court.

<sup>2</sup> See Rules 1(b) & 4, Rules Governing Section 2254 Cases (authorizing dismissal of habeas petition where it plainly appears from face of petition that petitioner is not entitled to habeas relief).

A district court may not entertain a § 2241 petition attempting to invalidate a sentence or conviction unless a motion to vacate, set aside or correct the sentence under 28 U.S.C. § 2255 in the sentencing court is “inadequate or ineffective to test the legality of [an inmate’s] detention.” *Swain v. Pressley*, 430 U.S. 372, 381 (1977) (internal quotation marks and citation omitted). A procedural impediment to § 2255 relief, such as the statute of limitations or the rule against successive petitions, does not render § 2255 review “inadequate” or “ineffective.” *See In re Vial*, 115 F.3d 1192, 1194 n. 5 (4th Cir. 1997).

The United States Court of Appeals for the Fourth Circuit has found that § 2255 is inadequate and ineffective when the inmate satisfies a three-part standard by showing that:

- (1) at the time of conviction settled law of this circuit or the Supreme Court established the legality of the conviction;
- (2) subsequent to the prisoner’s direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal;
- and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

*In re Jones*, 226 F.3d 328, 333-34 (4th Cir. 2000).

George’s petition does not specify any recent change of substantive law making it no longer criminal conduct to use a deadly weapon to murder someone, and I am not aware of any such precedent or statutory amendment. Thus, George fails to meet a critical element of the *In re Jones* standard as required to show that

§ 2255 is inadequate or ineffective to test the legality of his conviction,<sup>3</sup> and his challenge to his conviction cannot be addressed under § 2241 accordingly.

### III

Because George's claim is not appropriately raised under § 2241, I will summarily dismiss his petition.

A separate Final Order will be entered herewith.

DATED: June 24, 2014

/s/ James P. Jones  
United States District Judge

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<sup>3</sup> In fact, records available online indicate that George has previously filed numerous habeas corpus petitions and appeals in the courts of the Virgin Islands, as well as prior § 2255 motions. *See, e.g., George v. Wilson*, 59 V.I. 984, 2013 WL 5819098, \*1-2 (V.I. 2013) (detailing petitioner's several attempts at post-conviction relief, including prior § 2255 proceedings).