

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

IN RE: DAVID WOODRUFF

Civil No. 05-5137

PETITIONER

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

David Woodruff, a state inmate housed in a Wyoming penitentiary, brings a pro se motion for habeas corpus relief under 28 U.S.C. § 2254. I have not authorized a response.

Woodruff challenges a Wyoming state conviction. In 1997, he was convicted of first degree sexual assault and attempted first degree sexual assault. (See Att. "A"). The Clerk's Office attempted to return Woodruff's petition but he insisted it be filed in this court and submitted to a judge. (Att."B").

To grant habeas corpus relief, a district court must have jurisdiction over the petitioner's custodian. *Bearden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 494-95 (1973). See Rule 2 (a), *Rules Governing Section 2254 Cases* (petition must name as respondent the state officer who has custody). This district court lacks jurisdiction over the custodian of Woodruff's institution, Warden Abbott.

I recommend this action be dismissed without prejudice for lack of jurisdiction over the custodian. **The petitioner has ten days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger *de novo* review by the district court.**

DATED this 16th day of August 2005.

/s/Beverly Stites Jones
HON. BEVERLY STITES JONES
UNITED STATES MAGISTRATE JUDGE