

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

NORMAN ALTON MORRIS,

Petitioner,

v.

J. SCIBANA,

Respondent.

ORDER

04-C-734-C

Petitioner Norman Alton Morris, an inmate at the Federal Correctional Institution in Oxford, Wisconsin, has filed a pleading on forms for filing a petition for a writ of habeas corpus under 28 U.S.C. § 2241. He requests leave to proceed in forma pauperis. Although I conclude that petitioner has the ability to pay the \$5 fee for filing his petition, I will grant him pauper status because his petition must be dismissed immediately in any event for lack of jurisdiction.

In his petition, petitioner alleges that he is presently serving a sentence imposed by the District Court for the District of Nebraska. He appears to be contending that his conviction should be held to be invalid because 1) he was not properly informed of his constitutional rights on every element of the offense; 2) his guilty plea was involuntary; 3)

the jury did not adhere to a “beyond a reasonable doubt” standard; and 4) the federal government was without legal authority to indict him for violations of 21 U.S.C. § 841(b)(1).

Petitioner suggests no reason why his claim should not be understood as a claim cognizable only under 28 U.S.C. § 2255. Section 2255 is the only avenue available for attacking a federal conviction and sentence. See Waletzki v. Keohane, 13 F.3d 1079, 1080 (7th Cir. 1994) (“prisoner who challenges his federal conviction or sentence cannot use [§ 2241] at all but instead must proceed under 28 U.S.C. § 2255.”). Petitioner is challenging the validity of his conviction in the Nebraska district court. Therefore, his claims must be presented in a § 2255 motion directed to the court that imposed his sentence.

There is a narrow safety valve that permits federal sentences to be attacked collaterally under § 2241 when a motion under § 2255 is “inadequate or ineffective to test the legality of his detention.” See In re Davenport, 147 F.3d 605, 608 (7th Cir. 1998). Petitioner may be attempting to make an argument that § 2255 is an inadequate or ineffective avenue for him to take. He states that he filed a § 2255 motion in the Nebraska court but that “the appellate court did not give me a reason why my § 2255 petition was denied. I believe it was because I did not raise the right arguments to show that my attorney was ineffective.”

Petitioner 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 id. 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.

ORDER

IT IS ORDERED that petitioner Norman Alton Morris's motion for leave to proceed in forma pauperis is GRANTED.

Further, IT IS ORDERED that this petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 is DISMISSED for lack of jurisdiction.

Entered this 5th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge