

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HADDRICK BYRD : CIVIL ACTION
 :
 v. :
 :
 FRANK GILLIE, et al. : NO. 97-4697

MEMORANDUM

Dalzell, J.

November 5, 1997

After several unsuccessful petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, Haddrick Byrd has proffered a stragem to circumvent the congressional limitations imposed on successive petitions. Rather than invoke § 2254, Byrd asserts his claim under 28 U.S.C. § 2241. Recent Supreme Court teaching leads us to reject such an attempt to outflank the Antiterrorism and Effective Death Penalty Act of 1996 (hereinafter "the AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214, 1217-26 (1996).

In his petition, Byrd admits that he has previously filed at least four petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. See, Byrd Petition at p.2 ("The petitioner's request[s] for a writ of habeas corpus under 28 U.S.C. § 2254, [C.A.] Nos. 86-3688, 87-3044, and 88-7404, were all dismissed . . . [a]nd No. 91-0432, was denied without a hearing"). Then, on April 8, 1997, Byrd filed a motion with our Court of Appeals, requesting permission to file a successive petition pursuant to the requirements of the AEDPA as codified at

28 U.S.C. § 2244(b).¹ That petition was denied because the Court found that the petitioner failed to make the required showing. See Haddrick Byrd v. Frank Gillie, C.A. No. 97-8042 (3d Cir. April 17, 1997).

On July 21, 1997, petitioner filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241(c)(3). In his motion, Byrd attempts to circumvent the AEDPA's limitations on successive petitions by styling his claim as a "general" habeas petition under § 2241, rather than under § 2254. See Petitioner's Motion in Opposition to the District Court's Order, at p. 2. In essence, Byrd argues that while the AEDPA tightened

1. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Id. In determining whether such an order should be granted, the AEDPA dictates, in relevant part, that

a claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless - (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases . . . or (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2) (emphasis added).

standards for successive petitions pursuant to § 2254, petitions under § 2241 remain a separate, unaffected ground of federal review because they are not explicitly limited under the AEDPA.

Byrd's argument must fail, however, because in Felker v. Turpin, 116 S.Ct. 2333 (1996), the Supreme Court held that it would apply the AEDPA's new requirements for second and successive petitions to original petitions filed under 28 U.S.C. § 2241, even though the AEDPA does not explicitly mention § 2241. See id. at 2339-40; see also Greenwalt v. Stewart, 105 F.3d 1287 (9th Cir. 1997) ("The Supreme Court has instructed us that the authority of the federal courts to grant habeas relief to state prisoners under § 2241 is limited by 28 U.S.C. § 2254"); Roldan v. United States, 96 F.3d 1013, 1014 (7th Cir. 1996) (same).

Accordingly, Byrd's successive petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 must meet the requirements of the AEDPA.² Because Byrd has not been granted leave by our Court of Appeals to seek review of his latest application pursuant to 28 U.S.C. § 2244(b)(3)(A), we will deny his petition for habeas corpus.

An Order follows.

2. We note that Byrd's reliance on Ozoanya v. Reno, 968 F. Supp. 1 (D.D.C. 1997) is misplaced. In Ozoanya, the district court held that a first-time habeas petition brought by deported aliens pursuant to 28 U.S.C. § 2241 survives the 1996 amendments to the Immigration and Nationality Act and the passage of the AEDPA. See id. at 7. In this case the viability of first-time petitions under § 2241 is not at issue, and we do not address it here.

