

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

DOUGLAS DEBRUIN,

Petitioner,

MEMORANDUM

v.

04-C-744-C

STATE OF WISCONSIN,

Respondent.

On October 14, 2004, this court entered an order in which it dismissed without prejudice a writ of habeas corpus filed by Douglas DeBruin, on the ground that the petition failed to allege facts sufficient to state a viable claim under § 2254. In particular, the court noted that it was unclear where petitioner was in custody or how the 1969 Kenosha County conviction that was the subject of his habeas petition related to that custody.

Petitioner has now submitted a letter in which he attempts to clarify his petition. First, petitioner states that this court misconstrued his petition as being filed under 28 U.S.C. § 2254 instead of under § 2241. He also attempts to explain the connection between his current confinement and the 1969 conviction.

From petitioner's letter, I infer that he is seeking to challenge a federal sentence that he is currently serving on the ground that it was affected by the 1969 conviction. It appears that that sentence was imposed by a federal court in Phoenix, Arizona. (It still is unclear

why petitioner is now in custody in a county jail in Iowa.) Even with that clarification, however, petitioner's letter is still too vague for me to conclude that it states a viable federal claim. Instead of guessing at the basis for the petition, I am directing petitioner to state his claim on a standard form, a copy of which is enclosed.

Because it appears that petitioner seeks to challenge a federal sentence, I have enclosed a form for motions brought under 28 U.S.C. § 2255, which provides the mechanism by which federal prisoners may collaterally challenge their sentence. (Petitioner may not resort to § 2241 unless he can show that § 2255 is inadequate or ineffective to test the legality of his detention. Taylor v. Gilkey, 314 F.3d 832, 835 (7th Cir. 2002).) Petitioner should pay attention to 28 U.S.C. § 2255 ¶ 1, which provides that a prisoner in custody under sentence of a federal court who claims the right to release on the ground that the sentence was unconstitutional “may move *the court which imposed the sentence* to vacate, set aside or correct the sentence.” It is clear that this court did not impose the sentence that petitioner seeks to challenge: DeBruin has never been a defendant in this court. Accordingly, assuming petitioner is seeking to challenge a federal sentence, he should file his

§ 2255 motion in the federal district court that imposed the sentence from which he seeks release.

Dated this 15th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge