

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

FRANK LOUIS AMODEO,

Petitioner,

v.

Case No: 5:17-cv-284-Oc-10PRL

WARDEN, FCC COLEMAN - LOW

Respondent.

ORDER

Petitioner, a federal inmate proceeding *pro se*, initiated this case by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). Petitioner argues that he is factually innocent of the crimes for which he was convicted; the sentencing court made significant errors in the advisory guideline range and 3553(a) calculus; and that his indictment is flawed. (Doc. 1).

Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that “[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” See also Rule 12, Rules Governing Section 2255 Proceedings. Recently, sitting en banc, the United States Court of Appeals for the Eleventh Circuit overruled prior precedent and held that 28 U.S.C. § 2241 is not available to challenge the validity of a sentence except upon very narrow grounds not present in this case. McCarthan v. Director of Goodwill Industries-Suncoast, Inc., 851 F.3d 1076, 1079 (11th Cir. 2017) (en banc) (quoting 28 U.S.C.

§ 2255(e). Bernard v. FCC Coleman Warden, ___ Fed. Appx. ___, 2017 WL 1430875 (11th Cir. April 24, 2017) (citing McCarthan, 851 F.3d at 1092-93) (unpublished).

Thus, pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts (directing *sua sponte* dismissal if the petition and records show that the moving party is not entitled to relief), this case is **DISMISSED** without prejudice for lack of jurisdiction. See also 28 U.S.C. § 2255(b). The **Clerk** is directed to enter judgment accordingly, terminate any pending motions and close the file.

IT IS SO ORDERED.

DONE AND ORDERED at Ocala, Florida, this 2nd day of August 2017.



UNITED STATES DISTRICT JUDGE

Copies to: Pro Se Parties, Counsel of Record