

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

TERRELL BROWN,

Petitioner,

v.

RICHARD MARTINEZ,

Respondent.

OPINION and ORDER

07-C-175-C

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. Petitioner Terrell Brown is an inmate at the Federal Correctional Institution in Oxford, Wisconsin, serving a sentence imposed by the District Court for the Northern District of Indiana. Petitioner contends that he is in custody in violation of the laws and Constitution of the United States. Although petitioner has paid the \$5.00 filing fee, his petition will be dismissed for lack of jurisdiction.

Petitioner presents his claims in a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241; however, the substance, not the label, of petitioner's motion that controls how his request for relief shall be treated. United States v. Carraway, 478 F.3d 845 (7th Cir. 2007). Although petitioner's pleading is styled as a § 2241 habeas corpus petition, it raises

matters that may be raised only in a motion filed 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. Because he is challenging his conviction, petitioner’s claim is one for a writ of habeas corpus under 28 U.S.C. § 2255. 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.”).

From a review of public records available through the federal court’s PACER system, I find that petitioner has filed a § 2255 motion on several previous occasions. Each has been denied. See N. Dist. Ind. Case No. 3:06-CV-50 RM, dkt. #3; N. Dist. Ind. Case No. 3:01-CR-100, dkt. ## 123 and 142. Understood as a request for § 2255 relief, petitioner’s present motion is “subject to the requirement that second or successive motions . . . be

authorized by the court of appeals. Carraway, 478 F.3d at 845; 28 U.S.C. § 2255, ¶ 8; 28 U.S.C. § 2244. Unless petitioner seeks and obtains permission from the court of appeals to file a new § 2255 motion, this court is without jurisdiction to entertain his request. Carraway, 478 F.3d at 845; Nuñez v. United States, 96 F.3d 990, 991 (7th Cir. 1996). Because petitioner has not obtained permission from the court of appeals to file his successive petition, this court lacks jurisdiction over it.

ORDER

IT IS ORDERED that petitioner Terrell Brown's petition for a writ of habeas corpus is DISMISSED for lack of jurisdiction.

Entered this 2nd day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge