

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

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ROBERT MARO,

Petitioner,

MEMORANDUM AND ORDER

v.

06-C-735-S

WARDEN, FCI-OXFORD,

Respondent.

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Petitioner filed a petition for a writ of habeas corpus. Respondent filed his response on January 22, 2007. Petitioner replied on February 12, 2007.

FACTS

Petitioner Robert Maro is currently incarcerated at the Federal Correctional Institution, Oxford, Wisconsin. He was convicted of bank robbery in the United States District Court for the Northern District of Illinois. On November 21, 2000 petitioner was sentenced to a term of 210 months imprisonment.

Petitioner appealed his conviction and sentence. United States v. Maro, 272 F.3d 817 (7<sup>th</sup> Cir. 2001). On appeal the United States Court of Appeals for the Seventh Circuit concluded that petitioner was "career offender" and affirmed the district court's sentence. On April 22, 2002 the United States Supreme Court denied petitioner's petition for a writ of certiorari.

On October 21, 2002 petitioner filed a motion in the sentencing court under 28 U.S.C. § 2255. Petitioner alleged that

he had received ineffective assistance of counsel and that his sentence was beyond the limits of the offense charged in the indictment. On January 12, 2005 the district court denied petitioner's motion. On March 6, 2006 the Seventh Circuit Court of Appeals denied petitioner's request for a certificate of appealability.

Petitioner filed this petition under 28 U.S.C. §2241 on December 15, 2006.

#### MEMORANDUM

The statute, 28 U.S.C. § 2255, provides as follows:

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

Petitioner can proceed under 28 U.S.C. § 2241 only if he shows the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to test the legality of his sentence. Petitioner has not made this showing. See Kramer v. Olson, 347 F.3d 214, 217 (7<sup>th</sup> Cir. 2003).

In fact petitioner still has a remedy under 28 U.S.C. § 2255 to file a successive motion in the sentencing court if he requests and receives permission from the United States Court of Appeals for

the Seventh Circuit. Petitioner's writ of habeas corpus under 28 U.S.C. § 2241 must be dismissed.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his petition for a writ of habeas corpus must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that petitioner petition for a writ of habeas corpus is DISMISSED without prejudice.

Entered this 13<sup>th</sup> day of February, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge