PRISONER'S DILEMMA? HOW THE EIGHTH CIRCUIT RESOLVED A JURISDICTIONAL ODDITY ARISING FROM FEDERAL HABEAS MOTIONS

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In a recent case, Ralph Duke—prosecuted and convicted in Minnesota during the early 1990s as one of the state's biggest-ever drug dealers—successfully challenged elements of his conviction under a habeas petition in federal district court in Wisconsin, where he was imprisoned. Shortly thereafter, Duke was returned to Minnesota for resentencing. When the Minnesota court again sentenced Duke to life in prison, he challenged its jurisdictional authority to carry out that resentencing.[1] Duke's challenge failed, in large part because the Eighth Circuit had already spoken to the jurisdictional concern he raised. But Duke's challenge nevertheless reflects a confusion and frustration articulated by courts throughout the country when convictions are overturned in other jurisdictions. The Eighth Circuit appears to have been the first federal appellate court to directly address this issue, and Duke's case is the first instance in which one of the circuit's district courts has relied on that earlier precedent.

This Post deals with the federal jurisdictional issue raised in *Duke*. It briefly explains federal habeas law. It then describes how modern habeas statutes can give rise to a circumstance such as Duke's and discusses how the Eighth Circuit has handled this issue. It finally argues that this issue remains under-examined, under-explained, and likely to continue to arise in the future.

I. MODERN HABEAS: CHALLENGES TO CONVICTION UNDER § 2255 and § 2241

The writ of habeas corpus is a principle means by which prisoners may challenge their convictions or sentences. Under its contemporary manifestation in federal law, federal prisoners who wish to challenge all or part of their sentences may do so under one of two statutes: 28 U.S.C. § 2241 or 28 U.S.C. § 2255. These statutes were enacted by Congress in the mid-20th century to modernize the existing habeas statute of 1867, which was widely perceived as allowing prisoners to access the courts too freely.[2]

All told, the two modern statutes work together to provide prisoners with a range of opportunities to air grievances and challenges in court. Section 2255 was designed as a post-conviction remedy, giving federal prisoners the opportunity to challenge the validity of their convictions and sentences in the district where they were convicted and sentenced.[3] At the time of the law's enactment in 1948, most federal prisoners were held in a small number of jurisdictions, resulting in a glut of traditional habeas motions filed in the courts physically located in the same areas.[4] Section 2255 thus attempts to provide the rights embodied by habeas without the need for a writ issued in the place of a prisoner's confinement.[5] Section 2241, meanwhile, retains much of the traditional spirit of the habeas writ, in that a prisoner brings a § 2241 petition in the district where he or she is imprisoned and such petitions are typically focused on the conditions or implementation of their imprisonment.[6]

That being said, the individual reasons that a petitioner may choose to move under § 2241 or § 2255 are varied and do not always conform with simple explanation.[7] A full analysis of the motivations behind a decision to move under either statute is beyond the scope of this Post, but suffice to say that key factors include that prisoners are limited in the number of § 2255 motions they may bring and that federal circuits have unevenly interpreted what circumstances allow a successive § 2255 motion.[8] Section 2241 is thus at times the only available remedy for prisoners seeking a court's intervention over a conviction they believe should be overturned.

II. JURISDICTIONAL ISSUES ARISING UNDER § 2241 AND § 2251 AND THE EIGHTH'S CIRCUIT'S UNIQUE HANDLING

When federal prisoners successfully challenge the substance of their conviction under § 2241, an interesting jurisdictional question can arise. That is because a § 2241 motion is brought in the place of a movant's incarceration, which is frequently different than the movant's place of conviction. Thus, if a § 2241 motion brought in District A results in the overturning of a

conviction made in District B, this leaves some ambiguity as to whether a resentencing is necessary, and if so, which court should carry it out.

Resentencings of federal convictions, however they arise, are controlled by 18 U.S.C. § 3582. That statute imposes limits on when a court may conduct a resentencing, including times "expressly permitted by statute."[9] Section 2241 does not address resentencing at all, either explicitly or implicitly, but it does trigger 28 U.S.C. § 2243, which provides that a court hearing a § 2241 motion "shall … dispose of the matter as law and justice require."[10] Whether or not such a disposal includes authority to resentence, or to order a resentencing, has been subject to debate.

In *United States v. Triestman*,[11] the 2nd Circuit heard such a challenge by a defendant who had successfully moved the district court that had convicted him to vacate his federal gun convictions.[12] When that same district court then resentenced the defendant, he argued that it had no power to do so. The 2nd Circuit held otherwise. It found that § 2243's requirement to "dispose of the matter as law and justice require" was "broad enough to allow for resentencing in some circumstances."[13] It maintained that to accept the defendant's jurisdiction argument would seemingly render the § 2241 court unable to vacate unconstitutional convictions in the first place, which was surely an undesirable outcome for any defendant seeking relief.[14]

As a general matter, 18 U.S.C. § 3582 does not explicitly provide for any court but the court of conviction to interfere with a sentence once imposed. *Triestman* thus addresses a relatively simple question of jurisdiction, in which the resentencing at issue stemmed from a § 2241 motion brought and sustained in the same jurisdiction as the defendant's original conviction. In the court's holding, the necessary authority for the resentencing flowed unimpeded from 28 U.S.C. § 2241 to 28 U.S.C. § 2243 and back to 18 U.S.C. § 3582—all in one court, in one jurisdiction.

But if § 3582 only allows the court of conviction to modify a sentence, what happens when a § 2241 motion giving rise to a § 2243 requirement to "dispose of the matter as law and justice require" is brought in a court other than court of conviction? Which court has the power or duty to dispose? Outside of the 8th Circuit, this issue has been directly addressed on at least two occasions. In the first, a federal district court in Florida refused to resentence a defendant who was returned after having his conviction overturned on a § 2241 motion brought in a federal district court in Georgia.[15] In the second instance, a federal district court in Delaware agreed to resentence a defendant it originally convicted after a federal district court in Indiana overturned portions of that conviction on a § 2241 challenge and sent the defendant back.[16] In doing so, it denied that it must resentence at the order of the Indiana court, but reluctantly found it that it could do so voluntarily.[17]

The 8th Circuit appears to be the only court of its level to directly address this question and hold plainly that a § 2241 motion brought elsewhere confers jurisdiction on its own courts to resentence under § 3582. In *United States v. Cox*,[18] a federal district court in Missouri resentenced a defendant who had successfully petitioned a court in Illinois, where he was imprisoned, to vacate two counts of his original conviction under § 2241.[19] The Illinois court then ordered that he be returned to Missouri, where he was originally convicted, for resentencing.[20] When the Missouri court did resentence him, the defendant appealed, challenging its authority to do so.[21] The 8th Circuit upheld the Missouri court's decision to conduct the resentencing.[22]

The 8th Circuit's opinion in *Cox* seemingly side-steps ruling directly on the arguments presented to it on the jurisdiction question. Indeed, while the parties expressly litigated whether § 2243 allowed the Illinois court to send the defendant back to Missouri for resentencing,[23] the Court simply approved the resentencing while noting the "odd procedural posture" that left one district with the "unfortunate task of conducting a resentencing according to an order [of another district]."[24] Thus, in upholding the resentencing on substantive and procedural grounds, the court appeared to rule on the jurisdictional issue without overtly explaining its position.

Earlier this year, in *United States v. Duke*, the District of Minnesota held that *Cox* had settled the jurisdiction question.[25] Ralph Duke, like the *Cox* defendant, had several of his original convictions overturned in Illinois, and the court had then ordered the matter sent back to Minnesota for resentencing under § 3582.[26] The Minnesota court complied. In doing so, it reincorporated three gun convictions vacated in Illinois as enhancements to the original drug conviction, rather than as separate counts, essentially keeping Duke's existing prison term intact.[27]

Duke appealed the substantive fairness of his new sentence to the 8th Circuit and lost.[28] He then returned to the district court to argue that it had lacked jurisdiction to conduct the resentencing at all.[29] And citing *Cox*, the district court disagreed.[30]

III. WHY THE JURISDICTIONAL QUESTION MATTERS

On a basic level, the issue discussed above is important because the actual gravitas of the jurisdictional arguments still has not be resolved. *Duke* merely applies *Cox*, and *Cox* did not really explain why it found jurisdiction under its own facts. Arguably, the result is one legal conclusion stacked on another. The other cases that address this jurisdictional question have also struggled to articulate a satisfying rationale.[31] In fact, the court that spoke most declaratively actually rejected that § 2241 could create resentencing jurisdiction in another district.[32] This issue seems ripe for a more authoritative ruling on who is right and why.

A more substantive reason this "odd" jurisdictional dispute is of wider interest has to do with why these oddities arise in the first place. In *Cox*, for example, the defendant was only left fighting about jurisdiction on resentencing because he was prevented in the first place from challenging his conviction in the sentencing court.[33] The *Cox* defendant had first sought relief through §

2255 in the district of his conviction, but that court determined that the challenge was successive and barred under the statute.[34] Despite having an apparently meritorious claim, the defendant was thus only able to bring his challenge in another court, under § 2241. It feels intuitively wrong that a court that refuses to hear a defendant's challenge should then dispose of the attendant resentencing when that challenge is successfully heard and sustained elsewhere.

Finally, the issues raised in this Post are not likely to fade away. Ralph Duke, for instance, was among many defendants who successfully challenged his conviction after a Supreme Court ruling on a widely used federal gun-crime statute.[35] His particular circumstances that gave rise to his subsequent jurisdictional dispute are thus far from unique. Other recent Court decisions have triggered similar waves of challenges to previous convictions.[36] With the circuits split on when and how § 2255 motions can be brought in such circumstances,[37] we can expect prisoners to continue to employ § 2241 as a fallback and for jurisdictional disputes to continue to accrue.

