

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

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TERRANCE ROBERTS,

Petitioner,

v.

LOUIS WILLIAMS II,

Respondent.  
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ORDER

16-cv-541-bbc

Petitioner Terrance Roberts is a federal prisoner who was convicted in the United States District Court for the Eastern District of Missouri, but is now incarcerated in this district at the Federal Correctional Institution in Oxford, Wisconsin. He brings a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in which he contends that his 2000 conviction for money laundering is invalid under United States v. Santos, 553 U.S. 507 (2008). In that case, the Supreme Court held that the term “proceeds” in the federal money laundering statute means “profits,” not “receipts.” Id. at 514. Petitioner contends that the jury instructions in his criminal trial defined “proceeds” so broadly that the definition encompassed both profits and receipts.

The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases. (This rule also may be applied to habeas petitions not brought under § 2254, such as this petition pursuant to § 2241. Rule 1(b), Rules Governing

§ 2254 Cases). Under Rule 4, I must dismiss the petition if it plainly appears from the petition that petitioner is not entitled to relief; otherwise, I will order respondent to file an answer. See also 28 U.S.C. § 2243 (habeas court must award writ or order respondent to show cause why writ should not be granted, unless application makes it clear that petitioner is not entitled to relief).

Ordinarily, a federal prisoner challenging his conviction or sentence must do so on direct appeal or in a motion filed under 28 U.S.C. § 2255 in the district where he was convicted. Unthank v. Jett, 549 F.3d 534, 534-35 (7th Cir. 2008); Kramer v. Olson, 347 F.3d 214, 217 (7th Cir. 2003). However, petitioner says that he already filed one § 2255 motion on an unrelated issue in 2002, dkt. #1 at 3; dkt. #2 at 4, and § 2255(h) limits the circumstances under which a prisoner may file a second § 2255 motion. In particular, a prisoner may seek permission to file a second § 2255 motion only when he has newly discovered evidence or his claim relies on a new rule of constitutional law. 28 U.S.C. § 2255(h). In this case, plaintiff's claim relies on a new rule of statutory law, so he cannot file another § 2255 motion. Unthank, 549 F.3d at 536 (“§ 2255(f) and (h) do not authorize new (or belated) collateral attacks in response to statutory interpretations.”).

Under § 2255(e), a prisoner may file a habeas corpus petition under § 2241 if “the remedy by motion [under § 2255] is inadequate or ineffective to test the legality of his detention.” 28 U.S.C. § 2255(e); Kramer, 347 F.3d at 217; Taylor v. Gilkey, 314 F.3d 832, 835 (7th Cir. 2002). To satisfy § 2255(e), a prisoner must show three things: (1) he is seeking correction of a fundamental defect in his conviction or sentence (such as a claim for

actual innocence); (2) his petition is based on a rule of statutory law not yet established at the time he filed his first § 2255 motion; and (3) he is barred from bringing a successive § 2255 motion. Light v. Caraway, 761 F.3d 809, 812-13 (7th Cir. 2014); Hill v. Werlinger, 695 F.3d 644, 648 (7th Cir. 2012); United States v. Prevatte, 300 F.3d 792, 799-800 (7th Cir. 2002); In re Davenport, 147 F.3d 605, 610-11 (7th Cir. 1998). See also Webster v. Caraway, 761 F.3d 764, 767 (7th Cir. 2014) (“When a change of law, retroactively applicable, shows that the prisoner did not commit a crime or has received an illegally high sentence, § 2241 is available if it otherwise would be impossible to implement the Supreme Court's intervening decision.”). If the prisoner did not raise the argument on direct appeal or in his § 2255 motion, he also must show that the law at the time he filed his first § 2255 motion foreclosed the claim. Morales v. Bezy, 499 F.3d 668, 672 (7th Cir. 2007). Finally, as petitioner recognizes, a petition under § 2241 must be brought in the district where the prisoner is confined rather than the district where the prisoner was sentenced. Light, 761 F.3d at 812.

In this case, petitioner contends that he is actually innocent of money laundering because he transferred “receipts” not “profits” of an unlawful activity; controlling circuit precedent prevented him from raising this argument when he filed his first § 2255 motion, United States v. Simmons, 154 F.3d 765, 770 (8th Cir. 1998); Santos, 553 U.S. 507, created a new rule of statutory law; and he could not file a § 2255 motion after Santos because, by then, he already had filed one § 2255 motion. In addition, he says that a number of federal appellate and district courts around the country have applied Santos

retroactively. Blumeyer v. Walton, No. 11-CV-1137-DRH-DGW, 2013 WL 4510160, at \*12 (S.D. Ill. Aug. 26, 2013) (citing cases from various courts). This is adequate to require a response from the government.

In closing, I note that eight years have passed since the Supreme Court decided Santos, yet petitioner identifies no reason why he failed to bring his claim sooner. However, the Court of Appeals for the Seventh Circuit has stated that “there is no statute of limitations applicable to a federal prisoner's filing a section 2241 petition.” Morales, 499 F.3d at 672. If the government believes that the petition is untimely for a different reason or is otherwise procedurally barred, it is free to raise that issue in a motion to dismiss.

#### ORDER

IT IS ORDERED that

1. For the sake of expediency, I am directing the clerk of court to send the petition and supporting brief (dkt. ## 1 and 2) to respondent Louis Williams, the local United States attorney and the United States Attorney General via certified mail in accordance with Fed. R. Civ. P. 4(i), along with a copy of this order.

2. Respondent has two choices in deciding how to respond to the petition:

Option 1: Within 30 days from the date of service of the petition, respondent may file a motion to dismiss the petition on procedural grounds. Petitioner shall have 20 days following service of any motion to dismiss within which to file and serve his responsive brief and any supporting documents. The state shall have 10 days following service of the

response within which to file a reply.

Option 2: If respondent does not wish to raise any procedural defenses, if he wishes to combine his procedural and substantive arguments or if he simply is unable to meet the 30-day deadline, respondent may have 60 days from the date of service of the petition and petitioner's brief to file one brief raising all arguments he wishes to raise, together with supporting materials. Respondent must show cause why petitioner is not entitled to a writ of habeas corpus. Petitioner shall have 30 days following service of the response brief to file a reply.

3. Under both Option 1 and Option 2, respondent must comply with Rule 5 of the Rules Governing Section 2254 Cases. This includes providing the court and petitioner any portions of the record from the criminal or post conviction proceedings that he believes are necessary to deciding the petition.

4. If respondent chooses Option 1, but his motion to dismiss is denied, I will set a new briefing schedule on the merits of the petition.

5. Petitioner must serve by mail a copy of every document that he files with this court upon the Assistant United States Attorney who appears on respondent's behalf. The court will not consider any submission that has not been served upon the other party. Petitioner should note on each of his submissions whether he has served a copy of that document upon respondent's lawyer.

6. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed

copies of his documents.

7. If petitioner is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and respondent or the court is unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 11th day of October, 2016.

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