

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT NELSON HOWELL,

Petitioner,

v.

JOSEPH SCIBANA, Warden,
Federal Correctional Institution,

Respondent.

ORDER

04-C-27-C

In an order entered on January 26, 2004, I construed petitioner's petition for a writ of habeas corpus purportedly brought pursuant to 28 U.S.C. § 2241 as a motion brought under 28 U.S.C. § 2255. Because this court did not sentence petitioner, I dismissed the § 2255 action for lack of jurisdiction. Judgment was entered on January 30, 2004.

Now petitioner has filed a motion to alter or amend the judgment and order pursuant to Fed. R. Civ. P. 59. In his motion, petitioner argues that he has tried to no avail to get his conviction invalidated by filing a § 2255 motion in his sentencing court and appealing the denial of the motion to the Court of Appeals for the Seventh Circuit. Petitioner appears to believe that because he lost on his motion and appeal, he is entitled to try to get a different

ruling from this court. He is mistaken. As I told petitioner in the order dismissing his action,

[h]e cannot proceed under § 2241 in this court simply because he did not prevail on the § 2255 motion he filed in the court that imposed his sentence. See [In re Davenport], 147 F.3d 605 (7th Cir. 1998).] at 609-10. The fact that a § 2255 motion fails does not mean that the motion was not an adequate or effective means of testing the legality of his detention.

Petitioner does not argue that I erred in concluding that his petition in this court was brought to challenge the validity of his conviction. He has no valid legal argument that his inability to succeed on his § 2255 motion in the sentencing court and the court of appeals rendered inadequate or ineffective this means of testing the legality of his detention. Therefore, petitioner's motion for relief from the judgment entered in this case must be denied.

ORDER

IT IS ORDERED that Robert Nelson Howell's motion pursuant to Fed. R. Civ. P. 59

to alter or amend the judgment entered in this case on January 30, 2004 is DENIED.

Entered this 9th day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge