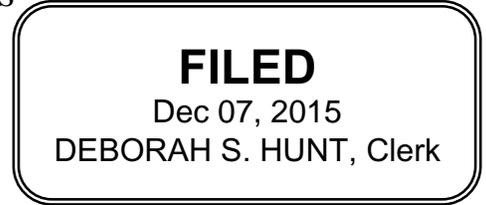


NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 15-5322

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT



RAJUL RUHBAYAN,)
)
 Petitioner-Appellant,)
)
 v.)
)
 J.C. HOLLAND,)
)
 Respondent-Appellee.)
)
)

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
KENTUCKY

ORDER

Before: KEITH, BOGGS, and GIBBONS, Circuit Judges.

Rajul Ruhbayan, a federal prisoner proceeding pro se, challenges the district court’s denial of his petition for a writ of habeas corpus filed under 28 U.S.C. § 2241. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In a Virginia federal district court, Ruhbayan was convicted of conspiracy to commit perjury and obstruction of justice, witness tampering, perjury, suborning perjury, and obstruction of justice. *United States v. Ruhbayan*, 369 F. App’x 497, 498 (4th Cir. 2010) (per curiam). The district court sentenced him to life imprisonment for the witness tampering conviction and three concurrent five-year sentences for his other convictions. *Id.* at 498–99. The Fourth Circuit affirmed. *Id.* at 500.

Ruhbayan filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, which the district court denied, and the Fourth Circuit Court of Appeals denied a

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certificate of appealability. *United States v. Ruhbayan*, 460 F. App'x 209 (4th Cir. 2011) (per curiam).

Ruhbayan filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in a Kentucky federal district court, challenging the constitutionality of his sentence. The district court denied his petition, concluding that his claims were not cognizable under § 2241 and that § 2255's savings clause did not apply. Ruhbayan filed a Federal Rule of Civil Procedure 59(e) motion for relief from judgment, which the district court denied. Ruhbayan appeals, arguing that the district court did not adjudicate his claims that challenged his sentence.

An appeal from a district court's denial of a Rule 59(e) motion is treated as an appeal from the underlying judgment. *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 832–33 (6th Cir. 1999). We review the district court's denial of a § 2241 petition de novo. *Wooten v. Cauley*, 677 F.3d 303, 306 (6th Cir. 2012). An attack on the validity of a conviction or sentence must be brought under § 2255 as opposed to § 2241, under which a petitioner may challenge only the execution of his sentence. *United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001). An exception allows a federal prisoner to challenge his conviction and sentence under § 2241 if he can show that his remedy under § 2255 is inadequate or ineffective. 28 U.S.C. § 2255(e). Section 2255 is not inadequate or ineffective simply because § 2255 relief has been denied before, the petitioner is procedurally barred from pursuing relief under § 2255, or the petitioner has been denied permission to file a second or successive § 2255 petition. *Wooten*, 677 F.3d at 307. Indeed, we have found that § 2255(e) applies only when the petitioner can demonstrate that an intervening change in the law establishes his "actual innocence." *Id.*

Ruhbayan is not challenging the execution of his sentence; he is challenging the validity of his sentence, which is not cognizable in a § 2241 petition. *See Peterman*, 249 F.3d at 461. Ruhbayan has not shown that the remedy under § 2255 is inadequate or ineffective, and the denial of his § 2255 petition is insufficient to meet this standard. *Wooten*, 677 F.3d at 307; *see Charles v. Chandler*, 180 F.3d 753, 756 (6th Cir. 1999) (per curiam). Ruhbayan has not identified an intervening change in the law that establishes his actual innocence.

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Accordingly, the district court's judgment is **AFFIRMED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk