

NO. 03-1775

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ALFRED W. TRENKLER,
Petitioner/Appellant

v.

MICHAEL PUGH, Warden, USP-Allenwood,
Respondent/Appellee

ON APPEAL FROM AN ORDER OF
THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

APPENDIX (VOLUME I)
OF PETITIONER/APPELLANT ALFRED W. TRENKLER

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May 5, 2003



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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 3:02-CV-1736
(Judge Conoboy)

ALFRED W. TRENKLER,
Petitioner

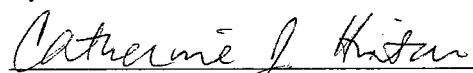
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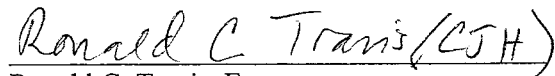
MICHAEL PUGH, Warden, USP-Allenwood,
Respondent

NOTICE OF APPEAL

Notice is hereby given that Alfred W. Trenkler, the petitioner in the above entitled case, hereby appeals to the United States Court of Appeals for the Third Circuit from an order dismissing the Petition for Writ of Habeas Corpus entered by this Court on March 7, 2003.

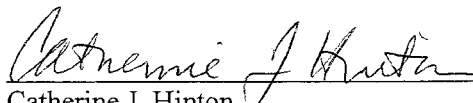
Respectfully submitted
ALFRED W. TRENKLER,
By his counsel,


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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Respondent by mailing a copy thereof, U.S. mail, postage prepaid, to Kevin McGrath, Assistant U.S. Attorney, District of Massachusetts, United States Courthouse, Suite 9200, 1 Courthouse Way, Boston, MA 02110 on March 12, 2003.


Catherine J. Hinton

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ALFRED W. TRENKLER, :
 : CIVIL ACTION NO. 3:02-CV-1736
Petitioner, :
 :
vs. :
 : (JUDGE CONABOY)
MICHAEL PUGH, Warden, :
USP-Allenwood, :
 :
Respondent. :

MEMORANDUM and ORDER

I

Before the Court is Alfred W. Trenkler's ("Trenkler" or "Petitioner") Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241 (Doc. 1). Petitioner is an inmate presently confined at the United States Penitentiary Allenwood ("USP-Allenwood") in White Deer, Pennsylvania. Named as Respondent is Michael Pugh, the Warden of USP-Allenwood. Petitioner challenges the sentence imposed on him after a trial before the United States District Court for the District of Massachusetts. Specifically, Trenkler contends that, in light of the Supreme Court's decision in United States v. Jones, 529 U.S. 848, 120 S.Ct. 1904 (2000), the conduct for which he was convicted under 18 U.S.C. §§ 844(i), 844(d) and 371 is no longer criminal, thus making his continued detention unlawful. The Court has been fully briefed and the matter is ripe for disposition. For the reasons set forth below, the Petition is **DISMISSED**.

BACKGROUND

II

On June 24, 1993, a federal grand jury sitting in the District of Massachusetts returned a superseding indictment against Trenkler and another individual, Thomas A. Shay, Jr., ("Shay Jr."), for their respective roles in the explosion that took place on October 28, 1991, at the home of Thomas Shay, Sr., ("Shay Sr."), in Roslindale, Massachusetts. The explosion killed Boston Police Bomb Squad Officer Jeremiah Hurley and severely maimed Bomb Squad Officer Francis Foley. The indictment charged Trenkler and Shay Jr. with conspiracy in violation of 18 U.S.C. § 371 (Count I); receipt of explosive materials in interstate commerce with knowledge and intent that the explosive materials would be used to kill, injure and intimidate Shay Sr. and cause damage and destruction to his real and personal property in violation of 18 U.S.C. § 844(d) (Count 2); and with knowingly attempting to maliciously damage and destroy, by means of fire and explosive a car owned by Shay Sr. that was used in interstate commerce and in activities affecting interstate commerce, in violation of 18 U.S.C. § 844(i) (Count 3).¹ (Docs. 2, 14).

