

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 14 2025

FOR THE NINTH CIRCUIT

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

BRENT ANDREW BURKE,

Petitioner - Appellant,

v.

D COLBERT, Acting Warden,

Respondent - Appellee.

No. 23-1644

D.C. No. 4:22-cv-00208-RCC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Raner C. Collins, District Judge, Presiding

Submitted January 14, 2025\*\*

Before: O'SCANNLAIN, KLEINFELD, and SILVERMAN, Circuit Judges

Brent Andrew Burke appeals pro se from the district court's order denying his 28 U.S.C. § 2241 habeas petition. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, *see Alaimalo v. United States*, 645 F.3d 1042, 1047 (9th Cir. 2011), we affirm.

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\* 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)*.

Burke contends that the military did not have jurisdiction to court-martial him because he reached his expiration of term of service (“ETS”) prior to being charged in a court-martial. The district court correctly concluded that this claim is barred by the abuse of the writ doctrine because he raised it in his first § 2241 petition. *See id.* at 1049 (abuse of the writ doctrine “generally forbids the reconsideration of claims that were or could have been raised in a prior habeas petition” (internal quotation marks omitted)). In addition, Burke has not shown cause for bringing a successive petition, or that a fundamental miscarriage of justice will result from the failure to entertain the claim. *See id.*

**AFFIRMED.**