

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

JAMES V. FRAZIER,

Petitioner,

v.

JIM WHITEHEAD, Warden,
FCI Cumberland, Maryland

Respondent.

ORDER

10-cv-293-bbc

In an order entered in this case on July 8, 2010, I gave petitioner an extension of time until July 22, 2010 in which to explain why he believes he is entitled to relief under 28 U.S.C. § 2241 instead of 28 U.S.C. § 2255 on his claim that his conviction is illegal. Now, petitioner has filed a second motion for an extension of time in which to make this showing. I will partially grant petitioner's motion and allow him a final extension in which to file his supplement.

In his motion, petitioner asks for a thirty-day extension of time to file his supplement. Also, petitioner asks the court whether he must file a 2255 at this time or whether he may file § 2241 and § 2255 petitions simultaneously. As I told petitioner in the order dated June

24, 2010, ordinarily a federal prisoner may attack his conviction or sentence only through direct appeal or in a motion filed under 28 U.S.C. § 2255. In other words, if a prisoner can file a § 2255 motion to challenge his conviction, he may not bring a 2241 petition to raise the same challenge. Rather than dismissing petitioner's petition, I gave him an opportunity to explain why he was bringing a § 2241 petition. Petitioner may have one final extension of time in which to explain to the court why § 2255 is “inadequate or ineffective to test the legality of [his] detention.” 28 U.S.C. § 2255(e). I will grant petitioner an extension of time until September 8, 2010 to file his supplement to his petition in which he explains his reasons for filing a § 2241 petition.

ORDER

IT IS ORDERED that petitioner James Frazier is GRANTED an extension of time to September 8, 2010. in which to file a supplement to his petition explaining why he believes he is entitled to relief under 28 U.S.C. § 2241 instead of 28 U.S.C. § 2255. If, by September 8, 2010, petitioner fails to file this supplement, I will dismiss his petition

for his failure to show that he is entitled to relief under 28 U.S.C. § 2241.

Entered this 17th day of August, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge