

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 7 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SERGIO SOSA-SANCHEZ,

Petitioner-Appellant,

v.

BONITA S. MOSLEY,

Respondent-Appellee.

No. 16-56375

D.C. No. 2:16-cv-02885-DSF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted February 16, 2018**
Pasadena, California

Before: McKEOWN and WARDLAW, Circuit Judges, and MENDOZA,^{***}
District Judge.

Sergio Sosa-Sanchez appeals from the district court's denial of his 28 U.S.C.
§ 2241 habeas corpus petition. A federal prisoner challenging the legality of a

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Salvador Mendoza, Jr., United States District Judge
for the Eastern District of Washington, sitting by designation.

sentence must generally do so by motion raised in the sentencing court pursuant to 28 U.S.C. § 2255. Section 2255 contains an exception—known as the “escape hatch” or “savings clause”—which allows petitioners to file a habeas corpus petition pursuant to § 2241 to contest a federal sentence where the remedy under § 2255 is “inadequate or ineffective to test the legality of his detention.” *Id.* § 2255(e); *see also Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000). Because Sosa-Sanchez cannot invoke § 2255’s escape hatch, he was not entitled to proceed under § 2241, and we must dismiss his petition.

“A petition meets the escape hatch criteria where a petitioner (1) makes a claim of actual innocence, and (2) has not had an unobstructed procedural shot at presenting that claim.” *Alaimalo v. United States*, 645 F.3d 1042, 1047 (9th Cir. 2011). In determining whether a petitioner had an unobstructed procedural shot to pursue his claim, the court considers: “(1) whether the legal basis for petitioner’s claim ‘did not arise until after he had exhausted his direct appeal and first § 2255 motion’; and (2) whether the law changed ‘in any way relevant’ to petitioner’s claim after that first § 2255 motion.” *Harrison v. Ollison*, 519 F.3d 952, 960 (9th Cir. 2008) (quoting *Ivy v. Pontesso*, 328 F.3d 1057, 1060–61 (9th Cir. 2003)).

Sosa-Sanchez’s petition fails because he cannot establish that he lacked an unobstructed procedural shot to bring the petition within the one-year § 2255 limitations period. Sosa-Sanchez is currently serving time on a 2015 conviction

for illegal reentry based on the reinstatement of a 1995 deportation order. The substance of Sosa-Sanchez's § 2241 petition challenges his 2013 illegal reentry conviction under 8 U.S.C. § 1326 on the grounds that his initial deportation order was invalid because it relied on a state law conviction for being a felon in possession of a firearm under California Penal Code § 12021(c)(1), which is not a categorical match for a federal removal firearms offense. While Sosa-Sanchez makes a colorable argument regarding the validity of his conviction, the legal basis for this argument—the Supreme Court's decision in *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013)—was available to him during the one-year § 2255 limitations period.

Because Sosa-Sanchez's petition did not qualify for § 2255's escape hatch, the district court lacked jurisdiction to hear the petition.

The district court's decision is **VACATED** and Sosa-Sanchez's petition is **DISMISSED**.