

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 95-8051**

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In Re: WILLIAM STEWART MALONE, JR.,

Petitioner.

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On Petition for Writ of Habeas Corpus. (CA-95-541-AM)

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Submitted: January 9, 1996

Decided: January 23, 1996

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Before HAMILTON and MOTZ, Circuit Judges, and BUTZNER, Senior  
Circuit Judge.

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Petition denied by unpublished per curiam opinion.

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William Stewart Malone, Jr., Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

William Stewart Malone, a federal prisoner, petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (1988). This court will not entertain a § 2241 petition unless a 28 U.S.C. § 2255 (1988) motion is "inadequate [or] ineffective to test the legality of a person's detention." Swain v. Pressley, 430 U.S. 372, 381 (1977). The petitioner bears the burden of showing the inadequacy or ineffectiveness of a § 2255 motion. McGhee v. Hanberry, 604 F.2d 9, 10 (5th Cir. 1979).

Malone makes no showing that § 2255 provides an inadequate remedy. Although he has brought a prior unsuccessful § 2255 motion, this fact alone does not establish that the remedy is inadequate. Id. In his § 2241 petition, Malone makes only conclusory allegations that there was insufficient evidence to sustain his guilty plea and that counsel was ineffective in failing to pursue allegedly exculpatory evidence. Finally, Malone's complaint of district court delay in ruling on his § 2255 motion is moot, since the district court denied the motion. United States v. Malone, Nos. CR-93-312-A; CA-94-1146-AM (E.D. Va. Jan. 25, 1995), aff'd No. 95-6271 (4th Cir. Dec. 20, 1995) (unpublished).

Accordingly, although we grant leave to proceed in forma pauperis, we dismiss the petition for a writ of habeas corpus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DISMISSED