After a seventeen day trial before the Honorable Rya W. Zobel, the jury convicted Trenkler on all three counts of the

¹ On Trenkler's motion, the district court severed the case and tried the two defendants separately. (Doc. 2).

superseding indictment. (Id.). Trenkler's post-verdict motions were denied and he was sentenced to concurrent terms of life imprisonment on Counts 2 and 3 and sixty (60) months imprisonment on Count 1.² (Doc. 14, at 6). Trenkler filed a timely appeal. (Doc. 2, at 3). The conviction was affirmed on direct appeal.³

On December 22, 1995, Petitioner filed a motion, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, for a new trial, or in the alternative, for an evidentiary hearing on the grounds of newly discovered evidence. This motion was denied without a hearing on February 4, 1997. (Doc. 2, at 4).

On November 19, 1996, Trenkler filed a motion for judicial inquiry into possible juror misconduct and for a new trial based on an allegation of juror misconduct. The District Court denied the motion on May 22, 1997. (Id.). The First Circuit affirmed the district court's denial of both motions for a new trial.⁴ (Id.).

On January 5, 1999, Trenkler filed a motion pursuant to 28 U.S.C. § 2255, in which he alleged ineffective assistance of trial counsel for failing to introduce certain expert testimony. (Id. at

² Review of the record here makes the Court aware of the stark difference between the life sentence imposed on the Petitioner and the 12 year sentence imposed on his co-conspirator following a plea agreement in the latter instance. Such perceived disparity may be what impels the Petitioner to repeated litigation. Other than the obvious human emotional response, this should not and did not play any role in the Court's disposition of this case.

³ See United States v. Trenkler, 61 F.3d 45 (1st Cir. 1995).

⁴ See United States v. Trenkler, 134 F.3d 361 (1st Cir. 1998).

5). The district court denied the petition as time-barred. The First Circuit affirmed the district court's denial of the § 2255 petition.⁵

On August 10, 2000, Trenkler filed a motion, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, for a new trial, or in the alternative, for an evidentiary hearing, on the grounds of newly discovered evidence. On December 28, 2000, the district court denied the motion as untimely. On April 6, 2001, the First Circuit dismissed Trenkler's appeal from the district court's denial of the motion. (Doc. 2, at 10). Trenkler's petition for writ of certiorari was denied on October 9, 2001.⁶

Trenkler filed the instant Petition for Writ of Habeas Corpus pursuant to § 2241 and Memorandum of Law in Support of the Petition on September 27, 2002. (Docs. 1-2). The Government filed its Memorandum of Law in Opposition to Trenkler's Petition on January 13, 2003. (Doc. 14). On February 11, 2003, Trenkler filed a Reply in Support of his Petition. (Doc. 17).

DISCUSSION

III

The parties submitted unnecessarily lengthy briefs, but

⁵ See United States v. Trenkler, 268 F.3d 16 (1st Cir. 2001).

⁶ See United States v. Trenkler, 534 U.S. 950 (2001).

their positions can be succinctly stated as follows. The Petitioner asserts that he is being held in custody unlawfully for conduct that is no longer criminal. He bases this assertion on the Supreme Court's decision in Jones, supra, which was decided subsequent to Trenkler's conviction, appeal and first § 2255 motion. (Doc. 1, at 3). He contends that Jones "significantly heightened" the requirements for proving the interstate commerce elements of §§ 844(i) and 844(d), and as a result, the evidence proved at trial regarding the nexus between the 1986 Buick Century ("the Buick") used in Shay Sr.'s auto body repair business and interstate commerce is no longer sufficient to support his conviction. (Doc. 2, at 1). While he recognizes that he cannot satisfy the gatekeeping provision of § 2255 (such that he would be able to file a second or successive motion under § 2255), he nevertheless contends that he may seek relief pursuant to the savings clause of § 2255. (Doc. 1, at 6). In so arguing, he relies on a narrow exception to the general rule that challenges to a federal court conviction must be pursued in the sentencing court under § 2255. Trenkler maintains that this narrow exception, as set forth in In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997), permits him to file a petition for writ of habeas corpus pursuant to § 2241 in order to have this Court review his claims.

The Government argues that Trenkler's Petition should be dismissed on several grounds. First, the Government asserts as

baseless Trenkler's claim that Jones requires his conviction under § 844(d) to be overturned because Jones does not address the scope or constitutionality of that statute, but rather interprets only § 844(i). (Doc. 14, at 2-4). On this basis, the Government contends that since Trenkler's conviction under § 844(d) is unaffected by Jones, and since Trenkler failed to cite any cases that extended the holding of Jones to § 844(d), his claim with respect to his conviction under § 844(d) is both "substantively meritless and jurisdictionally defective." (Id.) Second, the Government maintains that Jones is distinguishable from Trenkler's case. The Government compared the residential home not used for any commercial purpose in Jones, with the Buick used in connection with Shay Sr.'s auto body repair business in this case. (Id. at 4). The Government then argued that Jones is not relevant to the matter before the Court since Jones "did not hold, or even remotely suggest, that 844(i) does not cover arson or property actually used in commerce or in an activity affecting commerce, nor did the Court explicitly state or even suggest that such use must be more than de minimis." (Id. at 4) Third, the Government avers that Trenkler is barred from raising his claims pursuant to a § 2241 petition since he does not qualify for relief under the "savings clause" of 28 U.S.C. § 2255. (Id.).

IV

In 1996, Congress imposed new limitations on the availability of collateral attack of convictions and sentences by amending 18 U.S.C. § 2255 through the Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 ("AEDPA"). A § 2255 motion filed with the sentencing court is "[t]he usual avenue for federal prisoners seeking to challenge the legality of their confinement." Dorsainvil, 119 F.3d at 249. In general, a § 2255 motion "supersedes habeas corpus and provides the exclusive remedy" to one in custody pursuant to a federal court conviction. Strollo v. Alldredge, 463 F.2d 1194, 1195 (3d Cir.), cert. denied, 409 U.S. 1046, 93 S.Ct. 546 (1972). Under the AEDPA, a prisoner may file a second or successive § 2255 motion only if the court of appeals first certifies that the petition is based on either:

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.⁷

Dorsainvil, 119 F.3d at 247.

⁷ Several courts have held that Jones is a new rule of statutory interpretation of 18 U.S.C. § 844(i), and not a new rule of constitutional law. See, e.g., United State v. Prevatte, 300 F.3d 792, 798 (7th Cir. 2002) (cites omitted) ("the Supreme Court [in Jones] parsed and determined the meaning of the statutory language in § 844(i); it did not need to address the issue of constitutionality. . . ."); United States v. Ryan, 227 F.3d 1062 (8th Cir. 2000) (holding that Jones established the substantive reach of a federal statute).

Federal prisoners may attempt to circumvent the gatekeeping provisions of § 2255 by bringing a claim for collateral review of a conviction or sentence under § 2241. A § 2241 petition is only available to attack the validity of a conviction or sentence if the prisoner can show that a § 2255 motion is "inadequate or ineffective to test the legality of . . . detention."⁸ This petition is brought in the district court with jurisdiction over the petitioner's custodian.⁹ See United States v. Ferri, 686 F.2d 147, 158 (3d Cir. 1982) (citing Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 93 S.Ct. 1123 (1973)). "Section 2241 'is not an additional, alternative or supplemental remedy to 28 U.S.C. § 2255.'" Myers v. Booker, 232 F.3d 902, 2000 WL 1595967, at *1 (10th Cir. 2000) (citing Bradshaw v. Story, 86 F.3d 164, 166 (10th Cir. 1996)).

⁸ This is known as the "savings clause" of § 2255. The statute provides in part:

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to [section 2255], shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, *unless it appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.*

28 U.S.C. § 2255 (emphasis added).

⁹ Section 2241 provides in part:

Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

28 U.S.C. § 2241(a).

The petitioner has the burden to prove that the remedy afforded by § 2255 is "inadequate or ineffective." See Lewis v. Romine, 2001 WL 1555273, *3 (M.D. Pa. 2001). A petition under § 2255 does not become "inadequate or ineffective" merely because the petitioner cannot meet the AEDPA requirements. See Dorsainvil, 119 F.3d at 251 ("We do not suggest that § 2255 would be 'inadequate or ineffective' so as to enable a second petitioner to invoke § 2241 merely because that petitioner is unable to meet the stringent gatekeeping requirements of the amended § 2255. Such a holding would effectively eviscerate Congress's intent in amending § 2255."); see also Brown v. Mendez, 167 F. Supp. 2d 723, 726 (M.D. Pa. 2001) (Vanaskie, C.J.) (citing United States v. Barrett, 178 F.3d 34, 50 (1st Cir. 1999), cert. denied, 528 U.S. 1176 (2000)). "It has long been the rule of this circuit that 'the remedy by motion [under § 2255] can be "inadequate or ineffective to test the legality of . . . detention" only if it can be shown that some limitation of scope or procedure would prevent a Section 2255 proceeding from affording the prisoner a full hearing and adjudication of his claim of wrongful detention.'" United States v. Brooks, 230 F.3d 643, 648 (3d Cir. 2000) (citing United States ex rel. Lequillou v. Davis, 212 F.2d 681, 684 (3d Cir. 1954)); see also Application of Galante, 437 F.2d 1164, 1165 (3d Cir. 1971) (per curiam) (same). "It is the inefficiency of the remedy, not a personal inability to utilize it, that is determinative"

Garris v. Lindsay, 794 F.2d 722, 727 (D.C. Cir.), cert. denied, 479 U.S. 993 (1986).

V

In this case, Trenkler argues that his claim falls within the narrow exception to the general prohibition against filing § 2241 petitions to challenge a federal conviction, as recognized by the Court of Appeals for the Third Circuit in Dorsainvil, supra. In that case, the petitioner argued that the Supreme Court's decision in Bailey v. United States, 516 U.S. 137, 116 S.Ct. 501 (1995), which was issued after the petitioner's first § 2255 motion was denied on the merits, rendered the activity for which he was convicted no longer criminal.¹⁰ The petitioner, with the hope of collaterally attacking his sentence in the district court, sought certification from the Third Circuit to file a second § 2255 petition. Since Bailey did not announce a new rule of constitutional law, but merely interpreted the applicable statute, Dorsainvil failed to meet § 2255's gatekeeping provisions. Accordingly, the Third Circuit denied certification. However, this did not end the court's review of the matter.

The Dorsainvil court held that a § 2255 motion was only "inadequate and ineffective" (thereby allowing a petitioner to bring a § 2241 habeas corpus action) where the denial of the habeas

¹⁰ Bailey involved a review of 18 U.S.C. § 924(c)(1), which punishes anyone who uses or carries a firearm while involved in a drug trafficking crime. The Supreme Court narrowly interpreted § 924(c)(1) to require active use of the firearm.

action would raise serious constitutional issues. 119 F.3d at 249. The serious constitutional issue in Dorsainvil was that a change in substantive law since the petitioner's conviction had negated the criminal nature of the conduct for which the petitioner was convicted. Id. at 251. Also at issue was the retroactive application of the Supreme Court's statutory construction of the elements of a crime. Fundamental to this approach was the fact that a petitioner could claim that he was actually innocent of the crime for which he was convicted. "It is important to note in this regard that 'actual innocence' means factual innocence, not mere legal insufficiency." Bousley v. United States, 523 U.S. 614, 624, 118 S.Ct. 1604 (1998). In this case, Trenkler failed to present any evidence that he was actually innocent of the crimes for which he was convicted.

The Third Circuit was careful to note that this very narrow holding is limited to petitions involving conduct that has "been rendered non-criminal by an intervening Supreme Court decision," which the petitioner could not have presented on his first § 2255 motion. Dorsainvil, 119 F.3d at 252. That kind of situation, according to the court, "results in a complete miscarriage of justice and present(s) exceptional circumstances that justify collateral relief under § 2255." Id. at 250 (citing Davis v. United States, 417 U.S. 333, 346-47 (1974)). Thus, Dorsainvil set a high bar for what a court will consider a serious constitutional

issue sufficient to allow a petitioner to bring a § 2241 petition to challenge a conviction or sentence.

VI

Trenkler contends that in light of the Supreme Court's decision in Jones, his case falls within these narrow parameters, thus permitting this Court to review the substance of his petition. In Jones, the Court addressed the scope of the federal arson statute codified in 18 U.S.C. § 844(i).¹¹ Jones was indicted and convicted under the federal arson statute for "toss[ing] a Molotov cocktail through a window into a home in Fort Wayne, Indiana, owned and occupied by his cousin." 529 U.S. at 851. The Seventh Circuit affirmed the conviction. The Supreme Court granted certiorari in part to address a narrow issue.¹² See Jones v. United States, 528 U.S. 1002, 120 S.Ct. 494 (1999). The Court framed the issue as

¹¹ Section 844(i) provides in part:

Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used *in interstate or foreign commerce or in any activity affecting interstate or foreign commerce* shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both. .

18 U.S.C. § 844(i) (emphasis added).

¹² The Supreme Court previously construed § 844(i) in Russel v. United States, 471 U.S. 858, 105 S.Ct. 2455 (1985), where it held that an apartment building that was being rented at the time the owner attempted to have it destroyed by fire, was being used in an activity affecting commerce within the meaning of § 844(i). The Court stated: "the legislative history [of § 844(i)] suggests that Congress at least intended to protect all business property, as well as some additional property that might not fit that description, but perhaps not every private home." Id. at 862.

follows: "Does § 844(i) cover property occupied and used by its owner not for any commercial venture, but as a private residence. Is such a dwelling place, in the words of § 844(i), 'used in . . . any activity affecting . . . commerce'?" Jones, 529 U.S. at 854.

In Jones, the Government argued that the following connections to interstate commerce were sufficient under the statute: (1) the dwelling was used to obtain a mortgage from an out-of-state lender; (2) the dwelling was used to obtain casualty insurance from an out-of-state insurer; (3) the dwelling received natural gas from out-of-state supply sources. 529 U.S. at 855. The Supreme Court rejected the Government's argument. The Court, focusing its analysis on the term "use" in commerce, found that the dwelling was used solely as a residence for Jones and his family and not for any "trade or commercial purpose." Id. at 856. The Court then concluded that "[i]t surely is not the common perception that a private, owner-occupied residence is 'used' in the 'activity' of receiving natural gas, a mortgage, or an insurance policy." Id.

The Court determined that a building is "used" in an activity affecting interstate commerce only when, at the time of the arson, it is being "active[ly] employ[ed] for commercial purposes," thereby requiring more than "merely a passive, passing, or past connection to commerce." Id. at 858. The Court reversed the conviction and held that "an owner-occupied residence not used for any commercial purpose does not qualify as property 'used in'

commerce or commerce-affecting activity; arson of such a dwelling, therefore, is not subject to prosecution under § 844(i)."¹³ Id. at 851-52 (emphasis added). The Court narrowly construed the scope of § 844(i) and avoided any constitutional issues involving United States v. Lopez, 514 U.S. 549, 115 S.Ct. 1624 (1995).

We find that the evidence in this case presents a substantially different set of facts than those in Jones and that stark difference compels a different result than in Jones. Justice Ginsburg, delivering the opinion for a unanimous Court, reiterated several times that the issue was whether § 844(i) covered property occupied and used as a private residence, with no active connection to any commercial activities. Jones indicates that minimal, passive connections to non-commercial activities do not satisfy the jurisdictional elements of § 844(i). Thus it is clear that Jones is a limited holding that does not affect the disposition of Trenkler's conviction and sentence.

Unlike the situation with Bailey in Dorsainvil, Jones did not de-criminalize the conduct at issue in this case. The obvious distinction is that Jones involved a private residence that served

¹³ Section 844(i)'s "affecting interstate commerce" provision is a jurisdictional element of the crime which must be proved by the Government beyond a reasonable doubt. See also United States v. Williams, 299 F.3d 250, 253-54 (3d Cir., cert. denied, - U.S. -, 123 S.Ct. 614 (2002); United States v. Gaydos, 108 F.3d 505, 508 (3d Cir. 1997).

no commercial purpose.¹⁴ By contrast, in this case, there is uncontradicted evidence that the Buick was used in Shay Sr.'s auto body repair business at the time of the bombing. For example, during the course of the his work, Shay Sr. drove the Buick to auto body part stores to purchase parts that were manufactured for foreign and domestic cars. He also drove the car to the offices of insurance companies with which he had dealings. His customers were from the Boston area as well as from out of state. Additionally, there is uncontroverted testimony that Shay Sr. loaned the Buick to customers for unrestricted use while he repaired the customers' cars.¹⁵ (Docs. 2, 3, 14). These examples show more than merely

¹⁴ The Court suggested that its analysis would have been different had the residence "served as a home office or the locus of any commercial undertaking." Jones, 529 U.S. at 849.

¹⁵ Of course that does not mean that Jones could not be applied to vehicles. Indeed, the Jones functional analysis has been used by other Circuits in cases involving automobiles or trucks. See, e.g., United States v. Cristobal, 293 F.3d 134 (4th Cir. 2002) (concluding that: (1) trucks were owned by commercial businesses, (2) businesses were responsible for insurance on the trucks, (3) the primary purpose of trucks was to transport their drivers to and from work); United States v. Geiger, 263 F.3d 1034 (9th Cir. 2001) (holding that evidence was sufficient to establish nexus between victim's leased truck and interstate commerce); United States v. Grassie, 237 F.3d 1199 (10th Cir. 2001) (finding sufficient evidence of a connection to interstate commerce where truck was used seasonally to transport employer's pecans for sale). However, it is important to highlight that the procedural posture of the Cristobal, Geiger and Grassie opinions differ significantly from this case. In those cases, the Fourth, Ninth and Tenth Circuits affirmed on appeal convictions under § 844(i). None of the courts addressed the situation before this Court, namely, the effect of Jones on a § 2241 petition where the facts at issue are substantially different from those presented in Jones. We are not persuaded that those cases affect the disposition of this case.

passive use of the property; rather, it is clear that the Buick was actively employed in Shay Sr.'s business. Certainly, these actions show the car was "used in interstate or foreign commerce." This is a far different scenario than in Jones, where the homeowner "did not use his residence in any trade or business." Jones, 529 U.S. at 856.

VII

Within this framework, we also find Trenkler's claim that Jones renders his conviction for the receipt of explosive materials under § 844(d) unlawful without merit.¹⁶ Despite his concession that "[t]he narrow holding of the Supreme Court in Jones regarding § 844(i) did not specifically mention § 844(d)," he asserts that the language of the latter statute should be interpreted in a manner consistent with the holding in Jones. (Doc. 2, at 34). The Government counters this by arguing:

Jones did not address 844(d) whatsoever, nor can Jones be read to call into question the constitutionality of 844(d) or to graft onto it, as Trenkler argues, a requirement that the government need prove more than the shipment of an explosive device in interstate commerce to satisfy the interstate commerce requirement of 844(d).

¹⁶ Section 844(d) provides in part:

Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined under this title

²⁸ U.S.C. § 844(d).

(Doc. 14, at 35). We agree with Government's statement that Jones does not address § 844(d), but we shall refrain from addressing whether Jones affects the constitutionality of § 844(d). As discussed above, we find that Jones does not de-criminalize the conduct at issue in this case. As such, we do not have jurisdiction to reach the substance of this matter under § 2241.

VIII

Although Petitioner's first § 2255 motion was unsuccessful and he may be procedurally barred from seeking relief by a second or subsequent § 2255 motion, precedent dictates that the facts of his case do not render a § 2255 motion "inadequate or ineffective." Since we have concluded that Trenkler's reliance on Jones is misplaced, he is unable to show that a change in the substantive law since his conviction has negated the criminal nature of the conduct for which he was sentenced. Thus, he fails to satisfy the "inadequate or ineffective" exception under § 2255. The court in Dorsainvil stated that "habeas corpus under § 2241 is now reserved for rare cases." 119 F.3d at 250. Moreover, we are sensitive to the fact that the court stressed that nothing in its holding "represented a deviation from [the Third Circuit's] prior precedent strictly construing the applicability of the safety-valve language in § 2255." Id. at 251 (cites omitted). Trenkler's claim of being detained for conduct that a subsequent Supreme Court decision has

rendered not criminal is devoid of merit.¹⁷ It would not be a "complete miscarriage of justice" to deny relief in this case. Compare Dorsainvil, 119 F.3d at 251.

Accordingly, Trenkler's § 2241 petition is **DISMISSED**. An appropriate Order follows.

S/Richard P. Conaboy

Richard P. Conaboy
United States District Judge

DATE: March 7, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ALFRED W. TRENKLER,
Petitioner,

:
: CIVIL ACTION NO. 3:02-CV-1736
:

¹⁷ We recognize that several other courts have reviewed § 2241 petitions that rely on Jones for the argument that a subsequent decision by the Supreme Court rendered conduct for which the petitioner was convicted no longer criminal. See, e.g., Martin v. Perez, 2003 WL 297090 (6th Cir. Feb. 13, 2003) (holding that petitioner was entitled to review under § 2241 of a conviction for manufacturing and detonating a bomb which resulted in damaging a private residence); United States v. Prevatte, 300 F.3d 792 (7th Cir. 2002) (transferring the case to the district court with jurisdiction over petitioner's custodian for consideration of § 2241 petition to review a conviction involving a pipe bomb that damaged a private home and garage); Bennett v. Lamana, 2001 WL 1299257 (6th Cir. 2001) (affirming dismissal of § 2241 petition requesting review of conviction for arson of rental property); Davis v. Ray, 2001 WL 1301342 (D. Kan. 2001) (finding that the Department of Housing and Urban Development and the Virginia Housing Development Authority had an interest in the private residential house, thus removing the case from the purview of Jones). However, these are of little help since the factual histories of these cases are more closely analogous to the facts in Jones and do not present the circumstances at issue here. Furthermore, Petitioner failed to cite any cases where a court granted relief under § 2241 involving the facts at issue here that would persuade us to exercise jurisdiction over this case to resolve the substantive claims.

vs. :
: (JUDGE CONABOY)
MICHAEL PUGH, Warden, :
USP-Allenwood, :
Respondent. :

ORDER

NOW, THIS 7th DAY OF MARCH, 2003, IT IS HEREBY ORDERED THAT:

1. The Petition for Writ of Habeas Corpus, (Doc. 1), is **DISMISSED**.
2. The Clerk of Court is directed to **CLOSE** this case.

S/Richard P. Conaboy

Richard P. Conaboy
United States District Judge

**U.S. District Court
Middle District of Pennsylvania (Scranton)
CIVIL DOCKET FOR CASE #: 3:02-cv-01736-RPC**

Trenkler v. Pugh
Assigned to: Judge Richard P. Conaboy
Referred to:
Demand: \$0
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 28:2241 Petition for Writ of Habeas Corpus
(federa

Date Filed: 09/27/02
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner

Alfred W. Trenkler

represented by **Catherine J. Hinton**
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V.

Respondent

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Filing Date	#	Docket Text
09/27/2002	<u>1</u>	PETITION FOR WRIT OF HABEAS CORPUS Receipt #: 444558941 Amt: \$5.00 (lg) (Entered: 10/01/2002)
09/27/2002	<u>2</u>	BRIEF by petitioner IN SUPPORT of petition for habeas corpus (lg) (Entered: 10/01/2002)
09/27/2002	<u>3</u>	EXHIBITS by petitioner re habeas corpus petition [1-1] (lg) (Entered: 10/01/2002)
09/27/2002	<u>4</u>	MOTION by petitioner to exceed page limitation , concurr, c of s (lg) (Entered: 10/01/2002)
10/01/2002		SPECIAL ADMISSION FORMS received from attorneys Sultan and Hinton (lg) (Entered: 10/01/2002)
10/03/2002	5	REQUEST OF ATTORNEY FOR SPECIAL ADMISSION to practice on behalf of Alfred W. Trenkler by Atty. James L. Sulan approved by court (cc) (Entered: 10/03/2002)
10/03/2002	6	REQUEST OF ATTORNEY FOR SPECIAL ADMISSION to practice on behalf of Alfred W. Trenkler by Atty. Catherine J.Hinton approved by court (cc) (Entered: 10/03/2002)
10/11/2002	<u>7</u>	ORDER by Judge Richard P. Conaboy granting motion to exceed page limitation [4-1] re: memorandum of law in support of petitioner's writ of habeas corpus (cc: all counsel court) (hm) (Entered: 10/11/2002)
10/22/2002	<u>8</u>	ORDER TO SHOW CAUSE by Judge Richard P. Conaboy directing the Clerk of Court to serve a copy of the petition on the respondent and the U.S. Attorney; within 20 days, petitioner shall, if he so desires, file a reply to the respondent's answer within 15 days of its filing. The petitioner's motion to exceed page limit for

		filing a memorandum in support of his petition for habeas corpus is granted. Response to petition due 11/12/02 for Michael Pugh (cc: ptnr, counsel, ct) (hm) (Entered: 10/22/2002)
10/28/2002	<u>9</u>	RETURN OF SERVICE (return receipt card) of doc. #8 served on the U.S. Attorney on 10/24/02. (hm) (Entered: 10/28/2002)
10/28/2002	<u>10</u>	RETURN OF SERVICE (return receipt card) of doc. 8 served on Michael Pugh, Warden at USP Allenwood on 10/24/02. (hm) (Entered: 10/28/2002)
11/08/2002	<u>11</u>	MOTION by respondent Michael Pugh to extend time By 60 days in which to file resp. to habeas petition ; with concur, c/s and propo. (rw) (Entered: 11/12/2002)
11/13/2002	<u>12</u>	ORDER by Judge Richard P. Conaboy granting motion to extend time By 60 days in which to file resp. to habeas petition [11-1]. Petitioner shall, if he so desires, file a reply to the respondent's answer within 15 days of its filing. Response to petition ddl 1/13/03 for Michael Pugh. (cc: all counsel court) (hm) (Entered: 11/13/2002)
01/13/2003	<u>13</u>	MOTION by respondent for Kevin P. McGrath, AUSA, to appear pro hac vice (jc) (Entered: 01/14/2003)
01/13/2003	<u>14</u>	RESPONSE by respondent to the petition for writ of habeas corpus and c of s. [1-1] (jc) (Entered: 01/14/2003)
01/22/2003	<u>15</u>	ASSENTED MOTION by petitioner Alfred W. Trenkler to extend time for filing of traverse until 2/11/03 c/s (sm) (Entered: 01/22/2003)
01/23/2003	<u>16</u>	ORDER by Judge Richard P. Conaboy granting Petitioner's motion to extend time for filing of traverse until 2/11/03 [15-1] all counsel court) (cc) (Entered: 01/23/2003)
02/10/2003		ATTORNEY SPECIAL ADMISSION form received from: Kevin P. McGrath w/the US Attorney's Office in Massachusetts forwarded to judge for approval. (hm) (Entered: 02/10/2003)
02/11/2003	<u>17</u>	TRAVERSE by petitioner Alfred W. Trenkler to habeas corpus petition [1-1] to response to petition [14-1] w/COS (hm) (Entered: 02/11/2003)
02/19/2003	18	REQUEST OF ATTORNEY FOR SPECIAL ADMISSION of Kevin P. McGrath, A.U.S.A. to practice on behalf of Michael Pugh by approved by court (cc) (Entered: 02/20/2003)
03/07/2003	<u>19</u>	MEMORANDUM AND OPINION, ORDER DISMISSING CASE 1. The Petition for Writ of Habeas Corpus, (Doc. 1), is Dismissed. 2. The

		Clerk of Court is directed to close this case. copies petitioner, all counselSigned by Judge Richard P. Conaboy on 03/07/03. (cc,) (Entered: 03/07/2003)
03/18/2003	<u>20</u>	NOTICE OF APPEAL as to <u>19</u> Memorandum & Opinion,, Order Dismissing Case, by Alfred W. Trenkler. (Filing fee \$105, Receipt Number 333 91446) (Attachments: # <u>1</u> USCA Letter# <u>2</u> USCA Information Form)(hm,) (Entered: 03/19/2003)
04/01/2003	<u>21</u>	TRANSCRIPT PURCHASE ORDER REQUEST by Alfred W. Trenkler. No transcripts requested re <u>20</u> Notice of Appeal. (hm,) (Entered: 04/04/2003)
04/04/2003	<u>22</u>	Supplemental Record on Appeal consisting of the TPO transmitted to US Court of Appeals re <u>20</u> Notice of Appeal. (hm,) (Entered: 04/04/2003)

PACER Service Center			
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04/27/2003 18:13:34			
PACER Login:	rs0117	Client Code:	trenkler
Description:	Docket Report	Case Number:	3:02-cv-01736-RPC
Billable Pages:	2	Cost:	0.14



NO. 03-1775

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ALFRED W. TRENKLER,
Petitioner/Appellant

v.

MICHAEL PUGH, Warden, USP-Allenwood,
Respondent/Appellee

CERTIFICATE OF SERVICE

I hereby certify that I served the *Brief and Appendix (Volume I) of Petitioner/Appellant Alfred W. Trenkler* by mailing two copies thereof, U.S. mail, postage prepaid, to: Kevin McGrath, Assistant U.S. Attorney, District of Massachusetts, United States Courthouse, Suite 9200, 1 Courthouse Way, Boston, MA 02110 on May 2, 2003.



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