

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

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ROBERT NELSON HOWELL,

Petitioner,

v.

JOSEPH SCIBANA, Warden,  
Federal Correctional Institution,

Respondent.  
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ORDER

04-C-292-C

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. Petitioner Robert Nelson Howell is an inmate at the Federal Correctional Institution in Oxford, Wisconsin. Petitioner contends that he is being held past the term of the sentence imposed on him in the United States District Court for the District of Minnesota. Although petitioner has paid the \$5.00 filing fee, his petition will be denied for his failure to show that he is in custody in violation of the Constitution or the laws of the United States.

As I understand the allegations of the petition, which includes a supplement that petitioner filed on June 25, 2004, petitioner is contending that he is being held despite having completed his sentence in case no. 96-CR-52 (PAM). He asserts that the United

States District Court for the District of Minnesota sentenced him to a term of imprisonment of thirty months and that he has served this sentence. In making this argument, petitioner ignores the fact [how do we know this “fact”?] that he was later sentenced to a 360-month term of imprisonment on November 17, 2000 by the United States District Court for the Southern District of Illinois. Because 360 months have not passed since he was sentenced on November 17, 2000, petitioner could not possibly have served this later sentence.

In addition, petitioner raises a number of legal challenges to the Drug Enforcement Agency Action No. 98-30200, which resulted in the later conviction. In essence, petitioner argues that the agency was barred from pursuing the criminal charges against him because they either duplicated an earlier administrative action or extended it. This court lacks jurisdiction to decide these issues. Earlier this year, petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 in this court, challenging the validity of his conviction in the Illinois district court on essentially the same grounds he raises in this action. Howell v. Scibana, 04-C-27-C, January 26, 2004. As I explained to petitioner in dismissing his earlier petition for lack of jurisdiction, an attack on a conviction or sentence must be brought under 28 U.S.C. § 2255; a collateral attack may be brought under 28 U.S.C. § 2241 only when a § 2255 petition would be “inadequate or ineffective to test the legality of his detention.” In re Davenport, 147 F.3d 605, 608 (7th Cir. 1998)). Also, as I have already explained, petitioner’s lack of success on his previous petitions under § 2255

does not show that § 2255 is somehow inadequate or ineffective. See In re Davenport, 147 F.3d at 609-10.

Because petitioner has failed to show that his custody violates the Constitution or the laws of the United States in some respect that falls within this court's jurisdiction under 28 U.S.C. § 2241, his petition for writ of habeas corpus will be denied.

#### ORDER

IT IS ORDERED that petitioner Robert Nelson Howell's petition for a writ of habeas corpus is DISMISSED. The clerk of court is directed to enter judgment for respondent Joseph Scibana and close this case.

Entered this 7th day of July, 2004.

BY THE COURT:  
BARBARA B. CRABB  
District Judge