

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-6048**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ADRIAN MAURICE HUDGINS,

Defendant - Appellant.

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Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Joseph Robert Goodwin, District Judge. (CR-96-181; CA-03-221-5)

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Submitted: June 28, 2006

Decided: September 25, 2006

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Before WILLIAMS, MICHAEL, and KING, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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Adrian Maurice Hudgins, Appellant Pro Se. Charles T. Miller, United States Attorney, Charleston, West Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Adrian Maurice Hudgins appeals the district court's order accepting the recommendation of the magistrate judge, which construed a letter that Hudgins sent to the court as a 28 U.S.C. § 2255 (2000) motion, and dismissing the § 2255 motion.

In 1997, Hudgins was convicted in the Southern District of West Virginia for possession of contraband (marijuana) in prison. The district court sentenced him to a twenty-one-month term of imprisonment, followed by three years of supervised release, and imposed a \$500 fine. The court also imposed a \$100 assessment fee. On March 3, 2003, Hudgins sent a letter to the district court, claiming that the court improperly delegated the timing and amount of payments to the Bureau of Prisons in violation of United States v. Miller, 77 F.3d 71 (4th Cir. 1996).

Because a § 2255 motion may not be used for the sole purpose of challenging fines or restitution orders, we conclude that the district court should have treated Hudgins's claim as a habeas corpus petition under 28 U.S.C. § 2241 (2000). See United States v. Bernard, 351 F.3d 360, 361 (8th Cir. 2003) (collecting cases). A § 2241 petition, however, must be brought in the district of incarceration, 28 U.S.C. § 2241(a); In re: Jones, 226 F.3d 328, 332 (4th Cir. 2000), and Hudgins is incarcerated at the Federal Correctional Institution in Ashland, Kentucky. The

district court therefore does not have jurisdiction over this § 2241 proceeding.

We vacate the district court's order and remand for the court to determine whether transferring Hudgins's § 2241 petition to the proper federal district court would serve the interests of justice, see 28 U.S.C. § 1631 (2000), or whether the action would be more appropriately dismissed without prejudice to Hudgins's right to file his action in the appropriate district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED