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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WAYNE SIMPSON,

Petitioner,

No. CIV S-06-2763 WBS KJM P

vs.

RICHARD B. IVES,¹

Respondent.

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner is a federal prisoner proceeding pro se with an application for writ of habeas corpus filed under 28 U.S.C. § 2241. In 2002, he was convicted in the United States District Court for the District of Nevada of possessing cocaine with the intent to deliver. He is serving a sentence of 188 months’ imprisonment.

Petitioner challenges the execution of his sentence in that the federal Bureau of Prisons (BOP) has determined that petitioner must serve a four-year term of supervised release at the conclusion of his sentence. However, the BOP is simply following the judgment rendered by the District Court of Nevada when petitioner was convicted. See Am. Pet., Ex. D at 2-3 (“The defendant is hereby committed to the custody of the United States Bureau of Prisons to be

¹ Warden Ives is hereby substituted as the respondent in this action as provided by Rule 25(d) of the Federal Rules of Civil Procedure.

1 imprisoned for a total term of One hundred & eighty-eight (188) Months. . . Upon release from
2 imprisonment, the defendant shall be on supervised release for a term of four (4) years.”). In
3 other words, petitioner has no valid quarrel with the BOP.

4 His real issue appears to be with the court that imposed sentence. To the extent
5 petitioner believes the sentence imposed was unlawful, it would appear the proper approach
6 would be to file a motion under 28 U.S.C. § 2255 in the United States District Court for the
7 District of Nevada; such a motion is the procedure for a federal prisoner to challenge the legality
8 of his conviction or sentence, see Shabazz v. Carroll, 814 F.2d 1321, 1324 (9th Cir. 1987), and a
9 § 2255 motion must be filed in the court that imposed the sentence challenged, 28 U.S.C. § 2255
10 (a).

11 In accordance with the above, IT IS HEREBY RECOMMENDED that
12 petitioner’s application for writ of habeas corpus under 28 U.S.C. § 2241 be denied.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
15 days after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
18 shall be served and filed within ten days after service of the objections. The parties are advised
19 that failure to file objections within the specified time may waive the right to appeal the District
20 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: December 7, 2009.

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23 
24 U.S. MAGISTRATE JUDGE