

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARNOLD R. HAILASSIE,)	1:07-CV-01509 LJO GSA HC
Petitioner,)	FINDINGS AND RECOMMENDATION
v.)	REGARDING PETITION FOR WRIT OF
)	HABEAS CORPUS PURSUANT TO 28
)	U.S.C. § 2241
D. SMITH, Warden, et al.,)	
Respondents.)	

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

Petitioner is in the custody of the Bureau of Prisons at the United States Penitentiary in Atwater, California, pursuant to judgment imposed by the United States District Court for the Eastern District of California, Sacramento Division, for Petitioner’s 2005 convictions of conspiracy to exchange a stolen U.S. Treasure check and conspiracy to commit fraud with stolen identification information. See United States v. Hailassie, Case No. 2:03CR00336-01. Petitioner alleges in his petition that he is challenging the manner, location or conditions of the execution of his sentence. Petitioner claims the Bureau of Prisons has collected money from his inmate checking account in an attempt to satisfy a restitution amount of \$75,687.67; however, he claims restitution was not ordered

1 by the court.

2 Petitioner is incorrect. The judgment entered on March 4, 2005, in Petitioner's criminal
3 action clearly indicates that restitution in the amount of \$75,687.67 was imposed in addition to a
4 \$200 assessment. See United States v. Hailassie, Case No. 2:03CR00336-01. Thus, the Bureau of
5 Prisons is properly collecting the amount imposed by the judgment. Petitioner is therefore
6 challenging the judgment itself, not the manner or conditions of his confinement.

7 A federal prisoner who wishes to challenge the validity or constitutionality of his conviction
8 or sentence must do so by way of a motion to vacate, set aside, or correct the sentence under 28
9 U.S.C. § 2255. Tripati v. Henman, 843 F.2d 1160, 1162 (9th Cir.1988); Thompson v. Smith, 719
10 F.2d 938, 940 (8th Cir.1983); In re Dorsainvil, 119 F.3d 245, 249 (3rd 1997); Broussard v. Lippman,
11 643 F.2d 1131, 1134 (5th Cir.1981). In such cases, *only the sentencing court has jurisdiction*.
12 Tripati, 843 F.2d at 1163. A prisoner may not collaterally attack a federal conviction or sentence by
13 way of a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Grady v. United States,
14 929 F.2d 468, 470 (9th Cir.1991); Tripati, 843 F.2d at 1162; see also United States v. Flores, 616
15 F.2d 840, 842 (5th Cir.1980).

16 A federal prisoner authorized to seek relief under § 2255 may seek relief under § 2241 *if* he
17 can show that the remedy available under § 2255 is "inadequate or ineffective to test the validity of
18 his detention." United States v. Pirro, 104 F.3d 297, 299 (9th Cir.1997) (quoting § 2255). Although
19 there is little guidance from any court on when § 2255 is an inadequate or ineffective remedy, the
20 Ninth Circuit has recognized that it is a very narrow exception. Id; Holland v. Pontesso, 234 F.3d
21 1277 (9th Cir. 2000) (Section 2255 not inadequate or ineffective because Petitioner misses statute of
22 limitations); Moore v. Reno, 185 F.3d 1054, 1055 (9th Cir.1999) (Dismissal of a successive motion
23 attacking sentence did not render such motion procedure an ineffective or inadequate remedy, so as
24 to authorize federal prisoner to seek habeas relief); Aronson v. May, 85 S.Ct. 3, 5 (1964) (a court's
25 denial of a prior § 2255 motion is insufficient to render § 2255 inadequate.); Tripati, 843 F.2d at
26 1162-63 (9th Cir.1988) (a petitioner's fears bias or unequal treatment do not render a § 2255 petition
27 inadequate); Williams v. Heritage, 250 F.2d 390 (9th Cir.1957); Hildebrandt v. Swope, 229 F.2d 582
28 (9th Cir.1956); see, United States v. Valdez-Pacheco, 237 F.3d 1077 (9th Cir. 2001) (procedural

1 requirements of § 2255 may not be circumvented by invoking the All Writs Act, 28 U.S.C. § 1651).
2 The burden is on the petitioner to show that the remedy is inadequate or ineffective. Redfield v.
3 United States, 315 F.2d 76, 83 (9th Cir. 1963).

4 As stated above, Petitioner challenges the underlying sentence. Because he is alleging errors
5 in his sentence, and not errors in the administration of his sentence, the Court finds that Petitioner is
6 not entitled to relief under § 2241, and his petition should be dismissed. In addition, Petitioner
7 makes no claim that § 2255 is inadequate or ineffective. Should the Petitioner wish to pursue his
8 claims in federal court, he must do so by way of a motion to vacate or set aside pursuant to 28 U.S.C.
9 § 2255. The petition must be dismissed.

10 **RECOMMENDATION**

11 Accordingly, the Court RECOMMENDS that the petition for writ of habeas corpus be
12 DISMISSED because the petition does not allege grounds that would entitle Petitioner to relief under
13 28 U.S.C. § 2241.

14 These Findings and Recommendations are submitted to the Honorable Lawrence J. O’Neill,
15 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule
16 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of
17 California. Within thirty (30) days after being served with a copy, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendations.” Replies to the objections shall
20 be served and filed within ten (10) court days (plus three days if served by mail) after service of the
21 objections. The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636
22 (b)(1)(C). The parties are advised that failure to file objections within the specified time may waive
23 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 IT IS SO ORDERED.

25 **Dated: October 24, 2007**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE