

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES L. LIGHT, JR.,  
Petitioner,  
v.  
HECTOR A. RIOS, JR.,  
Respondent.

1:11-cv-01745 MJS HC  
ORDER DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS  
(Doc. 1)

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner has consented to Magistrate Judge jurisdiction. (ECF No. 4.)

Petitioner filed the instant petition for writ of habeas corpus on October 19, 2011. He is currently serving a sentence of 21 years and 10 months for convictions sustained on May 16, 2006, in the United States District Court for the Middle District of Florida for distribution of cocaine. Petitioner claims that he is entitled to relief as the arrest warrant was improperly issued. (Pet., ECF No. 1.)

**I. SCREENING THE PETITION**

Because the petition was filed after April 24, 1996, the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), the AEDPA applies to the petition. Lindh v. Murphy, 521 U.S. 320, 327, 117 S. Ct. 2059, 138 L. Ed. 2d 481 (1997); Jeffries v. Wood,

1 114 F.3d 1484, 1499 (9th Cir. 1997).

2 The Rules Governing Section 2254 Cases in the United States District Courts (Habeas  
3 Rules) are appropriately applied to proceedings undertaken pursuant to 28 U.S.C. § 2241.  
4 Habeas Rule 1(b). Habeas Rule 4 requires the Court to make a preliminary review of each  
5 petition for writ of habeas corpus. The Court must summarily dismiss a petition "[i]f it plainly  
6 appears from the petition and any attached exhibits that the petitioner is not entitled to relief  
7 in the district court...." Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990);  
8 see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule 2(c) requires that  
9 a petition 1) specify all grounds of relief available to the Petitioner; 2) state the facts supporting  
10 each ground; and 3) state the relief requested. Notice pleading is not sufficient; rather, the  
11 petition must state facts that point to a real possibility of constitutional error. Rule 4, Advisory  
12 Committee Notes, 1976 Adoption; O'Bremski v. Maass, 915 F.2d at 420 (quoting Blackledge  
13 v. Allison, 431 U.S. 63, 75 n. 7, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (1977)). Allegations in a  
14 petition that are vague, conclusory, or palpably incredible are subject to summary dismissal.  
15 Hendricks v. Vasquez, 908 F.2d at 491.

16 Further, the Court may dismiss a petition for writ of habeas corpus either on its own  
17 motion under Habeas Rule 4, pursuant to the respondent's motion to dismiss, or after an  
18 answer to the petition has been filed. Advisory Committee Notes to Habeas Rule 8, 1976  
19 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001).

## 20 **II. JURISDICTION**

21 A federal prisoner who wishes to challenge the validity or constitutionality of his  
22 conviction or sentence must do so by way of a motion to vacate, set aside, or correct the  
23 sentence under 28 U.S.C. § 2255. Tripathi v. Henman, 843 F.2d 1160, 1162 (9th Cir. 1988). In  
24 such cases, only the sentencing court has jurisdiction. Id. at 1163. A prisoner may not  
25 collaterally attack a federal conviction or sentence by way of a petition for a writ of habeas  
26 corpus pursuant to 28 U.S.C. § 2241. Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir.  
27 2000) ("Generally, motions to contest the legality of a sentence must be filed under § 2255 in  
28 the sentencing court, while petitions that challenge the manner, location, or conditions of a

1 sentence's execution must be brought pursuant to § 2241 in the custodial court.”); Tripati, 843  
2 F.2d at 1162.

3 In contrast, a federal prisoner challenging the manner, location, or conditions of that  
4 sentence's execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241.  
5 Hernandez, 204 F.3d at 865. Here, Petitioner is challenging the validity and constitutionality  
6 of his conviction. Therefore, the appropriate procedure would be to file a motion pursuant to  
7 § 2255 and not a habeas petition pursuant to § 2241.

8 The Ninth Circuit has recognized a narrow exception allowing a federal prisoner  
9 authorized to seek relief under § 2255 to seek relief under § 2241 if the remedy by motion  
10 under § 2255 is "inadequate or ineffective to test the validity of his detention." Alaimalo v.  
11 United States, 636 F.3d 1092, 1096 (9th Cir. 2011), citing Harrison v. Ollison, 519 F.3d 952,  
12 956 (9th Cir. 2008). "This is called the 'savings clause' or 'escape hatch' of § 2255." Id.  
13 Furthermore, § 2255 petitions are rarely found to be inadequate or ineffective. Aronson v. May,  
14 85 S.Ct. 3, 5, 13 L. Ed. 2d 6 (1964) (a court's denial of a prior § 2255 motion is insufficient to  
15 render § 2255 inadequate.); Tripati, 843 F.2d at 1162-63 (9th Cir.1988) (a petitioner's fears  
16 of bias or unequal treatment do not render a § 2255 petition inadequate); Williams v. Heritage,  
17 250 F.2d 390 (9th Cir.1957); Hildebrandt v. Swope, 229 F.2d 582 (9th Cir.1956). The burden  
18 is on the petitioner to show that the remedy is inadequate or ineffective. Redfield v. United  
19 States, 315 F.2d 76, 83 (9th Cir. 1963).

20 Following his conviction, Petitioner filed an appeal which was denied by the United  
21 States Court of Appeal for the Eleventh Circuit. See United States v. Light, 218 Fed. Appx. 970  
22 (11th Cir. 2007). Petitioner also filed a petition for writ of habeas corpus in the court of  
23 conviction. Light v. McCoun, 2011 U.S. Dist. LEXIS 109403 (M.D. Fla. Sept. 23, 2011). The  
24 petition was denied on September 23, 2011. Id. In the Petition, Petitioner raised the same  
25 arguments presented in this petition regarding the validity of the warrant. The petition was  
26 denied as the claims should have been raised by way of a § 2255 motion rather than a § 2241  
27 petition.

28 Petitioner has not claimed that he did not have an unobstructed opportunity to present

1 his claims in his § 2255 motion so that he must now raise it by way of a § 2241 petition. In  
2 addition, Petitioner has failed to present any facts to show that his claims qualify under the  
3 savings clause of section 2255 based on "actual innocence." In Bousley v. United States, 523  
4 U.S. 614, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998), the Supreme Court explained that, "[t]o  
5 establish actual innocence, petitioner must demonstrate that, in light of all the evidence, it is  
6 more likely than not that no reasonable juror would have convicted him." Id. at 623 (internal  
7 quotation marks omitted). See also Ivy v. Pontesso, 328 F.3d 1057, 1060 (9th Cir. 2003).  
8 Petitioner bears the burden of proof on this issue by a preponderance of the evidence, and  
9 he must show not just that the evidence against him was weak, but that it was so weak that  
10 "no reasonable juror" would have convicted him. Loretsen v. Hood, 223 F.3d 950, 954 (9th  
11 Cir. 2000). Petitioner only asserts that the government did not have the authority to arrest him,  
12 not that he is factually innocent of the crimes for which he was convicted.

13         Based on the foregoing, the Court finds that Petitioner has not demonstrated Section  
14 2255 constitutes an "inadequate or ineffective" remedy for raising his claims. Accordingly,  
15 Section 2241 is not the proper avenue for raising Petitioner's claims, and the petition should  
16 be dismissed for lack of jurisdiction.

### 17 **III. CERTIFICATE OF APPEALABILITY**

18         A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal  
19 a district court's denial of his petition, and an appeal is only allowed in certain circumstances.  
20 Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining  
21 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

- 22         (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
23             district judge, the final order shall be subject to review, on appeal, by the court  
24             of appeals for the circuit in which the proceeding is held.
- 25         (b) There shall be no right of appeal from a final order in a proceeding to test the  
26             validity of a warrant to remove to another district or place for commitment or trial  
27             a person charged with a criminal offense against the United States, or to test the  
28             validity of such person's detention pending removal proceedings.
- 29         (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
30             appeal may not be taken to the court of appeals from—

31             (A) the final order in a habeas corpus proceeding in which the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

detention complained of arises out of process issued by a State court; or

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

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

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

If a court denies a 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, 537 U.S. at 327; 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, 537 U.S. at 338.

In the present case, reasonable jurists would not find to be debatable or wrong the Court's determination that Petitioner is not entitled to federal habeas corpus relief nor would they find petitioner 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 be 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: November 21, 2011

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE