

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

ALAN E. GURSKI

PETITIONER

v.

CASE NO. 2:08CV00170 BSM

**T.C. OUTLAW, WARDEN,
FCI FORREST CITY, ARKANSAS**

RESPONDENT

ORDER

The court has received proposed findings and recommendations from Magistrate Judge H. David Young. After careful review of those findings and recommendations, the timely objections received thereto, and a *de novo* review of the record, the court concludes that the findings and recommendations should be, and hereby are, approved and adopted in their entirety as this court's findings in all respects. Judgment will be entered accordingly.

As explained in the proposed findings and recommendations, the Bureau of Prisons relies in part upon the intent of the sentencing judge, and here, the only indicator available was Judge Limbaugh's denial of petitioner's motion for sentencing *nunc pro tunc*. Aside from this determination, which appears to be based on Judge Limbaugh's assumption that he was constrained by federal statutes from taking any action, there is no way for the court to know Judge Limbaugh's intent as to the sentencing. Although the court takes the deprivation of a person's liberty very seriously, especially in a case where a mistake might have been made, the court must give some deference to the determination of the Bureau of Prisons and is bound by Eighth Circuit precedent. *See Fegans v. United States*, 506 F.3d

1101, 1104 (8th Cir. 2007). The court notes, however, that there are serious issues of comity, federalism, and separation of powers that need to be addressed, as petitioner is not the first, and is not likely to be the last, in this difficult situation. *See, e.g., Abdul-Malik v. Hawk-Sawyer*, 403 F.3d 72, 73 (2d Cir. 2005).

IT IS SO ORDERED this 30th day of December, 2008.


UNITED STATES DISTRICT JUDGE