FILED
United States Court of Appeals
Tenth Circuit

July 25, 2008

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: WILLIAM GENE EATON, Movant.	No. 08-6086 (D.C. No. 5:98-CR-00183-R-1) (W.D. Okla.)

ORDER

Before **BRISCOE**, **EBEL** and **GORSUCH**, Circuit Judges.

Movant William Gene Eaton, a federal prisoner appearing pro se, has filed a motion for remand challenging the transfer to this court of a post-conviction motion he filed in district court challenging his 1998 convictions and sentence. The motion, captioned as a writ for audita querela, is the second time Mr. Eaton has attempted to challenge his conviction and sentence in reliance on *Shepard v. United States*, 544 U.S. 13 (2005) (describing the types of documents that a sentencing court may properly consider when determining if a prior conviction qualifies as a violent felony under the Armed Career Criminal Act (ACCA)). We deny the motion for remand, dismiss the matter, and warn Mr. Eaton that further unauthorized filings may subject him to sanctions.

Mr. Eaton was convicted of two counts of armed bank robbery, one count of carrying a firearm during and in relation to a crime of violence, one count of

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being a felon in possession of a firearm, three counts of obstruction of justice, and two counts of tampering with a witness. He was sentenced to life imprisonment under the Three Strikes Statute, 18 U.S.C. § 3559(c), on the armed robbery counts. He was not sentenced under the ACCA. His convictions and sentence were affirmed on direct appeal. *United States v. Eaton*, No. 99-6151, 2000 WL 293789 (10th Cir. Mar. 21, 2000) (unpublished). Mr. Eaton filed a § 2255 motion in 2000 challenging his convictions and sentence, which was denied. This court denied him a certificate of appealability. *United States v. Eaton*, 20 F. App'x 763 (10th Cir. 2001) (unpublished).

In 2006, Mr. Eaton sought authorization to file a successive § 2255 motion. Citing *Shepard*, he sought to present a claim that the sentencing court had improperly relied on information about his prior convictions in the presentence report, rather than the type of documents deemed acceptable in *Shepard*. We denied authorization because *Shepard* did not announce a new rule of constitutional law, but involved an issue of statutory interpretation; thus, his proposed claim did not meet the requirements of 28 U.S.C. § 2255(h) for filing a second or successive § 2255 motion. *Eaton v. United States*, No. 06-6198, slip op. at 3 (10th Cir. July 12, 2006) (unpublished order).

In April 2008, Mr. Eaton filed a petition for a writ of audita querela in district court, again arguing that his conviction and sentence should be vacated because the sentencing court relied on a presentence report to determine his

sentence, citing *Shepard*.[1] The district court concluded that the claims in Mr. Eaton's motion constituted second or successive 28 U.S.C. § 2255 claims, for which circuit court authorization is required in order to be filed, and transferred the matter to this court to give Mr. Eaton an opportunity to seek such authorization. *See In re Cline*, __ F.3d __, 2008 WL 2673263, at *2-3 (10th Cir. July 9, 2008) (per curiam) (permitting district courts to either dismiss unauthorized second or successive claims for lack of jurisdiction or transfer them to the circuit court under 28 U.S.C. § 1631 if it is in the interest of justice to do so).

Rather than seek authorization, Mr. Eaton filed a motion asking that the matter be remanded to the district court for resolution in the first instance. He argues that he is not challenging the validity of his conviction, but is seeking relief from his sentence due to the changes in the law created by *Shepard*. He argues he is asserting a claim that is cognizable under a writ of audita querela.

The common law writ of audita querela, which was available to judgment debtors seeking rehearing, *see Melton v. United States*, 359 F.3d 855, 856 (7th Cir. 2004) and *Black's Law Dictionary* 141 (8th ed. 2004), has been

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[1] He also claimed to be relying on two other recent Supreme Court decisions, *Logan v. United States*, 552 U.S. __, 128 S. Ct. 475 (2007) (holding that the ACCA exclusion of predicate offenses for which the offender had his civil rights restored does not apply to a conviction that never deprived the offender of his civil rights) and *James v. United States*, 550 U.S. __, 127 S. Ct. 1586 (2007) (holding that attempted burglary, as defined by Florida law, qualifies as a violent felony under the ACCA).

abolished in civil proceedings. Fed. R. Civ. P. 60(e). Even if a writ of audita querela is available to a prisoner to obtain post-conviction relief, *see United States v. Torres*, 282 F.3d 1241, 1245 n.6 (10th Cir. 2002), it "is not available to a petitioner when other remedies exist, such as a motion to vacate sentence under 28 U.S.C. § 2255," *id*. at 1245 (internal quotations omitted). A prisoner cannot avoid the bar against successive § 2255 petitions "by simply styling a petition under a different name." *Id*. at 1246. The fact that Mr. Eaton is precluded from filing a second § 2255 petition does not establish that the remedy in § 2255 is inadequate. *See Caravalho v. Pugh*, 177 F.3d 1177, 1179 (10th Cir.1999).

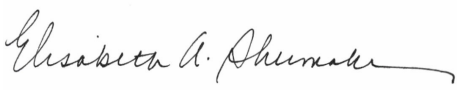
In any event, "[i]t is the relief sought, not [the] pleading's title, that determines whether the pleading is a § 2255 motion." *United States v. Nelson*, 465 F.3d 1145, 1148 (10th Cir. 2006). "A § 2255 motion is one claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." *Id*. at 1148 (quotation omitted). In the motion Mr. Eaton filed in district court, he asked that his conviction and sentence be vacated because his sentence was imposed in violation of the law and the Constitution. Thus, Mr. Eaton's post-conviction claims were, as the district court concluded, unauthorized second or successive § 2255 claims because they all substantively challenged the validity and

constitutionality of his conviction and detention, and were effectively indistinguishable from habeas claims. *See Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005); *Nelson*, 465 F.3d at 1148-49.

Mr. Eaton has not sought authorization; indeed, he acknowledges that his claims do not meet the authorization standards set forth in § 2255(h). He is therefore prohibited from pursuing his claims in district court. *Nelson*, 465 F.3d at 1148. Thus, there is no basis for remanding the matter to the district court.

Accordingly, the motion for remand is DENIED, and the matter is TERMINATED. We warn Mr. Eaton that any further attempt by him to begin a collateral attack on his convictions without first satisfying all of the authorization requirements set forth in § 2255(h), including first moving in this court for authorization, could lead to the imposition of sanctions.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk