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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAIME DEL RIO,)	1:10-CV-00707 SMS HC
)	
Petitioner,)	ORDER DISMISSING PETITION FOR WRIT
)	OF HABEAS CORPUS PURSUANT TO 28
v.)	U.S.C. § 2241
)	
)	ORDER DIRECTING CLERK OF COURT
MS. B. WAGNER,)	TO ENTER JUDGMENT AND CLOSE CASE
)	
Respondent.)	ORDER DECLINING ISSUANCE OF
_____))	CERTIFICATE OF APPEALABILITY

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. He has voluntarily consented to exercise of jurisdiction by the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

Petitioner is challenging his 2007 conviction in the United States District Court for the Northern District of Ohio of conspiracy to possess and distribute marijuana. Petitioner is in the custody of the Bureau of Prisons at the California City Correctional Center located in California City, California.

On April 22, 2010, Petitioner filed the instant petition for writ of habeas corpus.

DISCUSSION

A federal prisoner who wishes to challenge the validity or constitutionality of his conviction

1 or sentence must do so by way of a motion to vacate, set aside, or correct the sentence under 28
2 U.S.C. § 2255. Tripati v. Henman, 843 F.2d 1160, 1162 (9th Cir.1988); Thompson v. Smith, 719
3 F.2d 938, 940 (8th Cir.1983); In re Dorsainvil, 119 F.3d 245, 249 (3rd 1997); Broussard v. Lippman,
4 643 F.2d 1131, 1134 (5th Cir.1981). In such cases, *only the sentencing court has jurisdiction*.
5 Tripati, 843 F.2d at 1163. A prisoner may not collaterally attack a federal conviction or sentence by
6 way of a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Grady v. United States,
7 929 F.2d 468, 470 (9th Cir.1991); Tripati, 843 F.2d at 1162; see also United States v. Flores, 616
8 F.2d 840, 842 (5th Cir.1980).

9 In contrast, a federal prisoner challenging the manner, location, or conditions of that
10 sentence's execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241.
11 Capaldi v. Pontesso, 135 F.3d 1122, 1123 (6th Cir. 1998); United States v. Tubwell, 37 F.3d 175,
12 177 (5th Cir. 1994); Kingsley v. Bureau of Prisons, 937 F.2d 26, 30 n.5 (2nd Cir. 1991); United
13 States v. Jalili, 925 F.2d 889, 893-94 (6th Cir. 1991); Barden v. Keohane, 921 F.2d 476, 478-79 (3rd
14 Cir. 1991); United States v. Hutchings, 835 F.2d 185, 186-87 (8th Cir. 1987); Brown v. United
15 States, 610 F.2d 672, 677 (9th Cir. 1990).

16 A federal prisoner authorized to seek relief under § 2255 may seek relief under § 2241 *if* he
17 can show that the remedy available under § 2255 is "inadequate or ineffective to test the validity of
18 his detention." United States v. Pirro, 104 F.3d 297, 299 (9th Cir.1997) (quoting § 2255). Although
19 there is little guidance from any court on when § 2255 is an inadequate or ineffective remedy, the
20 Ninth Circuit has recognized that it is a very narrow exception. Id; Holland v. Pontesso, 234 F.3d
21 1277 (9th Cir. 2000) (Section 2255 not inadequate or ineffective because Petitioner misses statute of
22 limitations); Moore v. Reno, 185 F.3d 1054, 1055 (9th Cir.1999) (Dismissal of a successive motion
23 attacking sentence did not render such motion procedure an ineffective or inadequate remedy, so as
24 to authorize federal prisoner to seek habeas relief); Aronson v. May, 85 S.Ct. 3, 5 (1964) (a court's
25 denial of a prior § 2255 motion is insufficient to render § 2255 inadequate.); Tripati, 843 F.2d at
26 1162-63 (9th Cir.1988) (a petitioner's fears bias or unequal treatment do not render a § 2255 petition
27 inadequate); Williams v. Heritage, 250 F.2d 390 (9th Cir.1957); Hildebrandt v. Swope, 229 F.2d 582
28 (9th Cir.1956); see, United States v. Valdez-Pacheco, 237 F.3d 1077 (9th Cir. 2001) (procedural

1 requirements of § 2255 may not be circumvented by invoking the All Writs Act, 28 U.S.C. § 1651).
2 The burden is on the petitioner to show that the remedy is inadequate or ineffective. Redfield v.
3 United States, 315 F.2d 76, 83 (9th Cir. 1963).

4 In this case, Petitioner challenges the underlying conviction and sentence. Because he is
5 alleging errors in his conviction and sentence, and not errors in the administration of his sentence,
6 the Court finds that Petitioner is not entitled to relief under § 2241, and his petition should be
7 dismissed. In addition, Petitioner makes no claim that § 2255 is inadequate or ineffective. Should
8 the Petitioner wish to pursue his claims in federal court, he must do so by way of a motion to vacate
9 or set aside pursuant to 28 U.S.C. § 2255.¹ The petition must be dismissed.

10 CERTIFICATE OF APPEALABILITY

11 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
12 district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-
13 El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). The controlling statute in determining whether to issue
14 a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

15 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
16 district judge, the final order shall be subject to review, on appeal, by the court
of appeals for the circuit in which the proceeding is held.

17 (b) There shall be no right of appeal from a final order in a proceeding to test the
18 validity of a warrant to remove to another district or place for commitment or trial
a person charged with a criminal offense against the United States, or to test the
19 validity of such person's detention pending removal proceedings.

20 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

21 (A) the final order in a habeas corpus proceeding in which the
22 detention complained of arises out of process issued by a State
court; or

23 (B) the final order in a proceeding under section 2255.

24 (2) A certificate of appealability may issue under paragraph (1) only if the
25 applicant has made a substantial showing of the denial of a constitutional right.

26 (3) The certificate of appealability under paragraph (1) shall indicate which

27 ¹ A petition for writ of habeas corpus pursuant to § 2255 *must be filed in the court where petitioner was originally*
28 *sentenced*. In this case, Petitioner challenges convictions and sentences adjudicated in the U.S. District Court for the
Northern District of Ohio.

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specific issue or issues satisfy the showing required by paragraph (2).

If a court denies a petitioner’s petition, the court may only issue a certificate of appealability “if jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the petitioner is not required to prove the merits of his case, he must demonstrate “something more than the absence of frivolity or the existence of mere good faith on his . . . part.” Miller-El, 123 S.Ct. at 1040.

In the present case, the Court finds that reasonable jurists would not find the Court’s determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Petitioner has not made the required substantial showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to issue a certificate of appealability.

ORDER

Accordingly, IT IS HEREBY ORDERED:

- 1) The petition for writ of habeas corpus is DISMISSED;
- 2) The Clerk of Court is DIRECTED to enter judgment and close the case; and
- 3) The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: June 2, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE