

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted June 23, 2023*

Decided June 28, 2023

Before

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-3018

BRENT DOUGLAS COLE,
Petitioner-Appellant,

v.

R.D. KEYES,
Respondent-Appellee.

Appeal from the United States District
Court for the Western District of Wisconsin.

No. 20-cv-453-wmc

James D. Peterson,
Chief Judge.

ORDER

Brent Cole is serving 355 months' imprisonment for shooting and injuring a federal Bureau of Land Management ranger and an assisting state officer. The sentence was imposed in the Eastern District of California, *United States v. Cole*, 722 F. App'x 749 (9th Cir. 2018) (affirming), where Cole's 2019 request to vacate the judgment under

* Appellee R.D. Keyes was not served with process and is not participating in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

28 U.S.C. § 2255 remains pending after extensive motions practice, *United States v. Cole*, 2:14-cr-00269-WBS-DB-1 (E.D. Cal., § 2255 motion filed on criminal docket Nov. 8, 2019). While Cole was serving this sentence at the Federal Correctional Institute in Oxford, Wisconsin, he lost 27 days' good-time credit as discipline for fighting. See 28 C.F.R. § 541.3, Table 1, Offense 201. Cole then petitioned the district court in the Western District of Wisconsin for a writ of habeas corpus under 28 U.S.C. § 2241. That court denied the petition, rejecting Cole's three disparate theories: that he should not be disciplined for fighting because he meant only to defend others and restore peace; that he needs better medical care and access to the courts; and that perceived delays in his § 2255 action in California entitle him to review in Wisconsin of his conviction and sentence. We affirm.

We note initially that although Cole was transferred to FCI Sandstone in Minnesota (in the Eighth Circuit) after he filed his petition but before it was denied, this transfer does not affect the district court's jurisdiction or ours. See *In re Hall*, 988 F.3d 376, 378 (7th Cir. 2021) (district court); *Gamboa v. Daniels*, 26 F.4th 410, 414 (7th Cir. 2022) (circuit court). We turn, then, to Cole's arguments.

In his appellate brief, Cole does not contest the discipline for fighting. But he does in his separate jurisdictional memorandum, insisting that officers should have heeded his defense that he was a "Good Samaritan" who used force only to protect one prisoner from another. The disciplinary hearing officer considered but dismissed this theory because Cole was not authorized to restrain another prisoner and, in any event, Cole did not stop when staff told him to. Even if Cole's jurisdictional memorandum preserves this argument for appeal, the district court was right to deny it. Cole has not identified any rule authorizing federal prisoners to use physical force in defense of others, our own research has unearthed none, and we have repeatedly held that due process does not require prisons to allow such a defense in disciplinary proceedings. See *Jones v. Cross*, 637 F.3d 841, 847 (7th Cir. 2011); *Scruggs v. Jordan*, 485 F.3d 934, 939 (7th Cir. 2007); *Rowe v. DeBruyn*, 17 F.3d 1047, 1052–53 (7th Cir. 1994).

Next, Cole asserts in the same jurisdictional memorandum that, contrary to the district court's ruling, his various complaints about prison medical care and access to courts (the details of which we omit here) belong in this habeas corpus action, rather than in a civil rights action under, for instance, *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). See *Carlson v. Green*, 446 U.S. 14, 20 (1980) (federal prisoners can sometimes challenge healthcare decisions under *Bivens*). But his argument is foreclosed by *Glaus v. Anderson*, 408 F.3d 382, 387–88 (7th Cir. 2005). As the district court

observed, its denial of this action will not bar any valid challenge to conditions of confinement in a proper civil rights action, but habeas corpus is not the correct vehicle for Cole to pursue such relief.

In his appellate brief, Cole also contends that delay in the Eastern District of California renders his § 2255 proceedings “inadequate or ineffective” to test the legality of his convictions and sentence, 28 U.S.C. § 2255(e), thus opening habeas corpus courts in this circuit to a wide variety of his challenges. *Cf. Jones v. Hendrix*, 599 U.S. ___, (June 22, 2023) (slip op.) (eliminating § 2255(e) review for federal prisoners seeking to enforce new interpretation of criminal statute). We disagree. Even if we assumed that unfairly delayed § 2255 proceedings in one district court could lead to habeas corpus review in another—an unlikely assumption after *Jones*—Cole himself is responsible for much of the asserted delay here. After filing his collateral attack in late 2019, he followed up with a stream of supplemental filings requiring action from the court or government, most recently in December 2022. No authority suggests to us that this timeline entitles Cole to pursue collateral review here instead of completing his pending action in the sentencing court. *Cf. Evans v. Wills*, 66 F.4th 681, 685–86 (7th Cir. 2023) (excusing exhaustion of state remedies for Illinois prisoner after two-decade delay); *Stirone v. Markley*, 345 F.2d 473, 475 (7th Cir. 1965) (declining to foreclose theoretical possibility that “refusal to entertain a section 2255 motion or an inordinate delay in its disposition” in another circuit would open the door to habeas corpus review in this circuit).

Finally, Cole suggests that the Northwest Ordinance, an eighteenth-century statute on land ownership, statehood, and slavery, has some bearing on his access to habeas corpus here. But no connection between that law and this case is apparent.

AFFIRMED