

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AARION JENKINS,

Petitioner,

v.

WARDEN EMMERICK,

Respondent.

OPINION and ORDER

24-cv-476-wmc

Aarion Jenkins, who is representing himself, is a prisoner in the custody of the Federal Bureau of Prisons currently housed at the Federal Correctional Institution in Oxford, Wisconsin. He has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging his conviction for conspiracy to distribute more than 50 kilograms of marijuana. He argues that his conviction violates his constitutional rights because marijuana is not a dangerous substance. This court cannot grant Jenkins relief under § 2241, so his petition will be denied.

OPINION

Jenkins' challenge to his conviction cannot be raised in a § 2241 habeas petition. Section 2241 relief is generally limited to issues regarding the execution of a sentence—for example, parole administration, good-time credits, prison transfers, and the like. *See Valona v. United States*, 138 F.3d 693, 694 (7th Cir. 1998). To challenge the validity of a conviction, as Jenkins seeks to do, a prisoner ordinarily must file a direct appeal or a motion under 28 U.S.C. § 2255 in the sentencing court. Only in rare cases can a prisoner challenge his conviction or sentence with a § 2241 petition, instead of a § 2255 petition, through the so-called “savings

clause” contained in the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2255(e). But the circumstances in which the saving clause applies are narrow and “cover[] unusual circumstances in which it is impossible or impracticable for a prisoner to seek relief from the sentencing court” in a § 2255 motion. *Jones v. Hendrix*, 599 U.S. 465, 474 (2023) (giving examples such as the dissolution of the sentencing court).

Jenkins filed neither a direct appeal nor a § 2255 postconviction motion. But a petitioner’s own failure to file a timely § 2255 motion does not render § 2255 relief “inadequate or ineffective” under the savings clause. *Poe v. LaRiva*, 834 F.3d 770, 772 (7th Cir. 2016) (Availability of § 2241 relief under the savings clause “generally requires a structural problem in § 2255 that forecloses even one round of effective collateral review, unrelated to the petitioner’s own mistakes.” (internal quotation omitted and alteration adopted)); *Morales v. Bezy*, 499 F.3d 668, 672 (7th Cir. 2007) (“A prisoner cannot be permitted to lever his way into section 2241 by making his section 2255 remedy inadequate” (emphasis in original)). Because Jenkins cannot use the savings clause to obtain § 2241 relief, the court will deny his habeas petition.

The only remaining question is whether to issue a certificate of appealability. The court is not required to consider a certificate of appealability for petitions brought under § 2241, but the court will consider the issue because Jenkins’ petition should have been brought under § 2255. To obtain a certificate of appealability, the applicant must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Tennard v. Dretke*, 542 U.S. 274, 282 (2004). This means that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller El v.*

Cockrell, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted). Because no reasonable jurist would debate the outcome here, the court will not issue Jenkins a certificate of appealability. He may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.,

ORDER

IT IS ORDERED that:

- 1) Petitioner Aarion Jenkins' petition for a writ of habeas corpus under 28 U.S.C. § 2241 is DISMISSED.
- 2) Petitioner is DENIED a certificate of appealability.
- 3) The clerk of court is directed to enter judgment and close this case.

Entered October 24, 2024.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge