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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Mark Hartvigsen,

Petitioner,

vs.

Bruno Stolc,

Respondent.

No. CV 09-2053-PHX-MHM (MEA)

ORDER

Petitioner Mark Hartvigsen, who is currently confined in the Red Rock Correctional Center (RRCC)¹ in Eloy, Arizona, has filed a *pro se* “Petition for 28 USCS § 2241 Habeas Corpus Relief” naming RRCC Warden Bruno Stolc as Respondent. (Doc.# 1.)² Petitioner has paid the \$5.00 filing fee. (*Id.*) Petitioner has also filed a motion for appointment of counsel and an “Emergency Motion for Restraining Order” to prevent his transfer to any third party, including the Alaska Department of Corrections. (Doc.# 3, 5.) The Court will summarily dismiss this action and deny Petitioner’s motions.³

¹ RRCC is a private prison facility operated by Corrections Corporation of America (CCA).

² “Doc.#” refers to the docket number of documents filed in this case.

³ Petitioner filed another habeas action pursuant to § 2241 contemporaneous with this case. See Hartvigsen v. Stolc, No. CV09-2047-PHX-MHM. He has also previously filed habeas petitions pursuant to 28 U.S.C. § 2254 in this District. See Hartvigsen v. Crandell, No. CV96-1139-PHX-ROS and (transferred to the District of Alaska); Hartvigsen v. Stolc, No. CV08-0407-PHX-MHM (transferred to the District of Alaska); Hartvigsen v. Stolc, No. CV08-0408-PHX-MHM (transferred to District of Alaska).

1 **I. Background**

2 Petitioner was convicted of one count of first degree sexual abuse of a minor in Alaska
3 state court for which he was sentenced to 10 years in prison. Hartvigsen v. State, Nos. A-
4 6838, 4215, 2000 WL 632453 (Alaska App. May 17, 2000); see Hartvigsen v. State, No. A-
5 8340, 2003 WL 21279444 (Alaska App. June 4, 2003). Petitioner’s direct appeal was denied
6 by the Alaska Court of Appeals. Id.

7 **II. Petition**

8 Petitioner asserts that he is entitled to release from RRCC because it is a private prison
9 facility outside Alaska, where he was convicted and sentenced. He contends that he is
10 imprisoned by Respondent as the result of an arbitrary decision by Alaska Department of
11 Corrections officials. He further contends that neither Stolc nor CCA possess lawful
12 authority to imprison him and that Alaska officials are prohibited from contracting with an
13 “agency” unable to provide a degree of care, custody, and discipline required under Alaska
14 state law. Petitioner seeks:

15 immediate and unconditional release from confinement on the grounds that the
16 decision to effect unlawful execution of sentence was deliberately wrongful
17 conduct by AK DOC officials constituting the functional equivalent of (1)
18 commutation of sentence and any consequences of said sentence, (2) full
pardon from conviction and sentence of case 3KN-S89-174 cr.; and the act of
effecting unlawful execution of sentence caused irrevocable harm by denying
[him] a fair opportunity to challenge [his] state convictions on direct appeal.

19 (Doc.# 1 at 4.)

20 **III. Relief Pursuant to § 2241 is Unavailable for a State Conviction or Sentence**

21 At the outset of a case, a district court must determine whether it has jurisdiction over
22 a petition filed by a prisoner under § 2241. Stephens v. Herrera, 464 F.3d 895, 897 (9th Cir.
23 2006); Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000). Further, the Court must
24 undertake a preliminary review of the petition to determine whether “it plainly appears from
25 the face of the petition and any attached exhibits that the petitioner is not entitled to relief in
26 the district court.” Rule 4, Rules Governing Section 2254 Cases; see also 28 U.S.C. § 2243.⁴

27 _____
28 ⁴ Rule 4 of the Rules Governing Section 2254 Cases may be applied to habeas corpus
petitions other than those brought under § 2254. See Rule 1(b), Rules Governing Section

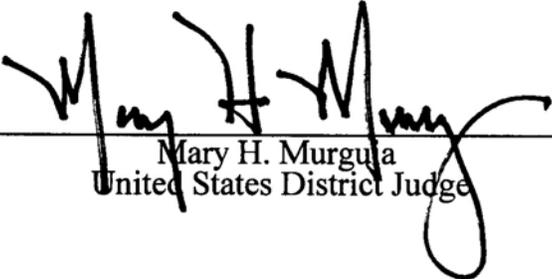
1 If the petitioner is not entitled to relief, the petition must be summarily dismissed. Id.;
2 Obremski v. Maass, 915 F.2d 418 (9th Cir. 1990) (affirming district court's summary
3 dismissal as a matter of law, but relying upon Rule 4 rather than Rule 12(b)(6)).

4 Section 2254 is the exclusive avenue for a state court prisoner to challenge the
5 constitutionality of his detention, even when the petition only challenges the execution of the
6 sentence and not the underlying conviction itself. White v. Lambert, 370 F.3d 1002, 1005,
7 1009 (9th Cir. 2004) (adopting the majority view that distinguishes between a *federal*
8 prisoner's ability to resort to § 2241 to attack the execution of a sentence and the structural
9 differences in the habeas statutes that make a state prisoner's resort to § 2241 improper to
10 challenge the execution of a state sentence). Petitioner may not, therefore, obtain habeas
11 relief as to the execution of his Alaska state sentence under § 2241. Accordingly, this action
12 will be summarily dismissed and Petitioner's motions denied.

13 **IT IS ORDERED:**

- 14 (1) The motions for a restraining order and to appoint counsel are **denied**. (Doc.#
15 3, 5.)
- 16 (2) The Petition and this action are summarily dismissed. (Doc.# 1.)
- 17 (3) The Clerk of Court must enter judgment accordingly.

18 DATED this 18th day of November, 2009.

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22 Mary H. Murgula
23 United States District Judge
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