

ALD-103

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3313

DANIEL PATRICK SHEEHAN,
Appellant

v.

WARDEN ALLENWOOD FCI

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 18-cv-01748)
District Judge: Honorable Christopher C. Conner

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

January 30, 2020

Before: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

(Opinion filed April 8, 2020)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Daniel Patrick Sheehan appeals the District Court's order dismissing his petition filed pursuant to 28 U.S.C. § 2241 for lack of jurisdiction. For the reasons below, we will summarily affirm the District Court's order.

The procedural history of this case and the details of Sheehan's claims are well known to the parties, set forth in the District Court's memorandum, and need not be discussed at length. Briefly, in 2013, Sheehan was convicted by a jury sitting in the District Court for the Eastern District of New York of Hobbs Act extortion and use of a destructive device to commit extortion. He was sentenced to a mandatory minimum sentence of thirty years in prison on the destructive device charge and a consecutive sentence of one month on the extortion charge. The Court of Appeals for the Second Circuit affirmed his conviction and sentence on appeal. United States v. Sheehan, 838 F.3d 109 (2d Cir. 2016). Sheehan filed a motion pursuant to 28 U.S.C. § 2255 challenging his conviction and sentence. The sentencing court denied all claims except one which it held in abeyance. Sheehan later withdrew that claim.

In 2018, Sheehan filed a petition pursuant to 28 U.S.C. § 2241 in the District Court for the Middle District of Pennsylvania, where he is incarcerated. The District Court dismissed the petition for lack of jurisdiction. Sheehan filed a timely notice of appeal.

We have jurisdiction under 28 U.S.C. § 1291 and exercise plenary review over the District Court's legal conclusions. Cradle v. U.S. ex rel. Miner, 290 F.3d 536, 538 (3d Cir. 2002). Under the explicit terms of § 2255, a § 2241 petition cannot be entertained by a court unless a § 2255 motion would be "inadequate or ineffective." Id. Sheehan argued

that a § 2255 motion is inadequate because the sentencing court was biased and defied Supreme Court rulings. However, in Cradle, we explained that

A § 2255 motion is inadequate or ineffective only where the petitioner demonstrates that some limitation of scope or procedure would prevent a § 2255 proceeding from affording him a full hearing and adjudication of his wrongful detention claim. It is the inefficacy of the remedy, not the personal inability to use it, that is determinative. Section 2255 is not inadequate or ineffective merely because the sentencing court does not grant relief, the one-year statute of limitations has expired, or the petitioner is unable to meet the stringent gatekeeping requirements of the amended § 2255.

Id. at 538-39 (citations omitted). That the sentencing court denied Sheehan's claims does not show that § 2255 is inadequate or ineffective. Sheehan's remedy for his claims of bias and errors of law was to appeal the sentencing court's denial of his § 2255 motion to the Court of Appeals for the Second Circuit.

On appeal, Sheehan argues that the District Court did not address his claims of actual innocence or his argument that there has been a substantive change in the law, namely the Supreme Court's opinion in Johnson v. United States, 135 S. Ct. 2551 (2015).

We have held that a defendant may proceed via a § 2241 petition, rather than a § 2255 motion, if a court's subsequent statutory interpretation renders the defendant's conduct no longer criminal and he did not have an earlier opportunity to raise the claim. Bruce v. Warden Lewisburg USP, 868 F.3d 170, 180 (3d Cir. 2017); In re Dorsainvil, 119 F.3d 245, 251 (3d Cir. 1997). Here, however, Sheehan had an earlier opportunity to

raise his Johnson claim in his § 2255 proceedings, and, in fact, did raise such a claim before withdrawing it.¹

Sheehan argues that he is actually innocent of extortion because he did not obtain any property. However, he does not explain how this claim is based on an intervening change in the substantive law and how he did not have an earlier opportunity to raise this claim. He cites to a Supreme Court case from 2003, ten years before his trial, to support this argument. See Scheidler v. NOW, 537 U.S. 393 (2003). Moreover, he raised this argument in his § 2255 motion. The District Court for the Eastern District of New York rejected his claim that because he abandoned his extortion plan before obtaining any property, counsel was ineffective for admitting that Sheehan was guilty of extortion.² The court noted that the statute at issue, 18 U.S.C. § 1951, covered attempted extortion.

The District Court did not err in dismissing Sheehan's § 2241 petition for lack of jurisdiction. Summary action is appropriate if there is no substantial question presented in the appeal. See 3d Cir. LAR 27.4. For the reasons above, as well as those set forth by

¹ In his § 2255 motion, Sheehan argued that the Supreme Court's ruling in Johnson eliminated attempted extortion as a predicate violent crime for a § 924(c) conviction. The District Court for the Eastern District of New York held this claim in abeyance pending further briefing after denying Sheehan's other claims. Sheehan v. United States, Civ. No. 16-6385, 2018 WL 1796548 (April 16, 2018). The District Court then appointed counsel and issued a briefing schedule. Sheehan filed a motion to proceed pro se and withdrew the Johnson claim.

² Given Sheehan's confession to the conduct at issue, the court concluded it was reasonable for counsel to admit guilt on the extortion count and focus on challenging whether the device Sheehan used qualified as a "destructive device."

the District Court, we will summarily affirm the District Court's September 24, 2019 order. See 3d Cir. I.O.P. 10.6. Sheehan's motion to expedite is denied.