[1] *United States v. Duke*, No. CR 4:89-94(DSD), 2020 WL 1043772 (D. Minn. Mar. 4, 2020).

[2] Lyn S. Entzeroth, *Struggling for Federal Judicial Review of Successive Claims of Innocence: A Study of How Federal Courts Wrestled with the Aedpa to Provide Individuals Convicted of Non-Existent Crimes with Habeas Corpus Review*, 60 U. Miami L. Rev. 75, 81–82 (2005).

[3] *Id*. at 83.

[4] *Id.* at 82.

[5] *Id.* (noting that "[t]he procedural mechanism established in § 2255 for collateral review of a federal prisoner's claim provides a post-conviction process designed to deal with administrative concerns that arose in the middle of the twentieth century with respect to habeas petitions filed by federal prisoners").

[6] *See Federal Habeas Corpus*, Dep't Just., https://www.justice.gov/usam/usam-9-37000- federal-habeas-corpus (last visited May 2, 2020); *see also* Entzeroth, *supra* note 2, at 85.

[7] For a discussion of the varying reasons a court may deny a § 2255 motion and why a defendant may seek relief under § 2241, *see* Lauren Casale, Note, *Back to the Future: Permitting Habeas Petitions Based on Intervening Retroactive Case Law to Alter Convictions and Sentences*, 87 Fordham L. Rev. 1577, 1584 (2019).

[8] *Id.*

[9] 18 U.S.C. § 3582(c)(1)(B) (2018).

[10] 28 U.S.C. § 2243 (1948).

[11] 178 F.3d 624 (2d Cir. 1999).

[12] *Id.* at 626.

[13] *Id.* at 629.

[14] *Id.*

[15] It is unclear what eventually became of this defendant and whether he was returned to prison in Georgia or released in Florida. United States v. Brye, 935 F. Supp. 2d 1319, 1320–21 (M.D. Fla. 2013) (noting that "[t]he issue of how a federal district court of incarceration deals procedurally and substantively with a § 2241 petition challenging a judgment of conviction and sentence suffered in another federal district court has . . . bedeviled and vexed district courts throughout the country").

[16] United States v. Brown, No. CR 95-69-SLR, 2013 WL 4742916 (D. Del. Sept. 4, 2013).

[17] *Id.* at 2.

[18] 766 F. App'x 423 (8th Cir. 2019).

[19] *Id.* at 424–25.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *See, e.g.*, Reply Brief for Petitioner at 1–7, 766 F. App'x 423 (8th Cir. 2019) No. 18-1630, 2018 WL 4933541; Brief for the United States, at 20–30, 766 F. App'x 423 (8th Cir. 2019) No. 18-1630, 2018 WL 4443670.

[24] *Id.* at 425.

[25] United States v. Duke, No. CR 4:89-94(DSD), 2020 WL 1043772 at 2 (D. Minn. Mar. 4, 2020) ("Given *Cox*, the court concludes that it had jurisdiction to resentence Duke at the direction of the Illinois court.").

[26] *Id.* at 1.

[27] *Id.*

[28] United States v. Duke, 932 F.3d 1056 (8th Cir. 2019).

[29] *Duke*, No. CR 4:89-94(DSD), 2020 WL 1043772.

[30] *Id.* at 2.

[31] *See* United States v. Brown, No. CR 95-69-SLR, 2013 WL 4742916 at 2 (D. Del. Sept. 4, 2013) (noting that its decision to find jurisdiction to resentence under § 2243 was a "legal stretch").

[32] United States v. Brye, 935 F. Supp. 2d 1319, 1323–24 (M.D. Fla. 2013) (finding that no district court could impose upon another a duty to carry out a resentencing or any other order, and that the § 2241 court alone could "dispose of the matter as law and justice requires" as required by § 2243).

[33] *See* Appellant's Opening Brief at 10–11, United States v. Cox, 766 F. App'x 423 (8th Cir. 2019) No. 18-1630, 2018 WL 3261816.

[34] *Id.*

[35] *See* Bailey v. United States, 516 U.S. 137, 116 S. Ct. 501, 133 L. Ed. 2d 472 (1995). In addition to his convictions for drug distribution, Duke received separate convictions under 18 U.S.C § 924(c)(1) for the "use" of a firearm in the course of his drug-trafficking crimes. The *Bailey* decision later limited the definition of "use" in such a way that would have prevented the Government from convicting Duke under the statute.

[36] *See, e.g.*, Johnson v. United States, 135 S. Ct. 2551 (2015) (holding that an element of the Armed Career Criminal Act was unconstitutionally vague and could not support the imposition of enhanced sentences).

[37] *See* Casale, *supra* note 8.