

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 24 2021

FOR THE NINTH CIRCUIT

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

TODD C. SMITH,

Petitioner-Appellant,

v.

BARBARA VON BLANCKENSEE,

Respondent-Appellee.

No. 20-15551

D.C. No. 4:18-cv-00183-JAS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Soto, District Judge, Presiding

Submitted June 21, 2021**

Before: SILVERMAN, WATFORD, and BENNETT, Circuit Judges.

Todd C. Smith appeals from the district court's judgment dismissing his 28 U.S.C. § 2241 habeas petition. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Smith's counsel has filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. Smith has filed a pro se

* 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).

supplemental brief. No answering brief has been filed.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80 (1988), discloses that the certified issue provides no basis for appellate relief. *See Graves v. McEwen*, 731 F.3d 876, 880-81 (9th Cir. 2013). Contrary to Smith’s pro se contention, the district court lacked jurisdiction to consider his § 2241 petition under the escape hatch in 28 U.S.C. § 2255(e). *See Allen v. Ives*, 950 F.3d 1184, 1188-90 (9th Cir. 2020) (discussing escape hatch criteria); *see also Allen v. Ives*, 976 F.3d 863, 869 (9th Cir. 2020) (W. Fletcher, J., concurring in denial for reh’g en banc) (clarifying that that escape hatch is available only to petitioners who can show: “(1) they were convicted of prior offenses, at least one of which was mistakenly deemed to qualify as a predicate offense; (2) the mistake was later addressed by the Supreme Court in a retroactive decision clarifying the applicable law; (3) they received a mandatory sentence under a mandatory sentencing scheme; and (4) all of this came to light after the opportunity to raise it in a § 2255 motion had passed”).

We treat Smith’s pro se arguments that his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), were violated and that he received ineffective assistance of counsel as a motion to expand the certificate of appealability. So treated, the motion is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999).

The motion to take judicial notice is granted.

Counsel's motion to withdraw is **GRANTED.**

AFFIRMED.