

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

GREGORY J. SHARP,

Petitioner,

v.

JOSEPH SCIBANA, Warden,
Federal Correctional Institution,

Respondent.

ORDER

04-C-77-C

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. Petitioner Gregory J. Sharp is an inmate at the Federal Correctional Institution in Oxford, Wisconsin, serving a sentence imposed by the District Court for the Eastern District of Wisconsin. Petitioner contends that he is in custody in violation of the laws and Constitution of the United States. He requests leave to proceed in forma pauperis.

In his petition, petitioner alleges that he is innocent of a charge of murder in the second degree and that his sentence is illegal. Although petitioner presents his claims in a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, he has given no reason why his claim should not be construed as 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 his 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.”).

Because petitioner is challenging the validity of his conviction in the Eastern District of Wisconsin court, 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). However, petitioner submits nothing in his petition or supporting papers suggesting that his challenge fits within the exception. He cannot proceed under § 2241 in this court simply because he did not prevail on the § 2255 motion he filed in the Eastern District court. 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 Gregory J. Sharp’s request for leave to proceed in forma pauperis is DENIED and his petition for a writ of habeas corpus brought pursuant to

28 U.S.C. § 2241 is DISMISSED for lack of jurisdiction.

Entered this 23rd day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge