

NONPRECEDENTIAL DISPOSITION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

Argued November 6, 2023
Decided December 20, 2023

Before

JOEL M. FLAUM, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1072

ROGER C. DAY, JR.,
Petitioner-Appellant,

v.

T. J. WATSON,
Respondent-Appellee.

Appeal from the United States District
Court for the Southern District of
Indiana, Terre Haute Division.

No. 20-cv-00362

Jane Magnus-Stinson,
Judge.

ORDER

Roger Charles Day, Jr. seeks habeas relief under a theory already considered by the courts of another circuit. Since he cannot relitigate this issue, we affirm the denial of his habeas petition.

After Day was extradited from Mexico, he was tried and convicted in the Eastern District of Virginia for his role in a multi-year conspiracy to defraud the United States government. He appealed to the Fourth Circuit, arguing that his conviction should be set aside on jurisdictional grounds. According to Day, his conviction violated a principle of international law known as the Rule of Specialty, which states that a country receiving a person by extradition “may prosecute the extradited person only for the ... crimes named

in the surrendering country's extradition grant." *United States v. Stokes*, 726 F.3d 880, 885 (7th Cir. 2013). The Fourth Circuit rejected Day's challenge and affirmed his conviction. *United States v. Day*, 700 F.3d 713, 716–17, 721–22 (4th Cir. 2012), *cert. denied*, 569 U.S. 959 (2013).

Day then tried to attack his conviction by filing a motion under 28 U.S.C. § 2255 in the Eastern District of Virginia, again asserting a Rule of Specialty violation. This time, Day connected his Rule of Specialty challenge to a Supreme Court case involving criminal aiding and abetting liability, *Rosemond v. United States*, 572 U.S. 65 (2014). Day argued that *Rosemond*, announced after his direct appeal, created an intervening change in aiding and abetting liability that allowed him to revive his Rule of Specialty argument. The Eastern District of Virginia disagreed, concluding that *Rosemond* "did not create new law" that warranted reconsideration of Day's claims, *United States v. Day*, No. 07-cr-00154, 2016 WL 96161, at *2 (E.D. Va. Jan. 8, 2016), and the Fourth Circuit declined to issue a certificate of appealability, *United States v. Day*, 668 F. App'x 506, 507 (4th Cir. 2016), *cert. denied*, 580 U.S. 1209 (2017).

Day, now incarcerated in Terre Haute, Indiana, subsequently filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the Southern District of Indiana. That court denied his petition, which once again raised a Rule of Specialty challenge. Day now appeals.

In collateral attacks, relief under § 2241 is rare: A prisoner can receive it in their district of incarceration "where unusual circumstances make it impossible or impracticable to seek relief in the[ir] sentencing court." *Jones v. Hendrix*, 599 U.S. 465, 478 (2023); *see* 28 U.S.C. § 2255(e). Indeed, Day cannot relitigate a theory "under § 2241 if § 2255 could have been (or was) used to raise the issue." *Roundtree v. Krueger*, 910 F.3d 312, 313 (7th Cir. 2018). This limitation ends our inquiry. Day's § 2255 motion "afforded [him] a means to address [his Rule of Specialty] arguments." *Id.* Since "[§] 2241 is not a means to get a second opinion in a different circuit[.]" Day cannot use it to resurrect an argument already rejected elsewhere. *Von Kahl v. Segal*, 19 F.4th 987, 988 (7th Cir. 2021).

For the foregoing reasons, we AFFIRM the district court's denial of Day's habeas petition.