

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

ROBERT TARPLEY,

ORDER

Petitioner,

12-cv-118-bbc

v.

ROBERT WERLINGER, Warden,
FCI Oxford, Wisconsin,

Respondent.

On March 23, 2012, I denied petitioner Robert Tarpley's petition for writ of habeas corpus under 28 U.S.C. § 2241, concluding that he had failed to show that his petition satisfied the standard under the savings clause in 28 U.S.C. § 2255(e). Now before the court is petitioner's motion to amend his petition, dkt. #11, and motion for reconsideration of the denial of his petition. Dkt. #12. Petitioner's motions must be denied because they are without merit.

As noted in the previous order, petitioner is challenging his February 2006 conviction in United States v. Tarpley, Case No. 04-cr-52-rhb-2 (W.D. Mich.), in which he pleaded guilty to possession of heroin and cocaine with the intent to distribute, conspiracy to distribute heroin and cocaine and being a felon in possession of a firearm. The Court of Appeals for the Sixth Circuit affirmed the conviction and sentence. On September 24, 2009, petitioner filed a motion in the Western District of Michigan to vacate his sentence under

28 U.S.C. § 2255, which was denied. On December 20, 2011, the court of appeals denied petitioner's motion for a certificate of appealability.

In his petition in this court, petitioner contended that his sentence is unlawful because his counsel coerced him into pleading guilty, withheld information from him and was ineffective during pretrial proceedings. I denied the petition, noting that petitioner could not bring a petition under § 2241 because he had not shown that § 2255 was "inadequate or ineffective to test the legality of his detention," as required by § 2255(e). In particular, petitioner did not raise a claim that was based on a legal theory or rule of law that was not yet established at the time he filed his § 2255 motion or that he could not have raised in his § 2255 motion. In re Davenport, 147 F.3d 605, 610-11 (7th Cir. 1998). He was not prevented from challenging the effectiveness of his counsel or the voluntary and knowing character of his guilty plea in his initial § 2255 motion, and in fact, petitioner did challenge those aspects of his conviction in his § 2255 motion. Dkt. #12, in Tarpley v. United States, 09-cv-876-rhb (W.D. Mich. Nov. 8, 2010) (rejecting petitioner's arguments that his counsel was ineffective for various reasons, including by inducing guilty plea).

In his motion for reconsideration, petitioner contends that § 2255 was ineffective because the Michigan court did not consider the case law petitioner cited in his § 2255 motion. Additionally, he says that there is new Supreme Court law regarding the standard for effective assistance of counsel.

Petitioner's arguments are not persuasive. Petitioner had the opportunity to raise his claims of ineffective assistance of counsel in his § 2255 motion and the Michigan court

considered each of petitioner's arguments, issuing a 20-page opinion denying petitioner's claims. Additionally, the Supreme Court cases cited by petitioner relating to pretrial assistance of counsel, Lafler v. Cooper, 132 S. Ct. 1376 (2012) and Missouri v. Frye, 132 S. Ct. 1399 (2012), are inapplicable to petitioner's case. Those cases involved situations in which counsel either failed to inform the defendant of a plea offer or provided deficient performance in advising the defendant to reject a plea offer. In this case, petitioner's counsel informed him of the plea offer and petitioner accepted it.

Finally, petitioner's proposed amendment would not save his petition. In his motion to amend, petitioner states that he would like to add to his petition that "Counsel led Petitioner into an unwanted plea deal. If not for Counsel's errors and his deficient performance, this Petitioner would have continued to trial." Dkt. #11. This is the same claim that petitioner raised in his § 2255 motion. He may not raise it again under § 2241.

ORDER

IT IS ORDERED that petitioner Robert Tarpley's motion to amend his petition, dkt. #11, and motion for reconsideration, dkt. #12, are DENIED.

Entered this 16th day of May, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge