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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ENRIQUE RIVERA,)	1:09-CV-01009 OWW GSA HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATION
)	REGARDING PETITION FOR WRIT OF
v.)	HABEAS CORPUS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Petitioner, a federal prisoner proceeding pro se, has filed an application for a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

BACKGROUND¹

Petitioner is currently in custody of the Federal Bureau of Prisons at the United States Penitentiary located in Atwater, California, pursuant to a judgment of the United States District Court for the Central District of California entered on June 21, 1999, for which he is serving a sentence of 262 months. On November 16, 2000, Petitioner was also sentenced in the United States District Court for the Southern District of Indiana to sentences of 293 months and 240 months on two separate counts. The district court ordered those sentences to be served concurrently to the California sentence.

Petitioner appealed the Indiana conviction to the Seventh Circuit Court of Appeals. The

¹This information was derived from the petition for writ of habeas corpus.

1 Seventh Circuit reversed one count for lack of sufficient evidence and remanded the matter back for
2 resentencing on the second count. On September 10, 2002, Petitioner was resentenced on the second
3 count of money laundering, this time to 120 months to be served consecutive to the California
4 sentence. Petitioner then sought relief in the Seventh Circuit Court of Appeals complaining that he
5 was actually innocent of the money laundering charge in light of United States v. Santos, ___ U.S.
6 ___, 128 S.Ct. 2020 (2008). The Seventh Circuit denied relief.

7 On June 10, 2009, Petitioner filed the instant petition for writ of habeas corpus challenging
8 his Indiana conviction. Petitioner argues he is actually innocent of the charge of money laundering
9 in light of the Supreme Court decision in Santos.

10 JURISDICTION

11 A federal prisoner who wishes to challenge the validity or constitutionality of his conviction
12 or sentence must do so by way of a motion to vacate, set aside, or correct the sentence under 28
13 U.S.C. § 2255. Tripati v. Henman, 843 F.2d 1160, 1162 (9th Cir.1988); Thompson v. Smith, 719
14 F.2d 938, 940 (8th Cir.1983); In re Dorsainvil, 119 F.3d 245, 249 (3rd 1997); Broussard v. Lippman,
15 643 F.2d 1131, 1134 (5th Cir.1981). In such cases, *only the sentencing court has jurisdiction*.
16 Tripati, 843 F.2d at 1163. A prisoner may not collaterally attack a federal conviction or sentence by
17 way of a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Grady v. United States,
18 929 F.2d 468, 470 (9th Cir.1991); Tripati, 843 F.2d at 1162; see also United States v. Flores, 616
19 F.2d 840, 842 (5th Cir.1980).

20 In contrast, a federal prisoner challenging the manner, location, or conditions of that
21 sentence's execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241. Brown
22 v. United States, 610 F.2d 672, 677 (9th Cir. 1990); Capaldi v. Pontesso, 135 F.3d 1122, 1123 (6th
23 Cir. 1998); United States v. Tubwell, 37 F.3d 175, 177 (5th Cir. 1994); Kingsley v. Bureau of
24 Prisons, 937 F.2d 26, 30 n.5 (2nd Cir. 1991); United States v. Jalili, 925 F.2d 889, 893-94 (6th Cir.
25 1991); Barden v. Keohane, 921 F.2d 476, 478-79 (3rd Cir. 1991); United States v. Hutchings, 835
26 F.2d 185, 186-87 (8th Cir. 1987).

27 In this case, Petitioner is challenging the validity and constitutionality of his sentence rather
28 than an error in the administration of his sentence. Therefore, the appropriate procedure would be to

1 file a motion pursuant to § 2255 and not a habeas petition pursuant to § 2241. Petitioner concedes
2 this fact. Petitioner admits bringing this petition as a § 2241 petition instead of a § 2255, because he
3 has already sought relief by way of § 2255.

4 In rare situations, a federal prisoner authorized to seek relief under § 2255 may seek relief
5 under § 2241 *if* he can show the remedy available under § 2255 to be "inadequate or ineffective to
6 test the validity of his detention." United States v. Pirro, 104 F.3d 297, 299 (9th Cir.1997) (quoting §
7 2255). The Ninth Circuit has recognized that this exception is a very narrow one. Ivy v. Pontesso,
8 328 F.3d 1057, 1059 (9th Cir.2003); Pirro, 104 F.3d at 299; Aronson v. May, 85 S.Ct. 3, 5 (1964) (a
9 court's denial of a prior § 2255 motion is insufficient to render § 2255 inadequate.); Tripati, 843
10 F.2d at 1162-63 (9th Cir.1988) (a petitioner's fears of bias or unequal treatment do not render a §
11 2255 petition inadequate); Williams v. Heritage, 250 F.2d 390 (9th Cir.1957); Hildebrandt v. Swope,
12 229 F.2d 582 (9th Cir.1956). In Ivy, the Ninth Circuit held that § 2241 relief is available pursuant to
13 the "escape hatch" in § 2255 if the petitioner claims to be: (1) factually innocent of the crime for
14 which he has been convicted; and, (2) has never had an "unobstructed procedural shot" at presenting
15 this claim." Ivy, 328 F.3d at 1059-60, *citing*, Lorensen v. Hood, 223 F.3d 950, 954 (9th Cir.2000)
16 (internal citations omitted). The burden is on the petitioner to show that the remedy is inadequate or
17 ineffective. Redfield v. United States, 315 F.2d 76, 83 (9th Cir. 1963).

18 In this case, § 2241 relief is unavailable to Petitioner because he does not satisfy the savings
19 clause. As Petitioner admits, he has had an opportunity to present his claim to the Seventh Circuit
20 Court of Appeals, but his motion for relief was denied.

21 **RECOMMENDATION**

22 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas
23 corpus be DISMISSED for lack of jurisdiction.

24 This Findings and Recommendation is submitted to the United States District Court Judge
25 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 72-304 of the
26 Local Rules of Practice for the United States District Court, Eastern District of California. Within
27 thirty (30) days after being served with a copy of this Findings and Recommendation, any party may
28 file written objections with the Court and serve a copy on all parties. Such a document should be

1 captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the
2 Objections shall be served and filed within ten (10) court days (plus three days if served by mail)
3 after service of the Objections. The Court will then review the Magistrate Judge's ruling pursuant to
4 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified
5 time may waive the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153
6 (9th Cir. 1991).

7
8 IT IS SO ORDERED.

9 **Dated: July 27, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE