

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

SAUL AGUIRRE,

Petitioner,

v.

R. WERLINGER, WARDEN,
FCI-OXFORD,

Respondent.

OPINION AND ORDER

12-cv-65-wmc

Saul Aguirre, also known as Jose Murillo-Leonard, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the validity of his conviction and sentence. He has filed a brief in support of his petition and he has paid the filing fee. The petition will be dismissed because this court lacks a valid jurisdictional basis to consider his claims for relief under § 2241.

FACTS

The following facts are taken from the pleadings and the electronic docket in Aguirre's underlying criminal cases:

Aguirre is presently incarcerated at the Federal Correctional Institution in Oxford, Wisconsin (FCI-Oxford), as the result of a conviction from the United States District Court for the Southern District of Texas, Laredo Division, in *United States v. Murillo-Leonard*, Case No. 5:08-cr-02119-01 (S.D. Tex.). Aguirre was charged in that case with illegal reentry into the United States following a prior deportation. Aguirre, who was deported previously on March 1, 2003, was on supervised release at the time he

committed the illegal-reentry offense.¹ On June 19, 2009, the trial court sentenced Aguirre to serve an 80-month term of imprisonment, consecutive and in addition to the 8-month prison term that he received upon the revocation of his supervised release.

Aguirre filed an appeal from his illegal-reentry conviction, but it was dismissed on March 2, 2010, for want of prosecution. He did not challenge his conviction further by filing a motion under 28 U.S.C. § 2255.

Aguirre now seeks relief under 28 U.S.C. § 2241, asking this court to vacate the sentence imposed by the Southern District of Texas in Case No. 5:08-cr-02119-01. In that petition, Aguirre raises the following grounds for relief: (1) he was denied effective assistance of counsel because his defense attorney did not request a competency evaluation prior to the entry of Aguirre's guilty plea; (2) the sentence violates the Due Process Clause because the plea was not voluntarily and knowingly made; (3) the district court failed to comply with Fed. R. Crim. P. 11 during the guilty plea proceeding; and (4) his term of imprisonment should be reduced under the "fast-track program" because he entered a prompt guilty plea.

OPINION

Aguirre seeks judicial review of his criminal conviction and sentence under 28 U.S.C. § 2241(c)(3), which authorizes a writ of habeas corpus where a prisoner can show

¹ Aguirre was convicted of money laundering in connection with the sale or distribution of a controlled substance in *United States v. Aguirre*, No. 6:99-cr-00100-01 (W.D. Tex. – Waco). On April 26, 2000, the trial court sentenced Aguirre to serve 60 months in federal prison, followed by a three-year term of supervised release. After his arrest in 2008, Aguirre's supervision was transferred to the Southern District, Laredo Division, where his release was revoked in *United States v. Aguirre*, No. 5:09-cr-00836-01 (S.D. Tex.).

that he is “in custody in violation of the Constitution or laws or treaties of the United States[.]” Review under § 2241 is usually reserved for attacking the execution, not the imposition, of a sentence. *See Kramer v. Olson*, 347 F.3d 214, 217 (7th Cir. 2003). By contrast, “[28 U.S.C.] § 2255 is the exclusive means for a federal prisoner to attack his conviction [or sentence].” *Hill v. Werlinger*, 695 F.3d 644, 647 (7th Cir. 2012); *see also Carnine v. United States*, 974 F.2d 924, 927 (7th Cir. 1992) (comparing the remedies available under §§ 2241, 2255).

Because Aguirre argues that his current sentence should be set aside or vacated, his petition is governed by § 2255. *See Hill*, 695 F.3d at 647. As a rule, motions of this kind must be filed with the sentencing court. *See* 28 U.S.C. § 2255(a); *Longbehn v. United States*, 169 F.3d 1082, 1083 (7th Cir. 1999). In a “narrow class of cases,” a federal prisoner may proceed under § 2241 if he can show that his claims fit within the “savings clause” found in 28 U.S.C. § 2255(e). *Hill*, 695 F.3d at 648; *Kramer*, 347 F.3d at 217 (citation omitted). To fit within that narrow exception, however, a prisoner must show that “the remedy by motion [under § 2255] is inadequate or ineffective to test the legality of his detention.” *Id.*

The Seventh Circuit has found that § 2255 is inadequate for purposes of the savings clause when the statutory prohibition on second or successive motions would otherwise “prevent a prisoner from obtaining review of a legal theory that ‘establishes the petitioner’s actual innocence.’” *Kramer*, 347 F.3d at 217 (quoting *Taylor v. Gilkey*, 314 F.3d 832, 835 (7th Cir. 2002)). Aguirre cannot show that he fits within the savings clause here because, to date, he has not filed an initial motion for relief under § 2255 in

the sentencing court. Aguirre neither offers an explanation for his failure to pursue these claims on direct appeal or in a challenge to his sentence under § 2255, nor otherwise shows that he was prevented from obtaining review of a legal theory that establishes his “actual innocence” of the underlying offense. Under these circumstances, Aguirre does not show that § 2255 was inadequate or ineffective to test the legality of his detention. *See Hill*, 695 F.3d at 649; *see also Taylor*, 314 F.3d at 835 (observing that a petitioner’s prior failure to present a constitutional claim or “theory that has long been appropriate for collateral review does not render § 2255 ‘inadequate or ineffective’”).

Because Aguirre does not fit within the savings clause found in § 2255(e), he may not proceed under § 2241. Accordingly, his petition for a writ of habeas corpus must be dismissed for lack of jurisdiction.

ORDER

IT IS ORDERED that the pending petition for a writ of habeas corpus under 28 U.S.C. § 2241 is DISMISSED for lack of jurisdiction because the petitioner does not fit within the savings clause found in 28 U.S.C. § 2255(e).

Entered this 15th day of January, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge