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

KENNETH J. RANEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

12-cv-584-wmc

Kenneth J. Raney has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, among other things, to challenge the validity of his continued confinement. He has paid the filing fee and he has filed several other motions for relief from his prison sentence. After reviewing all of the pleadings, the court concludes that the petition must be dismissed for reasons set forth below.

FACTS

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

A grand jury in the United States District Court for the Northern District of Illinois returned an indictment against Raney in 2001, charging him with (1) traveling in interstate commerce for the purpose of engaging in sex with a minor; and (2) attempting to manufacture child pornography. *See United States v. Raney*, No. 01-cr-557 (N.D. Ill.). After a jury found Raney guilty as charged, the trial court imposed a sentence of 145 months in federal prison, followed by a three-year term of supervised release.

On direct appeal, Raney argued that law enforcement improperly seized "homemade adult pornography" that was manufactured by Raney at his home in Janesville, Wisconsin, because the search exceeded the bounds of his consent. Raney also maintained that his defense attorney was ineffective for failing to file a motion to suppress the pornography seized from his home. Raney argued further that count two of the indictment (alleging attempted manufacture of child pornography) was defective.

The United States Court of Appeals for the Seventh Circuit rejected all of Raney's arguments and affirmed the conviction. *See United States v. Raney*, 342 F.3d 551 (7th Cir. 2003). Raney did not pursue certiorari review by the United States Supreme Court.

After his conviction became final, Raney filed a motion in the Northern District of Illinois, seeking to vacate, set aside or correct the sentence under 28 U.S.C. § 2255. In that motion, Raney argued that he was entitled to relief because: (1) he was denied effective assistance of counsel at his trial; (2) he was arrested without probable cause; and (3) the charges against him were the product of government entrapment. The trial court denied this motion on August 25, 2004. *See United States v. Raney*, No. 03-cv-2708, 2004 WL 2056222 (N.D. Ill.). Raney did not pursue an appeal.

While serving his federal sentence, Raney then filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the Eastern District of Wisconsin, Green Bay Division, challenging the validity of a detainer lodged against him by the State of Wisconsin. In committing a federal offense, the detainer alleged that Raney violated the terms of his probation from a 1996 conviction in Green County Circuit Court Case No.

1996CF000035.[1] Raney argued that the detainer was invalid because the five-year term of probation that he received in that case expired before he committed the federal offense on which he is now serving time. Because of the invalid detainer, Raney argued further that he was denied participation in the Bureau of Prisons residential drug abuse treatment program and eligibility for early release to a half-way house. The district court found that Raney was not entitled to relief from the detainer and dismissed his petition. *See Raney v. Hollingsworth*, No. 09-cv-292, 2009 WL 817113 (E.D. Wis. March 25, 2009). Raney also did not appeal that decision.

In May of 2011, Raney filed a motion with the trial court for the return of personal property and other items seized by police after his arrest. In response, the government advised that despite several attempts to return Raney's property, the individual who was designated to receive the items had refused to cooperate by making arrangements to receive the property. Ultimately, the trial court granted the motion for return of Raney's personal property, but advised him that the items would be considered "abandoned" and would be destroyed if no arrangements were made to retrieve the items by November 2, 2011, which is exactly what happened on or about November 14, 2011, when no one retrieved the property.[2]

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[1] In that case, Raney was convicted of second-degree reckless endangerment with a dangerous weapon in and sentenced to three years in prison. That sentence was modified later to five years' probation with one year in jail as a condition.

[2] Raney explains that the computer and CD contained digital images that were not his, but were downloaded instead by an individual named "Larry Flesher." Raney designated Flesher as the party responsible for picking up Raney's personal property from law enforcement. As outlined above, Raney's personal property was destroyed after Flesher failed or refused to cooperate with repeated requests to take possession of those items.

Still Raney was not done. In December of 2011, he filed a motion to modify his sentence under 18 U.S.C. § 3582(c)(2), asking the trial court to eliminate his three-year term of supervised release. Specifically, Raney argued that he should be excused from compliance with the terms of supervised release because Wisconsin's detainer prevented him from earning time off his sentence by completing the residential drug treatment program. The trial court found that Raney was not entitled to relief under 18 U.S.C. § 3582(c)(2), or any other theory, and denied the motion for lack of jurisdiction. *See United States v. Raney*, No. 01-cr-557 (N.D. Ill. Feb. 24, 2012).

Raney was released from federal prison on December 28, 2011, and his federal supervision was transferred to the Western District of Wisconsin on July 30, 2012. He now appears to be incarcerated in the Wisconsin Department of Corrections, having filed a habeas corpus petition and several other motions for relief in this court.

OPINION

Invoking 28 U.S.C. § 2241, 28 U.S.C. § 2255, and 18 U.S.C. § 3582(c)(2), Raney argues that he is entitled to relief from his federal conviction and sentence for the following reasons: (1) he was denied access to evidence presented at his trial; (2) this evidence was "false"; (3) the government disobeyed the trial court's order to return personal property, which consisted of his computer and a CD containing digital images; (4) the pre-sentence report was "based on false and misleading information"; (5) he should be granted two years off his sentence due to the detainer lodged against him by the State of Wisconsin, because he could not participate in the residential drug abuse

treatment program while in federal prison; and (6) asks this court to "stay" or suspend his placement on supervised release based on exemplary conduct in prison.[3]

A defendant has limited avenues of relief from a federal conviction once it has become final. After a defendant has completed a direct appeal, or his time to appeal has expired, a motion under 28 U.S.C. § 2255 is the "exclusive" means for a federal prisoner to challenge the validity or imposition of his sentence. *Hill v. Werlinger*, 695 F.3d 644, 647 (7th Cir. 2012). A writ of habeas corpus under 28 U.S.C. § 2241, by contrast, is usually reserved to attack the execution of a sentence. *See Kramer v. Olson,* 347 F.3d 214, 217 (7th Cir. 2003); *see also Carnine v. United States*, 974 F.2d 924, 927 (7th Cir. 1992) (comparing the remedies available under §§ 2241, 2255). In addition, a federal prisoner may file a motion to modify his term of imprisonment under 18 U.S.C. § 3582(c)(2), where an amendment to the Sentencing Guidelines would apply retroactively to the prisoner's benefit.[4] Having pursued all of these options already in other venues, none are available to Raney here.

[3] Raney also (1) filed a motion for access to the "complete file" in possession of federal prosecutors in his underlying criminal case and (2) requests this court to "overturn" or vacate his conviction if the government is unable to return his personal property.

[4] Apart from these options, relief may be available under Fed. R. Crim. P. 33, based on newly discovered evidence of actual innocence that was unavailable at trial, such as the recantation of a witness or scientific test results. *See United States v. Rollins*, 607 F.3d 500, 504 (7th Cir. 2010). Relief also may be available on the government's motion under Fed. R. Crim. P. 35(b), where the defendant has provided substantial assistance to law enforcement.

I. RANEY'S MOTION UNDER 28 U.S.C. § 2255

To the extent that Raney is seeking any relief from his federal conviction, 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). As outlined above, Raney already filed a motion for relief under § 2255, which the sentencing court denied in 2004. Second or successive requests for this type of relief are barred unless a defendant obtains authorization to proceed under 28 U.S.C. §§ 2244 and 2255(h) from the Court of Appeals. Raney does not present the requisite authorization here. For these reasons, Raney's motion under § 2255 must be dismissed for lack of jurisdiction.

II. RANEY'S PETITION UNDER 28 U.S.C. § 2241

Raney also requests relief from his conviction and sentence under § 2241. In a "narrow class of cases," a federal prisoner may challenge his conviction and sentence under § 2241, but only 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, a prisoner must show that "the remedy by motion [under § 2255] is inadequate or ineffective to test the legality of his detention." *Id.* Raney falls far short of that showing here.

The Seventh Circuit has found § 2255 inadequate for purposes of the savings clause only 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)). To make this showing, a prisoner must demonstrate that "the legal theory he advances relies on a change in law that both postdates his first § 2255 motion . . . and 'eludes the permission in [§] 2255 for successive motions.'" *Kramer*, 347 F.3d at 217 (quoting *Davenport*, 147 F.3d at 611). None of Raney's claims fit within this category. On the contrary, Raney appears to be attempting to challenge claimed procedural defects and issues collateral to his conviction, most of which were already rejected by the sentencing court in post-conviction and his § 2255 motion or were almost certainly waived.

Under these circumstances, Raney does not show that § 2255 was inadequate or ineffective to test the validity of his sentence. *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 Raney does not fit within the savings clause found in § 2255(e), he may not proceed under § 2241, and his petition for a writ of habeas corpus must be dismissed for lack of jurisdiction.

III.RANEY'S MOTION UNDER 18 U.S.C. § 3582(c)(2)

Finally, Raney has filed a motion under 18 U.S.C. § 3582(c)(2), asking this court to suspend or eliminate the three-year term of supervised release that was imposed as part of his sentence in the Northern District of Illinois, Case No. 01-cr-557. Raney argues that he is entitled to relief on the grounds that his stay in federal prison was extended unfairly by an invalid detainer. Raney maintains further that he should not be

required to serve a term of supervised release because of his exemplary conduct in prison, where he completed several educational and vocational programs.

A district court may only modify a term of imprisonment under § 3582(c)(2) where the defendant is eligible for a reduction in sentence under a retroactive amendment to the Sentencing Guidelines. Raney, who is no longer serving a federal term of imprisonment, does not invoke a change in the applicable guidelines and he alleges no other valid basis for relief under § 3582(c)(2). Instead, he raises arguments that were rejected previously by the sentencing court, which refused to relieve Raney of his term of supervised release.

The federal rules do not authorize endless challenges to a sentence. Raney offers no valid basis to reconsider or disturb the ruling made previously by the United States District Court for the Northern District of Illinois regarding his term of supervised release. Accordingly, Raney's motion to suspend or eliminate his term of supervised release will be denied.

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). All other pending motions are DENIED.

Entered this 24th day of January, 2013.

BY THE COURT:
____/s/_____
WILLIAM M. CONLEY
District Judge