

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

KENNETH JOHN PACHINGER,
ADC #30219-074

PETITIONER

V.

Case No. 2:11-CV-00057-JJV

T. C. OUTLAW,
Warden FCC Forrest City

DEFENDANT

ORDER

Mr. Pachinger's Petition for Writ of Habeas Corpus (Doc. No. 2) is without merit and is, therefore, DENIED. Pachinger was sentenced by the United States District Court for the Middle District of Georgia to 145 months of incarceration in the Federal Bureau of Prisons (BOP) for distribution of cocaine, heroin and marijuana to a person under 21 years of age and sexual exploitation of a child. Mr. Pachinger argues in his Petition that the term "month" has not been properly defined and is, therefore, ambiguous. He invokes the rule of lenity and argues that this ambiguity should be construed in his favor so that his sentence in months should be calculated using a Draconic month, which is 27.212 days long, instead of a calendar month.

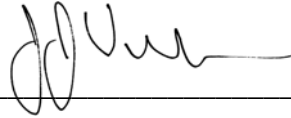
The rule of lenity is a feature of the law that takes into account the imperfect and sometimes ambiguous nature of language. It is used to ensure fairness in statutory interpretation, and comes into play when a word or phrase is used in a statute that could be construed in more than one way. When this ambiguity is discovered, the rule of lenity prescribes that the word or phrase should be construed in its most favorable meaning towards the accused.

The rule of lenity, however, does not apply in the Petitioner's situation. The plain meaning of the term "month" is understood to be the month used in the Gregorian Calendar, as the Gregorian

Calendar is the only commonly used computation of months and years in the United States, and has been since the foundation of this nation. BLACK'S LAW DICTIONARY 771, 1142 (9th ed. 2009). For this reason, the term "month" used in Petitioner's sentencing statute cannot be reasonably considered ambiguous, and Petitioner's sentence shall continue to be calculated using a normal month as determined by the Gregorian Calendar. Nevertheless, Petitioner is credited for his creative attempt in trying to reduce his sentence.

IT IS, THEREFORE, ORDERED that Mr. Pachinger's Petition for Writ of Habeas Corpus (Doc. No. 2) is DENIED.

SO ORDERED this 5th day of August, 2011.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE