

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

KEITH RUSSELL JUDD

PLAINTIFF

v.

Civil No. 10-5075

UNITED STATES OF AMERICA

DEFENDANT

O R D E R

Now on this 27th day of January, 2011, come on for consideration the following:

\* plaintiff's **Motion For Leave To Appeal In Forma Pauperis** (document #19);

\* plaintiff's **Application For Certificate Of Appealability** (document #20);

\* plaintiff's **Motion For Court To Certify Actual Innocence Claim Under Savings Clause** (document #22);

\* **Magistrate Judge's Report And Recommendation** (document #24); and

\* plaintiff's **Objections To Magistrate's Report And Recommendation** (document #25),

and from said documents, and other matters and things appearing, the Court finds and orders as follows:

1. Plaintiff Keith Russell Judd seeks to vacate a conviction from the United States District Court for the Western District of Texas. Although he couched his plea in terms of **F.R.C.P. 60(d)**, he clearly seeks relief which falls within the

provisions of **28 U.S.C. § 2255**, and his claims have been so treated.

2. Following an unfavorable decision, plaintiff sought to appeal *in forma pauperis*; to obtain a Certificate of Appealability; and to persuade this Court to determine a claim of actual innocence. His motions were referred to Magistrate Judge Erin L. Setser for report and recommendation.

3. The Magistrate Judge reports that this Court has no jurisdiction to provide *habeas* relief, because plaintiff was not sentenced in this District. She cites **§ 2255(a)**, which places jurisdiction of *habeas* petitions in the court which imposed the sentence. She recommends that all three pending motions be denied.

4. Plaintiff objects that this Court has jurisdiction pursuant to **28 U.S.C. § 2241**, because he is incarcerated in Texarkana, Texas, and that "Congress resently [sic] made it a law that federal judges in the U.S. District Court for the Western District of Arkansas or Eastern District of Texas could hear and decide cases from either judicial district in the Federal Courthouse in Texarkana."

5. The Court finds no merit in plaintiff's objections. The first of these propositions relates to the venue provisions of **§ 2241(d)**. These apply only to "a person in custody under the judgment and sentence of a State court of a State which contains

two or more Federal judicial districts." Plaintiff is in custody under the judgment and sentence of a United States District Court, not a State court.

No citation is given for the second proposition, but the Court believes plaintiff has reference to **28 U.S.C. § 124(c) (5)**, which states that

[t]he Texarkana Division [of the United States District Court for the Eastern District of Texas] comprises the counties of Bowie, Franklin, Red River, and Titus. Court for the Texarkana Division shall be held at Texarkana, and may be held anywhere within the Federal courthouse in Texarkana that is located astride the State line between Texas and Arkansas.

The last sentence of this subsection is neither a grant of jurisdiction nor a venue provision. It is merely an allocation of usage for the various courtrooms within one building which happens to sit on the state line between Texas and Arkansas. It makes possible the trial of a case with jurisdiction in the Eastern District of Texas in a courtroom located in the Arkansas side of the building. It has no application to plaintiff's situation.

6. For the foregoing reasons, the Court finds the Magistrate Judge's Report And Recommendation sound in all respects, and finds that it should be adopted *in toto*. It further finds that plaintiff's Objections are without merit, and that they should be overruled.

**IT IS THEREFORE ORDERED** that the **Magistrate Judge's Report And Recommendation** is **adopted in toto**.

IT IS FURTHER ORDERED that plaintiff's **Objections To Magistrate's Report And Recommendation** (document #25) are overruled.

IT IS FURTHER ORDERED that plaintiff's **Motion For Leave To Appeal In Forma Pauperis** (document #19) is **denied**.

IT IS FURTHER ORDERED that plaintiff's **Application For Certificate Of Appealability** (document #20) is **denied**.

IT IS FURTHER ORDERED that plaintiff's **Motion For Court To Certify Actual Innocence Claim Under Savings Clause** (document #22) is **denied**.

IT IS SO ORDERED.

          /s/ Jimm Larry Hendren            
JIMM LARRY HENDREN  
UNITED STATES DISTRICT JUDGE