

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

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FONG VANG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.  
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ORDER

05-C-143-C

Petitioner Fong Vang has filed a pleading styled as a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. Vang is an inmate at the Federal Correctional Institution in Fort Dix, New Jersey, serving a sentence imposed by this court in case nos. 96-CR-0011-C-01 and 97-CR-0011-C-01. Petitioner contends that he is in custody in violation of the laws and Constitution of the United States. Because he has not paid the \$5.00 filing fee, I assume he is requesting leave to proceed in forma pauperis. His request will be denied and his petition will be dismissed for lack of jurisdiction.

As noted above, petitioner presents his claims in a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 but has given no reason why his claim should not be construed as his fifth 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, which is what he is doing in this petition. 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 and sentence in this court, his claims must be presented in a § 2255 motion. He cannot proceed under § 2241 simply because he did not prevail on the first § 2255 motion he filed in this 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. If petitioner wants to file a successive petition, he has been told on four previous occasions that before this court will have authority to hear a successive motion, a panel of the Court of Appeals for the Seventh Circuit will have to certify that his motion contains either newly discovered evidence or a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable to defendant.

#### ORDER

IT IS ORDERED that petitioner Fong Vang’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 8th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge