

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

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WILLARD RICE,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

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ORDER

04-C-645-C

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. Petitioner Willard Rice is an inmate at the Federal Correctional Institution in Oxford, Wisconsin. He contends that he is in custody in violation of the laws and Constitution of the United States. Although petitioner has paid the \$5.00 filing fee, his petition will be dismissed for lack of jurisdiction.

In his petition, petitioner alleges that his sentence exceeds the maximum allowed under the sentencing guidelines and this his term should be reduced in light of Blakely v. Washington 124 S. Ct. 2531 (2004). Petitioner does not indicate which court sentenced him, but it was not this one.

Although petitioner presents his claim in a petition for a writ of habeas corpus

pursuant to 28 U.S.C. § 2241, the claim can only be heard by his sentencing court in a motion brought under 28 U.S.C. § 2255. It is not simply a matter of preference: § 2255 is the only avenue available to him for attacking the legality of his federal 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.”).

Because petitioner is challenging the validity of his conviction in another federal district court, his claims must be presented in a § 2255 motion directed to the court that imposed his sentence.

ORDER

IT IS ORDERED that Willard Rice’s petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 is DISMISSED for lack of jurisdiction.

Entered this 8th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge