IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAY JEFFERY REGAS

Petitioner, No. CIV S-10-3456 GGH P

vs.

RICHARD B. IVES,

Respondent. ORDER

_____/

Petitioner, a federal prisoner, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. This case is before the undersigned pursuant to petitioner's consent. Doc. 5. However, after reviewing the petition, it appears that petitioner is challenging his conviction and this case should be brought as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.

In addition, the underlying conviction occurred in the District of Nevada. Petitioner was convicted in 1995 and states that on direct appeal he raised as an issue that certain criminal conduct was not found by a jury. In the instant petition, petitioner states a similar claim that certain conduct was found true by the trial court and not a jury, yet there is no explanation on why he is bringing this claim more than fifteen years later or if he has already brought a motion pursuant to § 2255.

Petitioner was ordered to show cause within twenty-one days of the date of

service of this order, why this case should not be construed as a § 2255 motion and why it should not be transferred to the District of Nevada, and why the case should not be dismissed as barred by the statute of limitations or as being successive, if petitioner has already brought a § 2255 motion.

Petitioner timely filed a response, but has failed to adequately respond to the court's order. It is still not clear if the Eastern District of California is the appropriate district to bring his claim or if the relief he seeks should be brought within a § 2255 or § 2241 action.

Accordingly, IT IS HEREBY ORDERED that this matter is dismissed without prejudice.

DATED: March 24, 2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

GGH: AB
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