In the

United States Court of Appeals

For the Seventh Circuit

No. 20-1027

JOHN A. MANDACINA,

Petitioner-Appellant,

v.

FREDERICK ENTZEL, Warden, Federal Correctional Institution, Pekin,

Respondent-Appellee.

Appeal from the United States District Court
for the Central District of Illinois.
No. 18-cv-1453-SLD — **Sara Darrow**, *Chief Judge*.

ARGUED OCTOBER 1, 2020 — DECIDED MARCH 12, 2021

Before EASTERBROOK, MANION, and ROVNER, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. John Mandacina paid Patrick McGuire $25,000 to kill a potential witness in a federal criminal case. His role in the murder was uncovered, and he was sentenced to life imprisonment after a jury found him guilty. The opinion affirming his conviction and sentence provides details. *United States v. McGuire*, 45 F.3d 1177 (8th Cir. 1995).

Mandacina filed and lost a collateral attack under 28 U.S.C. §2255. While an appeal from that decision was pending, he attempted to add a contention that the prosecutor had failed to produce information that one of the witnesses at trial—FBI agent Daniel Craft—had committed misconduct in other cases. The Eighth Circuit affirmed without discussing this contention. *Mandacina v. United States*, 328 F.3d 995 (8th Cir. 2003). Mandacina then requested permission to pursue a second collateral challenge under §2255 based on information about Craft. The Eighth Circuit denied this request without much explanation. *Mandacina v. United States*, No. 05-2186 (8th Cir. June 8, 2005).

More than 13 years later, Mandacina filed this proceeding seeking a writ of habeas corpus under 28 U.S.C. §2241. He requests collateral relief based on the same considerations presented to the Eighth Circuit in 2003 and 2005. The district court denied the petition, ruling that it is blocked by §2255(e), which says that the writ of habeas corpus is unavailable "unless it also appears that the remedy by motion [under §2255] is inadequate or ineffective to test the legality of his detention."

Mandacina does not contend that Craft engaged in misconduct while investigating or testifying in his prosecution. He maintains only that Craft committed misconduct in other cases—Craft misrepresented the results of a polygraph examination and on a different occasion misfiled the report of an interview—and that he could have used that information to impeach Craft's testimony in his case. He describes this as a claim based on *Giglio v. United States*, 405 U.S. 150 (1972), which it is not. *Giglio* dealt with a prosecutor who had suborned perjury by inducing a witness to lie under oath. Man-

dacina does not contend that he has any evidence implying that Craft lied on the stand during his trial. Indeed, he does not contend that the prosecutors knew of Craft's misconduct. His claim therefore rests on *United States v. Bagley*, 473 U.S. 667, 676 (1985), which extended *Brady v. Maryland*, 373 U.S. 83 (1963), from directly exculpatory to impeaching information. See also *Strickler v. Greene*, 527 U.S. 263 (1999). From now on, we describe Mandacina's contention as a *Brady* claim.

His principal problem, which the district judge deemed insurmountable, is that *Brady* claims are made and decided under §2255 routinely. There is nothing "inadequate or ineffective" about §2255 from that perspective. See *Lee v. Watson*, 964 F.3d 663, 665, 667 (7th Cir. 2020). Mandacina himself actually presented this *Brady* claim under §2255: once by an effort to add issues during an appeal, and again by a request for permission to file a second §2255 motion. He presented a different *Brady* claim that the Eighth Circuit rejected on the merits in 2003. 382 F.3d at 1000–02.

That Mandacina did not succeed does not make §2255 inadequate or ineffective; it takes a structural problem in §2255 to merit that description. See, e.g., *Higgs v. Watson*, 984 F.3d 1235, 1239–40 (7th Cir. 2021); *Bourgeois v. Watson*, 977 F.3d 620, 633 (7th Cir. 2020); *Purkey v. United States*, 964 F.3d 603, 614–15 (7th Cir. 2020); *Webster v. Daniels*, 784 F.3d 1123, 1136 (7th Cir. 2015) (en banc). Nor is a prisoner entitled to review under §2241 just because the court that resolved motions under §2255 did not write an opinion. We do not use §2241 to regulate how our colleagues in other circuits handle their business. See *Vialva v. Watson*, 975 F.3d 664, 665–66 (7th Cir. 2020).

According to Mandacina, §2255 is structurally deficient as applied to all *Brady* claims, because the evidence showing a violation of *Brady* almost always comes to light years after the trial. That's a considerable overstatement; we see many *Brady* claims based on evidence discovered soon after trial. And §2255(f)(4) makes allowance for late-discovered evidence. It restarts the one-year time for collateral review on "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." Mandacina's problem is not that §2255 is unavailable for *Brady* claims, but that he squandered the one §2255 proceeding allowed as of right. That brought into play the limit on second or successive petitions.

The limits on second or successive §2255 motions have exceptions of their own. One appears in §2255(h)(1): a further §2255 motion is allowed when it contains "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense". If Craft's testimony had been essential to the conviction, and he had committed misconduct in *this* case rather than some other, that description might be apt. But his testimony was not essential (as the Eighth Circuit's opinion on direct appeal shows), and Mandacina does not contend that any of Craft's misconduct affected the investigation of this case. So Mandacina cannot meet the threshold in §2255(h)(1), but this just shows that he cannot obtain relief, not that there's a structural flaw. The high threshold in §2255(h)(1) reflects a legislative judgment that merely impeaching evidence—the sort of evidence that Mandacina wants to present—falls short of

the grave constitutional flaws that could justify multiple rounds of collateral review.

None of the decisions in this circuit holds that a desire to present impeaching evidence in a second or successive proceeding identifies a structural flaw in §2255. Our cases permit use of §2241 to deal with genuinely fundamental problems—for example, ineligibility for the death penalty in *Webster*, or actual innocence in *In re Davenport*, 147 F.3d 605 (7th Cir. 1998). It would take a dramatic revision of this circuit's precedents to treat lack of access to impeachment material as exposing a structural flaw in §2255. See *Webster*, 784 F.3d at 1136: "[S]omething more than a lack of success with a section 2255 motion must exist before the savings clause is satisfied." Our more recent decisions, such as *Lee*, *Purkey*, and *Higgs*, repeat this observation. See also *Higgs v. Watson*, No. 21-1073 (7th Cir. Jan. 15, 2021) (nonprecedential disposition holding that a *Brady* claim does not permit use of §2241).

What is more, by waiting 15 years between discovering Craft's misconduct and first making a *Brady* claim under §2241 (and 13 years after the claim's definitive rejection by the Eighth Circuit), Mandacina vastly exceeded the one-year window opened by §2255(f)(4) for newly discovered evidence. Although §2255(f)(4) applies only to §2255, and not to §2241, access to the writ of habeas corpus has always been limited by equitable principles. This was the basis of the "abuse of the writ" doctrine that prevailed before the amendments to §2255 in 1996. (We recognize that the doctrine of abuse of the writ no longer applies to litigation under §2255, see *Burris v. Parke*, 95 F.3d 465, 469 (7th Cir. 1996) (en banc), but it retains vitality when a prisoner seeks relief under §2241.) Someone who waits until a retrial would be

impossible has abused the writ. See *Williams v. Sims*, 390 F.3d 958, 961–62 (7th Cir. 2004); *Higgason v. Clark*, 984 F.2d 203, 206 (7th Cir. 1993). This crime was committed more than 30 years ago. Mandacina's delay independently precludes the relief he seeks now.

Finally, Mandacina's contention that any limit on §2241 unconstitutionally suspends the writ of habeas corpus conflicts with decisions holding that the Suspension Clause does not entitle anyone to successive collateral attacks on a criminal judgment. See *Felker v. Turpin*, 518 U.S. 651, 663–64 (1996); *Swain v. Pressley*, 430 U.S. 372 (1977); cf. *United States v. Hayman*, 342 U.S. 205 (1952). See also *Lindh v. Murphy*, 96 F.3d 856, 867–68 (7th Cir. 1996) (en banc), vacated on other grounds, 521 U.S. 320 (1997). One opportunity for one round of review suffices.

AFFIRMED