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

EDDIE GENE EVANS,

Petitioner,

v.

WISCONSIN DEPT. OF PROBATION AND PAROLE, LOUISIANA DEPT. OF PROBATION AND PAROLE; and LOUISIANA DEPT. OF CORRECTIONS AND PUBLIC SAFETY,

Respondents.

ORDER

05-C-343-C

Petitioner Eddie Gene Evans, incarcerated at the Waupun Correctional Institution, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 to quash a parole detainer issued against him in 2003 by the state of Louisiana. Although this claim appears meritless, this court cannot dismiss petitioner's petition because it has no jurisdiction. Accordingly, I am transferring this case to the United States District Court for the Eastern District of Wisconsin.

This is petitioner's second challenge in this court to Louisiana's decision to release him on parole rather than keep him in prison. On July 22, 2003, in Case No. 03-C-326-C, this court dismissed petitioner's § 1983 challenge to the same parole detainer, at which time petitioner was detained at the Dane County jail awaiting return to Louisiana. Since then,

it appears that petitioner has been charged, convicted and sentenced in the Circuit Court for Dane County for the crime of armed robbery in Case No. 03 CF 1002. This resulted in his transfer to the Waupun Correctional Institution, which is located in the Eastern District of Wisconsin. Because this transfer occurred before petitioner filed the instant habeas petition in June 2005, it deprives this court of jurisdiction in this case.

Pursuant to 18 U.S.C. § 2241(d), a petitioner under § 2254 may file his claim in the federal court sitting in the district in which he is incarcerated or in the federal court sitting in the district in which he was convicted and sentenced. Petitioner is challenging a sentence originally imposed by state court in Louisiana and then modified by Louisiana's Department of Public Safety and Corrections. Petitioner has been incarcerated by the state of Wisconsin in the Eastern District of Wisconsin at all times relevant to the instant petition. Therefore, he must seek relief in the United States District Court for the Eastern District of Wisconsin.

It is of no moment that petitioner is challenging a Louisiana parole decision that was subject to courtesy supervision by Wisconsin's Division of Probation and Parole, which is headquartered in the Western District of Wisconsin. In order for this court to entertain petitioner's habeas corpus action, it must have personal jurisdiction over petitioner's custodian. Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 495 (1973). The custodian is the person having day-to-day control over the prisoner, for he is the only one who can directly produce "the body" of the petitioner. Guerra v. Meese, 786 F.2d 414, 416 (D.C.

Cir. 1986). Wisconsin's Division of Probation and Parole cannot be characterized as petitioner's custodian, or as the entity that imposed the sentence that petitioner is challenging. Therefore, this court will be obliged to transfer this case.

Regrettably, this prolongs proceedings that otherwise appear subject to summary disposition. Pursuant to Rule 4, Rules Governing Section 2254 Cases in the United States District Courts, district courts are to dismiss habeas petitions without requiring a response when it plainly appears from the petition and all supporting documents that the petitioner is not entitled to relief. Relief under § 2254(a) is limited to persons who are in custody in violation of the Constitution or laws of the United States. Petitioner has alleged nothing more than that the state of Louisiana improperly has asserted parole jurisdiction over him following his early release from state custody, an allegation that does not implicate federal interests.

Petitioner alleges that on July 6, 1985, following his conviction for armed robbery and a lesser charge, a state court in Louisiana sentenced him to 35 years in prison "without benefit of probation or parole or suspension of sentence." According to then-existing state law, petitioner was entitled to mandatory release after serving two-thirds of this sentence, or 23 years, 4 months. Assuming that petitioner had been in state custody constantly since his October 25, 1984 arrest on the Louisiana charges, this meant that petitioner faced straight time until February 25, 2008.

However, after petitioner was sentenced and imprisoned, Louisiana sought to alleviate prison overcrowding by enacting a series of statutes that provided "double good time" credit and earlier release for certain types of inmates. According to petitioner, he was ineligible for these new programs because of his criminal history and other facts. Nevertheless, the Louisiana Department of Public Safety and Corrections advised petitioner that he was eligible for double good time credit. Petitioner advised the agency that he believed otherwise.

In the fall of 2002, in anticipation of early release, petitioner requested that Louisiana permit him to move to Madison, Wisconsin to live near a relative. On September 22, 2002 petitioner signed a Probation and Parole Application for Compact Services and Agreement To Return in which he "urged" Louisiana to allow transfer and promised to comply with all parole conditions. See Petition, Exh. A. Louisiana and Wisconsin acceded. Again, petitioner does not claim to have alerted the state that his release was inappropriate and that he later would challenge the applicability of these parole conditions to him.

On January 10, 2003, Louisiana authorized petitioner's early release on parole after he signed a document titled "Statement of General Conditions Under Which this Diminution of Sentence/Parole Supervision is Granted." See attachment to petition. Petitioner was not eligible for early release unless he signed the form, in which he averred that he understood his seventeen general conditions of release and promised to obey them. See attachment to petition (document numbered "139-140"). For the third time, petitioner

declined to advise the state that, notwithstanding his signature on the form, he did not intend to honor his promise because in his mind, his sentence was over as soon as Louisiana mistakenly released him from prison.

Petitioner was released and he moved to Madison. On April 1, 2003 he was arrested in possession of a firearm, in violation of his Louisiana parole. Louisiana filed a detainer asking Wisconsin to hold petitioner in custody pending his removal to Louisiana for revocation proceedings.

This prompted petitioner to launch his campaign to get a Wisconsin court to declare void the parole term imposed on him by Louisiana. After testing the water in this court (which rebuffed his § 1983 complaint), petitioner petitioned the Circuit Court for Dane County, which ultimately determined that a Louisiana court would have to decide the issue. See March 22, 2004 Memorandum Decision Dismissing Action in Case No. 04 CV 908, attached to petition. On December 6, 2004, the Wisconsin Court of Appeals summarily affirmed this decision. On March 8, 2005, the Wisconsin Supreme Court declined review. Petitioner now is back in this federal court pursuant to 28 U.S.C. §2254.

Essentially, petitioner contends that his entire sentence in Louisiana has been terminated by virtue of Louisiana's mistaken application of its early release statutes to petitioner. Although there are good reasons to conclude otherwise, no federal court needs to address them because petitioner has not stated a claim cognizable under § 2254. Louisiana's allegedly mistaken application of its new statutes did not diminish petitioner's

liberty, it augmented it beyond that to which he claims he was entitled. Petitioner's current attempt to obtain a compounded return from this alleged windfall is overreaching of the sort that could not possibly implicate the due process clause of the Fourteenth Amendment.

The due process clause guards against government action that *deprives* a person of liberty, and even then, it protects only liberty interests to which a person has a legitimate claim of entitlement as opposed to some unilateral expectation or abstract need. Greenholtz v. Inmates of the Nebraska Penal and Correctional Center, 442 U.S. 1, 7 (1979). See also Connecticut Board of Pardons v. Dumschat, 452 U.S. 458 (1981):

> A state-created right can, in some circumstances beget yet other rights to procedures essential to the realization of the parent right. Plainly, however, the underlying right must have come into existence before it can trigger due process protection.

Id. at 463.

In other words, a prisoner has no constitutional entitlement to release from a valid prison sentence absent a right explicitly conferred by the state. Id. at 463-64. Petitioner has not established that Louisiana law provides for the complete expunction of his remaining sentence if the state released him on parole incorrectly. Therefore, he cannot obtain federal habeas relief under §2254.

Although this result seems inarguable, this court cannot reach it because it has no jurisdiction over petitioner or his petition. It will be up to another court to determine what should happen next.

ORDER

IT IS ORDERED that this case is transferred to the United States District Court for the Eastern District of Wisconsin for further proceedings.

Entered this 10th day of August, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge