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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEONARD BROWN,)	1:08-cv-01515 YNP [DLB] (HC)
)	
Petitioner,)	ORDER GRANTING RESPONDENT’S
)	MOTION TO DISMISS
v.)	[Doc. #8]
)	
)	ORDER DISMISSING PETITION
NEIL H. ADLER, Warden)	
)	ORDER DIRECTING CLERK TO ENTER
Respondent.)	JUDGEMENT

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

BACKGROUND

Petitioner was convicted of attempting to possess with intent to distribute 100 kilograms or more of marijuana and sentenced to 262 months in prison, \$10,000 in fines, and \$100 assessment. (MTD at 2, Ex. B). Prisoner is currently housed at the Taft Correctional Institution where he is enrolled in the Inmate Financial Responsibility Program (IFRP), which assists inmates pay their fines and assessments during their incarceration. (MTD at 2).

In this petition, Petitioner challenges the Federal Bureau of Prisons’ (BOP) authority to schedule inmates’ restitution payments through the imposition of the IFRP and also claims that his participation in the IFRP is not voluntary because the BOP gives advantages to those who are enrolled and sanctions to those who are not. (Pet. at 3). On November 14, 2008, Respondent filed a

1 motion to dismiss. (Doc. #8). Petitioner did not file an opposition to the motion. It is Respondent's
2 motion to dismiss that will be considered herein.

3 DISCUSSION

4 Jurisdiction

5 Petitioner's claims are proper under 28 U.S.C. § 2241 and not 28 U.S.C. § 2255 because they
6 concern the manner, location, or conditions of the execution of petitioner's sentence and not the fact
7 of petitioner's conviction or sentence. Tucker v. Carlson, 925 F.2d 330, 331 (9th Cir.1990) (stating
8 that a challenge to the execution of a sentence is "maintainable only in a petition for habeas corpus
9 filed pursuant to 28 U.S.C. § 2241"); Montano-Figueroa v. Crabtree, 162 F.3d 548, 549 (9th
10 Cir.1998) (*per curiam*) (allowing a federal prisoner to use § 2241 to challenge the BOP's restitution
11 policies).

12 Federal Rule of Civil Procedure 12(b)(6)

13 Respondent argues that Petitioner's petition should be dismissed pursuant to Federal Rule of
14 Civil Procedure 12(b)(6) because Petitioner has failed "to state a claim upon which relief can be
15 granted." Both of the claims made by Petitioner have been foreclosed by the Ninth Circuit. See
16 Lemoine v. United States, 546 F.3d 1042 (2008). The petitioner in Lemoine filed a habeas petition
17 pursuant to § 2241 which, among other things, challenged the BOP's authority to schedule inmate
18 restitution payments though the imposition of the IFRP and claimed that his participation in the IFRP
19 was involuntary. Id. at 1044-46. The Ninth Circuit held that "the BOP's operation of the IFRP does
20 not constitute an unlawful delegation of authority to schedule restitution payments in violation of the
21 MVRA" and that the petitioner's participation in the IFRP is voluntary even though "he would have
22 been denied certain privileges if he had refused to join the program." Id. at 1046. The claims
23 brought by Petitioner in the instant case mirror two of those brought by the petitioner in Lemoine,
24 and the Ninth Circuit found that the petitioner in Lemoine was not due relief for those claims.
25 Petitioner presented no facts and made no arguments that distinguishes his case from Lemoine,
26 which means that, even when we assume the truth of the facts as alleged in Petitioner's complaint, he
27 cannot receive habeas relief.

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CONCLUSION

Petitioner has failed to present a claim for which relief can be granted; therefore, his petition must be dismissed.

ORDER

It is hereby ORDERED that:

- 1) Respondent's motion to dismiss is GRANTED;
- 2) The petition for writ of habeas corpus is DISMISSED with prejudice;
- 3) The clerk of the court is DIRECTED to enter judgement; and
- 4) As this petition arises under § 2241, a certificate of appealability is not required. Forde v.

U.S. Parole Comm'n, 114 F.3d 878, 879 (9th Cir. 1997).

IT IS SO ORDERED.

Dated: October 13, 2009

/s/ **Dennis L. Beck**
UNITED STATES MAGISTRATE JUDGE