

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

SCOTT WILLIAM FAUL,

Petitioner,

ORDER

v.

05-C-385-S

STEPHEN R. HOBART,

Respondent.

Petitioner filed a petition for a writ of habeas corpus. This motion has been fully briefed and is ready for decision.

FACTS

On May 28, 1993 petitioner was convicted of second degree murder of a United States Marshal and other crimes in the District of North Dakota. On January 18, 1985 the United States Court of Appeals for the Eighth Circuit affirmed his conviction.

On July 3, 2002 another United States District Judge, denied petitioner's motion under 28 U.S.C. § 2255. The United States Court of Appeals for the Eighth Circuit denied petitioner's motion for a certificate of appealability and dismissed his appeal on March 6, 2003.

MEMORANDUM

Respondent argues that this Court lacks jurisdiction of petitioner's motion under 28 U.S.C. § 2255 which he filed on June 29, 2005.

Petitioner's remedy lies under 28 U.S.C. § 2255 which states as follows:

An application for a writ of habeas corpus on behalf of a prisoner who is authorized to apply for relief pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief by motion to the court which has sentenced him, or that such court denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Petitioner alleges that the 28 U.S.C. §2255 motion he filed in the sentencing court was ineffective because the judge was biased against him. Petitioner has not met his burden of showing that his motion under 28 U.S.C. § 2255 in the sentencing court was inadequate or ineffective. This remedy was adequate because he could have moved to recuse the presiding judge on the basis of bias. Bradshaw v. Story, 86 F.3d 164, 167 (10th Cir. 1996). Accordingly, petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2241 must be dismissed.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must

be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED without prejudice.

Entered this 30th day of August, 2005.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge