

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13137

Non-Argument Calendar

ROBERT MARVIN HARRIS,

Petitioner-Appellant,

versus

WARDEN, FCC COLEMAN - USP I,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:23-cv-00366-PGB-PRL

Before WILLIAM PRYOR, Chief Judge, and BRASHER and ABUDU, Circuit Judges.

PER CURIAM:

Robert Harris appeals the dismissal of his petition for a writ of habeas corpus. 28 U.S.C. § 2241. The district court ruled that it lacked jurisdiction to consider Harris’s petition. *See id.* §§ 2241, 2255(e). Because we conclude that the district court erred by not considering all Harris’s claims for relief, we vacate and remand for further proceedings.

In 1999, Harris was convicted of conspiring to import and possessing with intent to distribute cocaine and marijuana and sentenced to four concurrent terms of 600 months of imprisonment. In 2000, he was convicted of conspiring to distribute cocaine, conspiring to commit money laundering, and maintaining a place to manufacture and distribute crack cocaine and was sentenced to a concurrent life term. In 2001, he filed a motion to vacate, *id.* § 2255, which the district court denied with prejudice. He filed other motions to vacate, which were dismissed as successive.

In 2023, Harris filed a petition for a writ of habeas corpus. *Id.* § 2241. He asserted that the remedy under section 2255 would be inadequate because he had not “had an opportunity to test the legality of his detention as it is also inadequate in seeking to recover jail credit time, good time credit and immediate release.” He raised four grounds for relief. He argued that he is being unlawfully detained for conduct not criminalized by his statute of conviction and

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because an earlier state conviction illegally enhanced his sentence. He argued that his enhanced sentences should be “made void” and that he “should recover jail credit time and good time credit [] against the valid and possible 20 year maximum term imposed upon him, and he should be immediately released from unlawful custody . . . on a combination of grounds, including the elimination of the [] statutory enhancement . . . and the length of time he has served.” He requested relief from fines and forfeitures assessed as part of his “unconstitutional sentence and [] conviction.”

In the same envelope, Harris included a “Petition For A Writ of Habeas Corpus (Amend) To 28 U.S.C. § 2241 or/and § 2255, § 2255(e).” This “amended petition” alleged 13 grounds for relief. Six grounds concerned his 1999 convictions and asserted that the district court improperly enhanced his sentence, his statute of conviction did not prohibit his conduct, and his trial and appellate counsel were ineffective. Five grounds concerned his 2000 convictions and asserted that his convictions violated the Double Jeopardy Clause and were unsupported by sufficient evidence, his sentence was based on an uncharged drug quantity, and his trial and appellate counsel were ineffective. In two grounds, he sought to “recover jail credit time [] and good time credit.” He requested credit for time between 1998 and 1999 and from April 1999 “until the date of adjudicating this [] petition,” as well as for good-time credits under the First Step Act of 2018 “by increasing credits from 42 days to 54 days through retroactive good time credit.”

The district court dismissed the petition for lack of jurisdiction. It ruled that instead of challenging the execution of his sentence, Harris’s “four grounds for relief” challenged the legality of his convictions and sentences and must be brought in a motion to vacate. *Id.* § 2255. The district court explained that although the saving clause of section 2255(e) permits a federal prisoner to challenge his sentence in a habeas petition when “the remedy by motion is inadequate or ineffective to test the legality of his detention,” *id.* § 2255(e), Harris failed to establish that his petition satisfied the saving clause. The district court did not address the other nine claims in Harris’s “amended petition.”

Harris twice sought reconsideration. Fed. R. Civ. P. 59(e). In his first motion for reconsideration, he restated the grounds raised in his “petition and amend motion.” In his second motion for reconsideration, he asserted that he could bring his two claims regarding good time and jail time credits, “which arguably challenge the execution of his sentence not the legality of his conviction,” in a habeas petition. The district court denied both motions and, in denying the second motion, stated that the “problem for Harris is that he did not seek restoration of good time and jail time credit in his § 2241 petition.” The district court stated that Harris’s petition raised only four grounds for relief and that, although he was “correct that [h]e does not need authorization to bring these claims, he did not properly present them to the” district court and could not raise them “belatedly.” The district court stated that Harris must bring his time-credit claims in a new action.

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We review *de novo* whether a prisoner may petition for a writ of habeas corpus under the saving clause of section 2255(e). *McCarthan v. Dir. of Goodwill Industries-Suncoast, Inc.*, 851 F.3d 1076, 1081 (11th Cir. 2017) (en banc). If a federal prisoner files a habeas petition that does not fall within the saving clause, the district court lacks jurisdiction to consider it. *Id.* at 1080–81; see *Jones v. Hendrix*, 599 U.S. 465, 477–78 (2023). A federal prisoner may petition for a writ of habeas corpus under section 2241 only if his remedy by motion to vacate is “inadequate or ineffective to test the legality of his detention.” 28 U.S.C. §§ 2255(e), 2241. The circumstances in which a motion to vacate is inadequate or ineffective include challenges to the execution of a sentence, such as the deprivation of good-time credits or parole determinations. See *McCarthan*, 851 F.3d at 1092–93.

In *Clisby*, we instructed district courts to resolve all claims for relief raised in a petition for a writ of habeas corpus before granting or denying relief. *Clisby v. Jones*, 960 F.2d 925, 936 (11th Cir. 1992) (en banc) (addressing a section 2255 motion to vacate); see *Rhode v. United States*, 583 F.3d 1289, 1291 (11th Cir. 2009) (recognizing that the legal principles applicable to section 2254 proceedings generally apply to section 2255 proceedings). When a district court fails to resolve every claim, “we will vacate the judgment without prejudice and remand the case for consideration of all of the remaining claims” without addressing whether the underlying claims are meritorious. *Dupree v. Warden*, 715 F.3d 1295, 1298–99 (11th Cir. 2013) (addressing a section 2254 petition).

The district court erroneously omitted from its consideration the claims for relief raised in Harris’s “amended petition,” which was attached to his petition form. After Harris raised the issue of good time and jail time credits again in his motion for reconsideration, the district court acknowledged that Harris was “correct that [h]e does not need authorization to bring these [time-credit] claims,” but it incorrectly found that he “did not seek restoration of good time and jail time credit in his § 2241 petition.” The district court erred in requiring Harris to allege these “belated[ly]” claims in a new action. Although the district court might determine that it still lacks jurisdiction if it finds that Harris’s unaddressed claims for relief do not fall within the saving clause, we must vacate the judgment without prejudice “*whenever* the district court has not resolved all such claims.” *Clisby*, 960 F.2d at 938 (emphasis added).

We **VACATE** the order denying Harris’s petition and **REMAND** for further proceedings consistent with this opinion. We **DENY AS MOOT** Harris’s motion for “Order/Judgment.”

VACATED and REMANDED.