

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

BOBBY MARVIN COLLINS,

Petitioner,

v.

WARDEN RICARDO MARTINEZ,

Respondent.

ORDER

07-C-130-C

Petitioner Bobby Marvin Collins is an inmate at the Federal Correctional Institution in Oxford, Wisconsin, serving a sentence imposed by the United States District Court for the District of Minnesota. Although petitioner's petition is not easily understood, it appears that he is contending that his conviction is illegal because his lawyer was ineffective.

Although petitioner's pleading is styled as a § 2241 habeas corpus petition, it raises matters that may be raised only in a motion made pursuant to 28 U.S.C. § 2255 in the court that imposed his sentence. Rule 4, Rules Governing Section 2255 Proceedings for the United States District Courts. This court lacks jurisdiction to hear his motion.

Instead of dismissing a § 2255 motion filed in the wrong district, a district court is allowed to transfer the case to the proper district "if it is in the interests of justice" to do so. 28 U.S.C. § 1631. In Phillips v. Seiter, 173 F.3d 609 (7th Cir. 1999), a petitioner chose the

wrong court for filing a § 2255 motion styled as a § 2241 habeas corpus petition. The court of appeals noted that in deciding whether the interests of justice required transfer of the case rather than its dismissal, district courts are authorized to consider whether the statute of limitations would bar a second filing but not the first. However, if the statute of limitations has already run, then the case would fall within “the ‘sure loser’ exception to section 1631,” and transfer would not be in the interests of justice. Id. at 611.

From a review of public records available through the federal court’s PACER system, I find that petitioner has already filed a § 2255 motion raising the issues raised in his pleading in this court. That motion was denied on July 27, 2005. On August 15, 2005, petitioner moved for reconsideration of the July 27 decision, and that motion was denied on August 18, 2005. Subsequently, on September 14, 2005, petitioner requested a certificate of appealability so that he could appeal the July 27, 2005 decision. His request was denied in the district court on September 16, 2005 and in the court of appeals on March 8, 2006. Because petitioner has already filed a § 2255 motion in the federal court in Minnesota, he cannot file a second or successive petition in that court without first obtaining permission from the Court of Appeals for the Eighth Circuit to do so. 28 U.S.C. § 2255 ¶ 8. He does not appear to have sought and obtained such permission. Therefore, I conclude that it is not in the interests of justice to transfer petitioner’s motion to the United States District Court for the District of Minnesota, because his successive petition would have to be dismissed immediately for lack of jurisdiction.

ORDER

IT IS ORDERED that petitioner Bobby Marvin Collins's motion brought pursuant to 28 U.S.C. § 2255, improperly titled as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, is DISMISSED for lack of jurisdiction.

Entered this 3rd day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge