UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

REGINALD REAVES,	:	
	:	CIVIL ACTION NO. 3:01-CV-1149
Petitioner,	:	
	:	
v.	:	(JUDGE CONABOY)
	:	(Magistrate Judge Blewitt)
WARDEN, U.S.P. LEWISBURG,	:	
	:	
Respondent.	:	
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	:	

MEMORANDUM AND ORDER

This case is before the Court for consideration of Magistrate Judge Thomas M. Blewitt's Report and Recommendation, (Doc. 10), concerning Reginald Reaves petition for habeas corpus filed pursuant to 29 U.S.C. § 2241, (Doc. 1). The Magistrate Judge recommends that this Court dismiss Petitioner's habeas corpus action. (Doc. 10 at 8.) Petitioner has filed objections to the Magistrate Judge's Report and Recommendation, (Doc. 13), and Respondent has filed a brief opposing Petitioner's objections, (Doc. 14). Therefore, we will review the matter de novo. See Cipollone v. Liggett Group, Inc., 822 F.2d 335, 340 (3d Cir. 1987), cert. denied, 484 U.S. 976 (1987).

Petitioner objects by reiterating his assertion that 28 U.S.C.

§ 2241 is a proper ground for his claim. (Doc. 13.) Specifically, Petitioner raises the following objections: 1) the Petitioner should be granted a default judgment, or at a minimum strike the Government's response, (Doc. 4), because the Government has not properly responded to the habeas petition; 2) the Magistrate Judge incorrectly concluded that this District Court does not have subject matter jurisdiction; 3) the Magistrate Judge did not properly consider appellate decisions holding that the failure to state drug quantity in the indictment is an unwaivable jurisdictional element; 4) the Magistrate Judge did not properly consider a recent United States Supreme Court decision regarding the Suspension Clause of the United States Constitution as it applies to the writ of habeas corpus; 5) as the first interpretation of a statute, Apprendi v. New Jersey, 530 U.S. 466 (2000), and Jones v. United States, 526 U.S. 227 (1999), are retroactive; 6) 28 U.S.C. § 2255 is "inadequate or ineffective" to test the validity of Petitioner's sentence because that section does not apply to a treaty of the United States; 7) 28 U.S.C. § 2255 is "inadequate or ineffective" to test the validity of Petitioner's sentence because Petitioner's claim was unavailable when he filed his 2255 motion; 8) a United States Treaty mandates retroactivity of Apprendi and Jones; and 9) the Court has an

obligation to examine and correct a jurisdictional defect.[1] (Doc. 13 at 1-22.) After a thorough reexamination of the record and carefully reviewing the matter de novo, we shall adopt the disposition set forth in the Magistrate Judge's Report and Recommendation.

Background

On October 2, 1991, a grand jury in the United States District Court for the Eastern District of Pennsylvania returned a thirty-two count indictment charging Petitioner, along with twenty-five others, with conspiracy to distribute cocaine, crack cocaine, and heroine between late 1985 and September, 1991. United States v. Price, 13 F.3d 711, 716 (3d Cir. 1994). The indictment alleged that all were members of a criminal organization, the Junior Black Mafia (JBM), which sold and distributed large amounts of cocaine and heroine in the Philadelphia area. Id. Petitioner was also charged, with two others, with separate instances of distribution of cocaine or cocaine base. Id. The twenty-six defendants were split into three groups for trial: petitioner and six others; the three leaders; and the remaining defendants. Id.

At the sixteen day jury trial of Petitioner and six codefendants, among other things, the evidence demonstrated that

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[1] Petitioner numbers his objections I through X. However, because there is no "III," Petitioner raises nine, rather that ten, objections. (Doc. 13.)

the JBM "purchased and then distributed in the Philadelphia area over 1,000 kilograms of cocaine and lesser amounts of heroin during the time alleged in the indictment . . . [and] that Reginald Reaves was a squad leader . . .." Id. The jury found all the defendants guilty of conspiracy to distribute and to possess with intent to distribute cocaine and heroin in violation of 21 U.S.C. § 846 (1988), and Petitioner was also convicted on one count of distribution of cocaine in violation of 21 U.S.C. § 841(a)(1). Petitioner was sentenced to life imprisonment, to be followed by supervised release for life. United States v. Price, 13 F.3d at 717.

Petitioner filed a direct appeal with the Third Circuit Court of Appeals, confining his challenge to his conviction to the claim that the judge's conduct during the trial tainted the fairness of the proceedings. Id. at 723. On the direct appeal, Petitioner was the only one of the defendants with whom he went to trial who did not challenge the application of the Sentencing Guidelines and did not contest the length of his sentence. Id. at 716, 732. In their sentence challenges, none of the defendants questioned that the JBM distributed more than 500 kilograms of cocaine. Id. at 732. The Third Circuit Court of Appeals affirmed Reaves conviction and sentence. Id.

On April 24, 1997, Petitioner filed a 28 U.S.C. § 2255 motion

with the sentencing court alleging that his attorney was constitutionally ineffective for not giving him sufficient information to make an informed choice whether to plead guilty or stand trial. (Doc. 1 at 4.) The motion was summarily denied on July 1, 1997. (Id.)

On July 16, 1998, the Third Circuit reversed and remanded for an evidentiary hearing. (Doc. 1 at 2-3.) At the conclusion of the evidentiary hearing on January 6, 1999, the § 2255 motion was again denied. (Id.) The Third Circuit affirmed the denial on January 5, 2000. (Id. at 3.)

On June 25, 2001, Petitioner filed the 28 U.S.C. § 2241 habeas petition currently before this Court. The matter was assigned to Magistrate Judge Thomas M. Blewitt who issued a Report and Recommendation on November 28, 2001. (Doc. 10.) The Magistrate Judge recommended that the habeas petition be dismissed. (Id.) As noted previously, our review is de novo because the Petitioner has filed objections to the recommended disposition. (Doc. 13.)

Discussion

We will address each of Petitioner's bases of objection. (Supra at 1-2.) However, we will not do so individually or in the order presented because several of the objections raise the same legal issues.

1. Government's Response to Habeas Petition

Petitioner's first objection is that Respondent did not properly respond to Petitioner's habeas petition. (Doc. 13 at 1-4.) Petitioner raised a similar argument when he filed a Motion to Strike Government's Motion to Dismiss, claiming therein that the response was in the nature of a motion to dismiss and such a response was improper regarding a habeas proceeding. (Doc. 4.) Insofar as the motion sought to strike the Government's response, the Magistrate Judge denied the motion, considering the remainder of the document Petitioner's traverse. (Doc. 6.)

Petitioner's counsel has raised this argument previously in other habeas cases in the Middle District and elsewhere. See Rivera v. Warden, No. CV-01-96, slip op. at 7 (M.D. Pa. May 1, 2001)(Caldwell, J.); see also Baratta v. Warden, No. CV-00-216, slip op. at 5 (M.D. Pa. Nov. 13, 2000)(Muir, J.). Each attempt has been similarly defeated. Because these cases were decided before the filing of the instant petition, Petitioner's counsel should be well aware that she raises an argument that is without merit. Her citation to a footnote in Browder v. Director, Department of Corrections of Illinois, 434 U.S. 257, 269 n.14 (1978), is not applicable to this case. A previous note in the same case confirms that seeking dismissal as a matter of law can be an appropriate response to a habeas petition. Browder, 434 U.S. at 266 n.12 (citations omitted).

Here, Respondent made a credible argument supported by extensive United States Supreme Court and Third Circuit precedent that a 28 U.S.C. § 2241 petition is not the proper action to raise Petitioner's claims. (Doc. 4.) Contrary to Petitioner's assertion, the Magistrate Judge and this Court have sufficient information to decide the issues before us. Therefore, we find Petitioner's objection to the Government's response without merit.

2. Jurisdiction

Petitioner's jurisdictional arguments are repeated throughout his submissions to the Court and present both the propositions that this Court does have jurisdiction over the present matter and the sentencing court did not have jurisdiction to enter judgment and sentence. While Petitioner's arguments are difficult to follow because they are not succinctly presented and are often rambling and intertwined, we will attempt to address all of his jurisdictional concerns.

Petitioner asserts that the Magistrate Judge incorrectly concluded that the district court does not have jurisdiction over this 28 U.S.C. § 2241 petition. (See Doc. 13 at 4.) This assertion is based on the premise that a 28 U.S.C. § 2241 petition is appropriate because a 28 U.S.C. § 2255 motion is "inadequate or ineffective" to bring Petitioner's claims. Petitioner reiterates the claims set forth in his petition, arguing that a § 2255 is

"inadequate or ineffective" for three reasons: 1) Petitioner is in custody in violation of a treaty of the United States, an issue that is not cognizable under 28 U.S.C. § 2255; 2) intervening changes in the reach of criminal statutes occurred after the expiration of the deadline for filing the § 2255 motion; and 3) the sentencing court lacked jurisdiction to impose a life sentence because the indictment did not allege a drug quantity. (Doc. 13 at 6-7.) Petitioner's underlying argument is that he should be able to raise these claims in a habeas petition under 28 U.S.C. § 2241 because he cannot raise them in a second § 2255 motion. (Doc. 13 at 9-10.) Therefore, before reaching the merits of Petitioner's argument, we will review general principles regarding the relationship between a § 2241 petition and a § 2255 motion.

The statutory framework for post-conviction relief generally requires that a person convicted in federal court challenging the validity of his conviction or sentence must file a motion before the sentencing court pursuant to 28 U.S.C. § 2255. E.g., United States v. Addonizio, 442 U.S. 178, 179 (1979). A § 2255 motion should be filed rather than a § 2241 habeas corpus petition unless the case falls within a narrowly defined exception provided for in § 2255 where a § 2255 motion would be "inadequate or ineffective." 28 U.S.C. § 2255; Davis v. United States, 417 U.S. 333, 343 (1974); In re Dorsainvil, 119 F.3d 245, 249 (3d Cir. 1997).

Historically, a petition for writ of habeas corpus, the great writ, was allowed to be used in almost any circumstance where an individual sought to contest the legality of his conviction or confinement. Previously, prisoners had challenged their federal convictions by filing a petition under § 2241 in the district where the prisoner was confined. As a result, the few districts in which federal penal institutions were located had an inordinate number of habeas actions and did not have access to the witnesses and records of the sentencing court. In re Dorsainvil, 119F.3d 254, 249 (3d Cir. 1997). Another adverse consequence was a lack of finality with respect to criminal convictions.

In response, legislatures and courts have determined ways by which to bring finality to appeals in all criminal cases. Among the remedies developed was 28 U.S.C. § 2255, which permits a federal criminal defendant's conviction/sentence to be collaterally attacked in a proceeding before the sentencing court. E.g., United States v. Addonizio, 442 U.S. 178, 179 (1979).

In the instant case, Petitioner is seeking post-conviction relief, maintaining that his federal drug conviction and sentence violated his constitutional rights. Therefore, § 2255 would be the appropriate action unless the narrowly defined exception, where a § 2255 is "inadequate or ineffective," applies.

Whether the exception to the exclusivity of the § 2255 remedy

applies is governed by the statutory language and its subsequent interpretation. Section 2255 provides in part that "[a]n application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is <u>inadequate or ineffective</u> to test the legality of his detention." 28 U.S.C. § 2255 (emphasis added).

In 1996, Congress imposed limitations on the availability of collateral attack of convictions and sentences through amendments to § 2255.[2] The 1996 amendments retained the original provisions of § 2255 and added both a one-year statute of limitations and restrictions on a prisoner's ability to bring a second or successive motion. The statute of limitations runs from the latest of: 1) the date on which a final judgment of conviction becomes final; 2) the date on which impediment to making the motion created by the government is lifted; 3) the date on which the right asserted was initially recognized by the Supreme Court, if that

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[2] In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 ("AEDPA"). As part of the AEDPA, 28 U.S.C. §§ 2254 and 2255 were amended, limiting the availability of collateral review for all motions brought under those sections.

right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or 4) the date on which the facts supporting the claim could have been discovered.

Congress additionally required that a second or successive motion must be certified by the appropriate court of appeals. Id. Known as the "gatekeeping provisions," certification restricts a prisoner's ability to bring a second or successive motion by requiring that the new motion contain either: 1) newly discovered evidence that, if proven, would be sufficient to establish that the movant was not guilty; or 2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. Id.

Prisoners may attempt to circumvent the statute of limitations and gatekeeping provisions of § 2255 by bringing a claim for collateral review of conviction or sentence under § 2241. As noted previously, a § 2241 petition is only available to attack the validity of a conviction or sentence if a § 2255 motion is "inadequate or ineffective." 28 U.S.C. § 2255.

Caselaw provides us with guidance on the application of the statutory "inadequate or ineffective" language. As a preliminary matter, the burden is on the habeas petitioner to allege or

demonstrate inadequacy or ineffectiveness.[3]

Most substantive precedent in this area focuses on what does not satisfy the "inadequate or ineffective" exception, courts strictly construing the exception to the rule. Section 2255 "is not rendered inadequate or ineffective merely because an individual has been unable to obtain relief under that provision . . . or because an individual is procedurally barred from filing a § 2255 motion . . .."[4] A § 2241 petition is inappropriate unless it is established "that some limitation of scope or procedure would prevent a § 2255 proceeding from affording the prisoner a full hearing and adjudication of his claim of wrongful detention."[5] "It is the inefficacy of the remedy, not a personal inability to utilize it, that is determinative . . .."[6]

The Court of Appeals for the Third Circuit has held that, as

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[3] See Application of Galante, 437 F.2d 1164, 1165 (3d Cir. 1971)(per curiam); Cagle v. Ciccone, 368 F.2d 183, 184 (8th Cir 1966).

[4] In re Vial, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997). See also In re Dorsainvil, 119 F. 3d at 245, 251 (3d Cir. 1997); Tripati v. Herman, 843 F.2d 1169, 1162 (9th Cir.), cert. denied, 488 U.S. 982 (1988); Litterio v. Parker, 369 F. 2d 395, 396 (3d Cir. 1966)(per curiam); United States ex rel. Leguillou v. Davis, 212 F. 2d 681, 684 (3d Cir. 1954).

[5] Application of Galante, 437 F.2d 1164, 1165 (3d Cir. 1971)(per curiam)(quoting Leguillou, 212 F. 2d at 684).

[6] Garris v. Lindsay, 794 F.2d 722, 727 (D.C. Cir.), cert. denied, 479 U.S. 993 (1986).

to issues cognizable by the sentencing court under § 2255, a § 2255 motion "supersedes habeas corpus and provides the exclusive remedy."[7] Recent Third Circuit cases affirm the limited applicability of the exception. The legislative limitations (either the statute of limitations or gatekeeping provisions outlined supra at 10-11) placed on § 2255 proceedings simply do not render the remedy inadequate or ineffective so as to authorize pursuit of a habeas corpus action in this Court.[8]

Very limited caselaw gives affirmative substantive context regarding what circumstances satisfy the exception. Triestman v. United States, 124 F.3d 361 (2d Cir. 1997), and Dorsainvil, 119 F.3d 245 (3d Cir. 1997), addressed what circumstances make a § 2255 motion "inadequate or ineffective." Both the Triestman and Dorsainvil courts held that a § 2255 motion was only "inadequate and ineffective" (thus allowing a petitioner to bring a § 2241 habeas corpus action) where the denial of a habeas action would raise serious constitutional issues. Triestman, 124 F.3d at 377; Dorsainvil, 119 F.3d at 249. The serious constitutional issue was that a change in substantive law rendered the conduct for which

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[7] Strollo v. Alldredge, 462 F.2d 1194, 1195 (3d Cir.)(per curiam), cert. denied, 409 U.S. 1046 (1972).

[8] United States v. Brooks, 230 F.3d 643, 647 (3d Cir. 2000); Dorsainvil, 119 F.3d at 251; Kennemore v. True, Civil No. 98-1175, slip op. At 6. (M.D. Pa. July 28, 1998).

petitioner was convicted no longer criminal. Triestman, 124 F.3d at 366; Dorsainvil, 119 F.3d at 251. Thus, these cases set a high bar for what a court will consider a serious constitutional issue sufficient to allow a petitioner to bring a § 2241 petition to challenge a conviction or sentence.

Petitioner does not make any viable claim that the narrow exception contemplated in Dorsainvil or Triestman which would render a § 2255 motion inadequate or ineffective applies in this case. Petitioner makes no valid argument that the conduct for which he was convicted is no longer criminal because of a change in substantive law. He cites no case decided since his conviction that negates the criminal nature of his conduct.

Although Petitioner's previous § 2255 motion was unsuccessful and he may be procedurally barred from seeking relief by a § 2255 motion, precedent dictates that these facts do not render a § 2255 "inadequate or ineffective." His inability to show that a change in substantive law since his conviction has negated the criminal nature of the conduct for which he was sentenced leaves him unable to satisfy the "inadequate or ineffective" exception to § 2255. This conclusion requires our finding that Petitioner's exclusive remedy is a § 2255 motion and his current § 2241 petition is inappropriate.

A common element of Petitioner's "inadequate or ineffective"

arguments and most of the other proffered objections is his assertion that the United States Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), is retroactive to cases on collateral review.[9] We disagree with Petitioner's assertion that the Apprendi decision suggests a finding that a habeas petition under § 2241 is proper in this case. The Supreme Court in Apprendi held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Apprendi, 530 U.S. at 490.

While Petitioner urges us to apply Apprendi retroactively, we are not at liberty to do so because the Supreme Court has not made Apprendi retroactive to cases on collateral review. In Tyler v. Cain, 533 U.S. 656 (2001), the Supreme Court established that a new rule of constitutional law is not made retroactive to cases on collateral review unless the Supreme Court itself holds it to be

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[9] Petitioner at times characterizes his Apprendi argument as a "Jones/Apprendi/Jones" issue. (Doc. 13 at 13.) Jones confirmed a previous United States Supreme Court holding that an element of an offense must be charged in the indictment, submitted to a jury, and proven beyond a reasonable doubt. Jones, 526 U.S. at 232 (citing Hamling v. United States, 418 U.S. 87 (1974); United States v. Gaudin, 515 U.S. 506, 509-510 (1995).

retroactive.[10] Id. at 660. A review of Apprendi reveals that there is no indication that the decision was determined to have retroactive effect. The Court of Appeals for the Third Circuit, relying on Tyler, has recognized that "no Supreme Court case specifically holds that Apprendi is retroactive on collateral review." In re: Carnell Turner, 267 F.3d 225, 231 (3d Cir. 2001). The conclusion that Apprendi is not to be applied retroactively was recently confirmed in a Third Circuit decision in which the court noted that "[w]e have held that the new rule in Apprendi was not retroactive to cases on collateral review."[11] United States v. McBride, No. 01-1616, 2002 WL 389288, at *4 n.1 (3d Cir. March 13, 2002)(citing In re: Turner, 267 F.3d 225 (3d Cir. 2001).

Moreover, the issue of whether Apprendi is applied

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[10] Tyler specifically addressed the detention of a state prisoner and thus a claim presented under 28 U.S.C. § 2254. However, the holding applies equally to a federal prisoner's § 2255 claim because a § 2255 motion is the federal equivalent of a state habeas petition filed pursuant to § 2254 and was intended to mirror § 2254 in operative effect. United States v. Vancol, 916 F. Supp. 372, 377, n.3 (D. Del.)(citing Reed v. Farley, 512 U.S. 339, 353 (1974)). Precedent under § 2254 and § 2255 may be used interchangeably. 916 F. Supp. at 377 n.3 (citing Kaufman v. United States, 394 U.S. 217, 224-27 (1969)).

[11] The McBride court also cites United States v. Sanders, 247 F.3d 139 (4th Cir. 2001), and notes that all circuits to have considered the issue agree that Apprendi is not retroactive to cases on collateral review. McBride, 2002 WL 389288, at *4 n.1. This notation did not limit the retroactivity holding to apply only to successive applications for collateral review filed under 28 U.S.C. § 2255.

retroactively to cases on collateral review does not impact our conclusion that a § 2241 habeas corpus petition is not appropriate in this case. If the United States Supreme Court holds that Apprendi is retroactive to cases on collateral review, under current applicable law, § 2241 would remain an inappropriate avenue for Petitioner's claims. This is so because a retroactivity holding would not render a § 2255 motion "inadequate or ineffective." Rather, such a holding would mean that Petitioner may be able to meet the gatekeeping provision of § 2255 that provides for collateral review if a new rule of constitutional law has been made retroactive by the Supreme Court. See, supra 10-11. Therefore, if the United States Supreme Court holds that Apprendi is retroactive to cases on collateral review, current applicable statutes and relative caselaw dictate that Petitioner's claims would properly be raised in a motion for permission to file a successive petition under § 2255 before the court of appeals of the sentencing court.

Petitioner recognizes that he cannot satisfy the gatekeeping provisions of § 2255 because the United States Supreme Court has not held that Apprendi is retroactive to cases on collateral review. (Doc. 13 at 10.) Nevertheless, he asserts that Apprendi is retroactive, and, therefore, a claim based on Apprendi must be allowed in a § 2241 petition. (See Doc. 13 at 13-16.) However,

the foregoing analysis of the relationship between a § 2241 petition and a § 2255 motion illustrates that Petitioner's argument is not grounded in or supported by binding legal authority.

Petitioner criticizes the Tyler/Turner foundation as a basis for concluding that Apprendi is not retroactive.[12] (Doc. 13 at 13-16.) Petitioner contends that Apprendi is not a new rule of criminal procedure, rather the case is retroactive as the first interpretation of a statute. (Id.) In light of our review of United States Supreme Court and Third Circuit precedent, we will not address this assertion other than to note Petitioner does not cite any case which has held that Apprendi is retroactive as the first interpretation of a criminal statute. In an earlier submission to this Court, Petitioner argued that United States v. Buckland, 259 F.3d 1157, (9th Cir. 2001), "tends to show that the Apprendi decision is automatically retroactive as the first interpretation of a criminal statute." (Doc. 8 at 7.) While Petitioner repeats the argument, he does not repeat the Buckland citation, and wisely so: the decision was reversed by a hearing *en banc* and the court held that the penalty provisions of the federal

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[12] Petitioner attributes the Tyler/Turner argument to the Magistrate Judge in his Report and Recommendation and states that the Magistrate Judge is "overreading" Turner. (Doc. 13 at 7). Our reading of the Magistrate Judge's Report and Recommendation does not reveal any reference to either Tyler or Turner. (Doc. 10.) Therefore, we do not address Petitioner's conclusory statement regarding the Report and Recommendation.

drug statutes are not facially unconstitutional under Apprendi. Buckland v. United States, 277 F.3d 1173, 1187 (9th Cir. 2002). Therefore, we find Petitioner's claim that Apprendi is retroactive without merit. Precedent supports our conclusion that Apprendi is not currently applicable to cases on collateral review and cannot give Petitioner any basis for his assertion that a § 2255 motion is "inadequate or ineffective."

Within this legal framework, all of Petitioner's remaining specific objections are similarly without merit. His arguments concerning intervening changes in the reach of statutes and the lack of jurisdiction in the sentencing court are Apprendi-related arguments in that his sentence was beyond the statutory maximum and drug quantity was not charged in the indictment. (See, e.g., Doc. 13 at 6-7.) However, as the foregoing discussion illustrates, only if the intervening change in law had rendered the conduct for which Petitioner was sentenced no longer criminal would he have grounds for asserting his claim as a § 2241 petition. Petitioner makes no such claim. Because the sentencing court had jurisdiction at the time the sentence was imposed in 1992, the law had not changed when the sentence became final with the Third Circuit's affirmance of his conviction and sentence in 1994, and no subsequent laws or decisions give Petitioner access to this Court through a § 2241 petition, Petitioner's jurisdictional claims are without merit.

Petitioner's objections to the Magistrate Judge's Report and Recommendation based on his assertion that the Magistrate Judge failed to consider specific caselaw are also without merit. The objection that the Magistrate Judge did not consider United States v. Cotton, 261 F.3d 397 (4th Cir. 2001), or United States v. Gonzalez, 259 F.3d 355 (5th Cir. 2001), is without foundation: Petitioner's argument is a different formulation of the Apprendi argument presented in a conclusory manner and relying on cases that are not precedential in the matter before this Court. (Doc. 13 at 7-11.) Furthermore, we note that prior to the submission of objections to the Magistrate Judge's Report and Recommendation, Petitioner did not cite either Cotton or Gonzalez in any submission to this Court. (See Docs. 1, 5, 8.)

Likewise, Petitioner's objection that the Magistrate Judge did not consider the United States Supreme Court case of INS v. St. Cyr, 121 S.Ct. 2271 (2001), is without merit. (Doc. 13 at 11-13.) Petitioner asserts that this case stands for the proposition that the writ of habeas corpus must be protected as it existed in 1789. (Id. at 11.) The argument is very confusing in that it is made referring to "Ruotolo" who is not a party in this case, repeats the preceding jurisdictional argument, and raises an international treaty consideration without context. (Id. at 11-13.) However, piecing together the scattered references to this case, it appears

that the basis of the argument is that a habeas petitioner in 1789 would have had the right to petition the court to present claims that his sentence was imposed by a court without jurisdiction or that his sentence violated a treaty of the United States and, therefore, petitioners should continue to have those rights today. (Doc. 13 at 3, 5, 8, 11-13, 17, 18, 19.)

Assuming *arguendo* that St. Cyr has any application to the case before us, the foregoing jurisdictional discussion illustrates that, under applicable statutes and caselaw, the district court properly imposed sentence in this case. Further, here Petitioner does have a forum in which to raise claims to the contrary. That forum is in the sentencing court pursuant to a 28 U.S.C. § 2255 motion. The United States Congress and Supreme Court have recognized that the interest in the finality of criminal convictions allows the kind of gatekeeping provisions that the 1996 amendments to § 2255 impose on the ability to bring a successive motion. Tyler, 121 S.Ct. at 2483. Nothing in Petitioner's historical review, the Supreme Court's reasoning in St. Cyr, or the caselaw previously cited in this Memorandum supports the proposition that a prisoner, either historically or currently, must be entitled to file successive petitions without restriction. Therefore, we find Petitioner's objection based on the Magistrate Judge's lack of consideration of St. Cyr without merit.

b. International Covenant on Civil and Political Rights

Petitioner also contends that a § 2241 petition is appropriate because he is in custody in violation of a treaty of the United States, an issue that is not cognizable under 28 U.S.C. § 2255. The treaty in question is the International Covenant on Civil and Political Rights (ICCPR). Petitioner asserts that this Court should have jurisdiction over this matter either because a § 2255 motion is "inadequate or ineffective" or on independent jurisdictional, historical and precedential grounds.[13] (Doc. 13 at 5, 8-9, 11, 12, 18.)

The Magistrate Judge thoroughly addressed this issue and concluded that the ICCPR is not available to the Petitioner to enforce his rights. The Magistrate Judge based his conclusion on a decision by Judge William W. Caldwell, United States District Judge in the Middle District of Pennsylvania. (Doc. 10 at 6-7.) Judge

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[13] As a statutory basis for his ICCPR claim, Petitioner asserts that § 2255 applies to violations of "the Constitution or laws of the United States," but does not apply to treaties. (Doc. 13 at 17-18.) However, Petitioner maintains that the scope of § 2241 includes violations of "the Constitution, laws or treaties of the United States." (Id. at 18.) Although this issue is not dispositive based on the fact that we agree with Rivera that the ICCPR is not self-executing, we note that the Ninth Circuit has held that relief available to federal prisoners under § 2255 extends to treaties and thus § 2255 was not "inadequate." Benitez v. Warden, No. 01-15158, 27 Fed. Appx. 917, 2001 WL 1662648, at *1 (9th Cir. Dec. 28, 2001)(citing Davis v. United States, 417 U.S. 333. 344 (1974).

Caldwell analyzed the same claim made by Petitioner's counsel in Rivera v. Warden, No. 1:CV-01-96, Doc. 18 (M.D. Pa. June 12, 2001), and concluded that the ICCPR is not self-executing. Because the Rivera decision was filed before Petitioner's habeas action, we assume that Petitioner's counsel is aware of the defects in her argument. However, we review the Rivera analysis because it illustrates that Petitioner's ICCPR claim is without merit.

> During ratification, the Senate declared that Articles 1 through 27 of the ICCPR are not self-executing. 138 Cong. Rec. S4783-84 (daily ed. Of April 2, 1992)(statement of the presiding officer). Most courts have held that the ICCPR is not self-executing.[14] Because the treaty is not self-executing, it is not enforceable in the courts and Petitioner cannot rely on it.[15] Moreover, the Senate stated that the United States would not follow the third clause of article 15(1), the very clause that Petitioner relies on. Id. at S4783.

Rivera, No. 1:CV-01-96 at 11-13.

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[14] See, e.g., Beazley v. Johnson, 242 F.3d 248, 267 (5th Cir. 2001)(considering habeas petition and recognizing the Senate, in ratifying the ICCPR, stated that Articles 1 through 27 are not self-executing); Benas v. Baca, No. 00-11507, 2001 WL 485168, at *5 (C.D. Cal. Apr. 23, 2001) (finding plaintiff had no cause of action because the ICCPR is not self-executing and Congress had not passed implementing legislation); Cancel v. Goord, No. 00-CV-2042, 2001 WL 303713, at *9 (S.D.N.Y. Mar. 29, 2001)(noting courts have "uniformly" held that the ICCPR is not self-executing and does not provide a private right of action); (other citations omitted).

[15] A treaty ratified by the Senate can only be enforced in the courts as domestic law if it is self-executing or if implementing legislation has been passed. Mannington Mills, Inc. v. Congoleum Corp., 595 F.2d 1287, 1298 (3d Cir. 1979)(citations omitted). Not only is the ICCPR not self-executing, but also Congress has not passed implementing legislation. Jama v. INS, 22 F.Supp. 2d 353, 364 (D.N.J. 1998).

Further, other circuits have agreed that a § 2255 motion is not "inadequate or ineffective" based on a claimed ICCPR violation. Dutton v. Warden, No. 01-6811, 2002 WL 255520, at *1 (4th Cir. Feb. 22, 2002); Benitez v. Warden, No. 01-15158, 2001 WL 1662648, at *1 (9th Cir. Dec. 28, 2001); Kenan v. Warden, 00-57047, 2001 WL 1003213 at *1 n.1 (9th Cir. Aug. 30, 2001).

Therefore, based on the legal authority which guides us in this matter, we find that the ICCPR does not provide a basis for Petitioner's claims.

3. *Petitioner's Additional Correspondence*

Petitioner has filed a hand-written document which was docketed as a letter requesting the status of his case on August 23, 2001. (Doc. 9.) Although difficult to decipher, it appears that this "letter" may contain some form of petition seeking relief for a mail problem. Because we dismiss this habeas action, to the extent that the "letter" could be considered a petition, it is deemed moot.

CONCLUSION

Petitioner cannot support his assertion that a § 2241 is appropriate because he has not presented any basis on which this Court could find that a § 2255 motion is "inadequate or ineffective." He has not presented any other grounds to bring this action as a § 2241 petition. The current § 2241 petition is not

the proper vehicle to challenge the legality of Petitioner's federal conviction and sentence. The only available action to raise these claims is a § 2255 motion. Therefore, we deny Petitioner's § 2241 petition. An appropriate order will enter.

____
Richard P. Conaboy
United States District Judge

DATE: March 22, 2002

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

REGINALD REAVES,	:	
	:	CIVIL ACTION NO. 3:01-1149
Petitioner,	:	
	:	
v.	:	(JUDGE CONABOY)
	:	(Magistrate Judge Blewitt)
WARDEN, U.S.P. LEWISBURG,	:	
	:	
Respondent.	:	
	:	

ORDER

NOW, this 22nd DAY of March, 2002, it is hereby ORDERED that:

1. Petitioner's habeas corpus petition brought pursuant to 28 U.S.C. § 2241, (Doc. 1), is DISMISSED without prejudice for the reasons set forth in the accompanying Memorandum.

2. Document 9 is deemed moot.

3. The Clerk of Court is directed to close this case.

4. Based on the Court's conclusion herein, any appeal from this order will be deemed frivolous.

____
Richard P. Conaboy
United States District Judge