Smith v. Driver

Case 6:07-cv-00287-KKC Document 4 Filed 08/22/2007 Page 1 of 3

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF KENTUCKY SOUTHERN DIVISION at LONDON

CIVIL ACTION NO. 07-CV-287-KKC

BERNARD E. SMITH PETITIONER

VS: <u>MEMORANDUM OPINION AND ORDER</u>

JOE DRIVER, Warden, USP Hazelton

RESPONDENT

Doc. 4

On August 15, 2007, Bernard E. Smith filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241 [Record No. 2]. The petitioner is confined in the United States Penitentiary Hazelton located Bruceton Mills, West Virginia ("USP-Hazelton").¹

The petitioner has named Joe Driver, Warden of USP-Hazelton, as the respondent to this action. The § 2241 petition is 235 pages long and consists of twelve separate sub-parts.

CLAIMS

The primary issue which Petitioner Smith raised in his § 2241 petition is a challenge to the manner in which the Bureau of Prisons ("BOP") has calculated his federal sentence [Record No. 2-1, p. 4]. Summarized, he alleges that the BOP failed to credit his federal sentence, imposed in 1978, with time he served on a state sentence imposed by the state of Tennessee [*Id.*, pp. 4-9]. To that extent, the petitioner alleged that his right to due process of law, guaranteed by the Fifth Amendment of the United States Constitution has been violated.

The Court takes judicial notice of the fact that on August 14, 2007, (the day before he filed the instant § 2241 petition in this Court) the petitioner filed the very same § 2241 petition - - seeking the very same relief as he does in the instant § 2241 petition - - in the United States District Court

¹ The judicial district in which USP-Hazelton is located is the United States District Court for the Northern District of West Virginia.

for the Northern District of West Virginia at Clarksburg. *See Bernard E. Smith v. Warden Joe Driver*, Civil Case No. 1:07-CV-00109-IMK-JES ("the West Virginia proceeding").² In short, the petitioner has engaged in what appears to be astonishing forum shopping and/or "double-dipping," by filing two identical § 2241 petitions in two different United States District Courts.

DISCUSSION

The Petitioner is confined in the USP-Hazelton, which is located in Bruceton Mills, West Virginia. The Petitioner's current custodian is Joe Driver, the warden of USP-Hazelton. The petitioner is not incarcerated in any prison located in the Eastern District of Kentucky.

A petition for writ of habeas corpus pursuant to 28 U.S.C. §2241 must be brought in the district where a petitioner is incarcerated and may only challenge execution of sentence, such as the computation of parole or sentence credits. *See Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996); *United States v. Jalili*, 925 F.2d 889, 893 (6th Cir.1991); *DeSimone v. Lacy*, 805 F.2d 321, 323 (8th Cir. 986) (per curiam); *Cohen v. United States*, 593 F.2d 766, 770-71 (6th Cir. 1979); (per curiam); *Wright v. United States Bd. of Parole*, 557 F.2d 74, 77 (6th Cir.1977).

As the petitioner is confined in another jurisdiction, it is in that jurisdiction, the Northern District of West Virginia, where he must pursue his contemporaneously filed §2241 petition. This Court lacks jurisdiction to address his sentence-credit challenges under §2241. Since the petitioner has already filed an identical § 2241 petition in Northern District of West Virginia, there is no need

² In fact, in his filings in this Court, it appears that the petitioner simply submitted the exact same documents which he filed in the West Virginia proceeding. It appears that in preparing his submissions to be filed in this Court, the petitioner merely "whited-out" or physically removed references to the "Northern District of West Virginia" in the caption of the documents and substituted them (either with paper pasting or white-out liquid) with references to the "United States District Court for the Eastern District of Kentucky."

for this Court to transfer this action [07-CV-287-KKC] to that jurisdiction. The instant petition will be dismissed without prejudice.

CONCLUSION

Accordingly, it is **ORDERED** as follows:

- The §2241 petition for habeas corpus [Record No. 2] is **DENIED**, and this action (1) is **DISMISSED WITHOUT PREJUDICE**, sua sponte, from the docket of the Court.
- (2) Judgment shall be entered contemporaneously with this Memorandum Opinion and Order in favor of the named Respondent.

Dated this 22nd day of August, 2007.

Signed By:

Karen K. Caldwell
United States District Judge