

May 4, 2012

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

JERRY ALLEN CLARK,

Petitioner–Appellant,

v.

ERIC HOLDER, Attorney General,

Respondent–Appellee.

No. 11-6332

(D.C. No. 5:11-CV-00707-HE)

(W.D. Oklahoma)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **McKAY** and **HOLMES**, Circuit Judges.

After examining Petitioner’s brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore ordered submitted without oral argument.

Petitioner, a former federal prisoner proceeding pro se, appeals the district court’s dismissal of his 28 U.S.C. § 2241 habeas petition. Petitioner has filed numerous motions in various courts including a motion to vacate his sentence

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

under 28 U.S.C. § 2255, *see United States v. Clark*, No. 07-CR-00213-HE, 2010 WL 3075243, at *1 (W.D. Okla. Aug. 4, 2010), and a motion for habeas relief under 28 U.S.C. § 2241, *see Clark v. Revel*, No. 09-CV-00228-M, 2009 WL 763487 (W.D. Okla. Mar. 19, 2009).

In this habeas petition, Petitioner's actual claims are difficult to decipher. It appears he is raising claims he has raised before. The magistrate judge concluded Petitioner was attacking the validity of his sentence rather than its execution and therefore recommended dismissal of his claims. After a de novo review, the district court adopted the magistrate judge's findings and dismissed Petitioner's claims.

We review de novo the district court's denial of § 2241 habeas relief. *See Martinez v. Flowers*, 164 F.3d 1257, 1258 (10th Cir. 1998). A § 2241 petition is not the appropriate vehicle to challenge the legality of a conviction or sentence unless Petitioner can demonstrate the inadequacy or ineffectiveness of § 2255. *See Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996). The fact that Petitioner was previously denied § 2255 relief does not demonstrate this remedy was inadequate or ineffective. *See id.*

Like the district court, we agree with the magistrate judge's conclusions and have nothing to add. Therefore, we **AFFIRM** the dismissal of this action.

Petitioner's motion to proceed *in forma pauperis* on appeal is **DENIED**.

ENTERED FOR THE COURT

Monroe G. McKay
Circuit Judge