

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

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GREGORY J. SHARP,

Petitioner,

v.

JOSEPH SCIBANA, Warden,  
Federal Correctional Institution,

Respondent.

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ORDER

04-C-77-C

This petition for a writ of habeas corpus was dismissed on February 23, 2004, for lack of jurisdiction. A judgment of dismissal was entered on February 24, 2004. Now petitioner has moved pursuant to Fed. R. Civ. P. 59 to alter or amend the judgment. The motion will be denied.

In reviewing petitioner's petition, I concluded that because petitioner is challenging the validity of his conviction and sentence in the District Court for the Eastern District of Wisconsin, this court lacks jurisdiction to entertain his claims under § 2241. His sole remedy is a motion pursuant to 28 U.S.C. § 2255 filed in the sentencing court. In his Rule 59 motion, petitioner does not assert that I erred in interpreting the allegations of his

petition as challenging the validity of his conviction. Rather, he argues that because his § 2255 motion was denied in the Eastern District court on the ground that it was untimely, he should be allowed to raise his claim in a § 2241 petition in this court. He is wrong. As I told petitioner in this court's February 23 order, 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. Although I understand petitioner's frustration at being jurisdictionally barred from raising his challenges here, particularly in view of the fact that he already has been unsuccessful in obtaining a favorable ruling on his § 2255 motion in the sentencing court and the court of appeals, there is no legal merit to the argument he raises in the present motion.

#### ORDER

IT IS ORDERED that petitioner's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 is DENIED. If petitioner intends to appeal the judgment of dismissal, he has 60 days from the date of this order in which to file a notice of appeal. Fed. R. App. P. 4.

Entered this 15th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge