

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 30 2023

FOR THE NINTH CIRCUIT

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

CODY RAY LEVEKE,

No. 23-15746

Petitioner-Appellant,

D.C. No. 2:23-cv-00654-SPL-ESW

v.

BROWN, First Name Unknown, Warden,

MEMORANDUM*

Respondent-Appellee.

Appeal from the United States District Court
for the District of Arizona
Steven P. Logan, District Judge, Presiding

Submitted August 15, 2023**

Before: TASHIMA, S.R. THOMAS, and FORREST, Circuit Judges.

Federal prisoner Cody Ray Leveke appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2241 habeas petition. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, *see Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006), we affirm.

* 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).

Leveke contends in his opening brief and “motion to allow appeal to proceed” that he meets the escape hatch requirements of 28 U.S.C. § 2255(e). He argues that he is permitted to file a § 2241 petition in the district of confinement because caselaw in the sentencing district—the Southern District of Iowa—bars his claims and renders § 2255 relief inadequate or ineffective. The district court did not err in concluding otherwise. The record shows that Leveke has not filed a first § 2255 motion and thus he cannot establish he has not had an “unobstructed procedural shot” at presenting his claims. *See Stephens*, 464 F.3d at 898. Further, § 2255 is not “inadequate or ineffective” even if, as Leveke contends, Eighth Circuit authority is not favorable to his claims. *See Jones v. Hendrix*, 143 S. Ct. 1857, 1870 & n.4 (2023) (stating that adverse circuit law does not render § 2255 “inadequate or ineffective” to test the prisoner’s detention). Accordingly, the district court properly dismissed Leveke’s § 2241 petition for lack of jurisdiction. *See Stephens*, 464 F.3d at 899.

AFFIRMED.