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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JIMMY PRESKY HODGE,
Petitioner,
v.
ANDRE MATEVOUSIAN,
Respondent.

No. 1:18-cv-00276-SKO HC
FINDINGS AND RECOMMENDATION
TO DISMISS PETITION FOR LACK OF
JURISDICTION
COURT CLERK TO ASSIGN DISTRICT
JUDGE
(Doc. 1)

Petitioner, Jimmy Presky Hodge, is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner challenges the computation of his sentence.

I. Screening Requirement

Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990). A petition for habeas corpus should not be dismissed without leave to amend unless it appears

1 that no tenable claim for relief can be pleaded were such leave to be granted. *Jarvis v. Nelson*,
2 440 F.2d 13, 14 (9th Cir. 1971).

3 **II. Procedural and Factual Background**

4 On December 12, 2008, Petitioner pled guilty to one count of interference with commerce
5 by threats and violence (18 U.S.C. 1951) in the United States District Court for the District of
6 Arizona. (Doc. 1 at 26.) Petitioner was sentenced to 15 to 25 years imprisonment with credit for
7 time served in federal custody. *Id.* at 28. Petitioner is currently incarcerated at the United States
8 Penitentiary in Atwater, California (“USP-Atwater”). *Id.* at 1.

9 On February 26, 2018, Petitioner filed his petition for writ of habeas corpus, alleging that
10 he did not receive credit for his time served in federal custody. *Id.* at 3.

11 **III. No § 2241 Jurisdiction For Sentencing Claims**

12 A federal prisoner who seeks to challenge the validity or constitutionality of his federal
13 conviction or sentence must do so by filing a motion to vacate, set aside, or correct the sentence
14 under 28 U.S.C. § 2255. *Tripati v. Henman*, 843 F.2d 1160, 1161-62 (9th Cir. 1988); *Stephens v.*
15 *Herrera*, 464 F.3d 895, 897 (9th Cir. 2006). In such cases, only the sentencing court has
16 jurisdiction. *Tripati*, 843 F.2d at 1163. A prisoner may not collaterally attack a federal
17 conviction or sentence using a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, as
18 Petitioner does in this case. *Tripati*, 843 F.2d at 1162.

19 A prisoner challenging the manner, location, or conditions of the execution of his sentence
20 may bring a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the district in which he
21 is in custody. *Stephens*, 464 F.3d at 897; *Hernandez v. Campbell*, 204 F.3d 861, 864-65 (9th Cir.
22 2000). But a motion under 28 U.S.C. § 2255 is the exclusive means by which a federal prisoner
23 may test the legality of his detention. *Stephens*, 464 F.3d at 897. Restrictions on the availability
24 of a § 2255 motion cannot be avoided by filing a petition under 28 U.S.C. § 2241. *Id.*

25 Since Petitioner challenges the sentence imposed by the District of Arizona rather than the
26 administration of his sentence at USP-Atwater, proper procedure required him to file a motion
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1 pursuant to § 2255 in the District of Arizona rather than a petition pursuant to § 2241 in this
2 Court.

3 If a federal prisoner can demonstrate that the remedy available under § 2255 is
4 "inadequate or ineffective to test the validity of his detention," however, he may nonetheless seek
5 relief under § 2241. *United States v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997) (quoting 28 U.S.C.
6 § 2255); *Hernandez*, 204 F.3d at 864-65. The exception is very narrow. *Ivy v. Pontesso*, 328
7 F.3d 1057, 1059 (9th Cir. 2003). The remedy under § 2255 usually will not be deemed
8 inadequate or ineffective merely because a prior § 2255 motion was denied or because a remedy
9 under § 2255 is procedurally barred. *See Aronson v. May*, 85 S. Ct. 3, 5 (1964); *Tripati*, 843 F.2d
10 at 1162-63; *Williams v. Heritage*, 250 F.2d 390, 390 (9th Cir. 1957); *Hildebrandt v. Swope*, 229
11 F.2d 582, 583 (9th Cir. 1956). The burden is on the petitioner to show that the remedy is
12 inadequate or ineffective. *Redfield v. United States*, 315 F.2d 76, 83 (9th Cir. 1963).

13 Petitioner has not demonstrated that § 2255 constitutes an inadequate or ineffective
14 remedy for raising his claims. As such, § 2241 is not the proper statute for raising Petitioner's
15 claims, and the undersigned recommends that the Court dismiss the petition for lack of
16 jurisdiction.

17 **III. Certificate of Appealability**

18 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
19 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*
20 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a
21 certificate of appealability is 28 U.S.C. § 2253, which provides:
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23 (a) In a habeas corpus proceeding or a proceeding under section 2255
24 before a 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.

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

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

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

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

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

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

13 If a court denies a habeas petition, the court may only issue a certificate of appealability
14 "if jurists of reason could disagree with the district court's resolution of his constitutional claims
15 or that jurists could conclude the issues presented are adequate to deserve encouragement to
16 proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
17 Although the petitioner is not required to prove the merits of his case, he must demonstrate
18 "something more than the absence of frivolity or the existence of mere good faith on his . . .
19 part." *Miller-El*, 537 U.S. at 338.

20 Reasonable jurists would not find the Court's determination that it lacks jurisdiction over
21 the above-captioned § 2241 petition to be debatable or wrong, or conclude that the issues
22 presented required further adjudication. Accordingly, the Court recommends declining to issue a
23 certificate of appealability.

24 **IV. Conclusion and Recommendation**

25 The undersigned recommends that the Court dismiss the Petition for writ of habeas corpus
26 for lack of jurisdiction and decline to issue a certificate of appealability.

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