

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 07-cv-00056-MSK-BNB

MELVIN LEE DAVIS,

Petitioner,

v.

R. WILEY,

Respondent.

ORDER

This matter arises in connection with the **Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241** [Doc. #6] (the “Application”), filed February 12, 2007, by Melvin Lee Davis (the “petitioner”).

The petitioner is incarcerated by the Bureau of Prisons (“BOP”) at the United States Penitentiary-Administrative Maximum in Florence, Colorado. The Application sets forth several claims. In Claim One, the petitioner alleges that the Commonwealth of Virginia has lodged an illegal detainer against him. The parties do not discuss the jurisdiction of this court to determine the claim. Accordingly, the parties shall provide further briefing on this issue.

In Claim Three, the petitioner alleges that he is being held beyond his release date. An evidentiary hearing is necessary to determine the proper sentence calculation and release date for the petitioner.

In addition, the respondent asserts that the petitioner has not exhausted all of his available prison remedies. The respondent asserts that on December 20, 2006, the Central Office received the petitioner's second appeal. *Response*, Ex. A, ¶ 32. This appeal was rejected because the petitioner failed to provide a copy of the regional appeal "and/or" the response. *Id.* The respondent does not specify whether this appeal was rejected for failure to provide a copy of the regional appeal or for failure to provide a copy of the Regional Office's response to the appeal, or both. The respondent shall provide evidence, including a copy of the Central Office's second rejection notice, if available, to address this issue.

IT IS ORDERED that on or before **May 6, 2009**, the parties shall submit further briefing on the issue of whether this court has jurisdiction over Claim One.

IT IS FURTHER ORDERED that an evidentiary hearing on the remaining issues is set for **May 6, 2009, at 8:30 a.m.**, in Courtroom 401, Fourth Floor, Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, Colorado. Plaintiff and defense counsel shall submit to the Court by **April 29, 2009**, proposed witness lists, exhibit lists, and the original and two copies of all exhibits.

Please advise my courtroom deputy, Geneva Mattei, (303) 335-2061, of any anticipated filings or late filings to insure that all necessary documents are present during the hearing. If you intend to use any special equipment, including videos or overhead projections, please make arrangements to provide **all** necessary equipment and inform the courtroom deputy of the date the equipment will be brought to the courthouse so that we may facilitate clearance through court security.

The exhibit list should be prepared on the attached form. Petitioner's exhibits should be marked with the enclosed yellow labels, using numbers. Respondent's exhibits should be marked with blue labels, using alphabetical letters. The civil action number should appear on each exhibit sticker. Copies of all exhibits must be provided to the court and opposing counsel on or before **April 29, 2009**.

The petitioner shall appear via video conference. A copy of this Order is to be mailed to the following: Case Manager for Melvin Lee David, #39574-133, USP Penitentiary MAX, P.O. Box 8500, Florence, CO 81226-8500.

Dated April 20, 2009.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

EXHIBIT LIST

CASE NUMBER _____ PLAINTIFF'S LIST _____ DEFENDANT'S LIST _____ THIRD PARTY LIST _____

CASE CAPTION _____ VS. _____ PAGE NUMBER ____ DATE _____

LIST PLAINTIFF'S EXHIBITS BY NUMBER (1, 2, 3, ETC.) and DEFENDANT'S EXHIBIT BY LETTER (A, B, C, A1, A2, A3, B1, B2, B3, ETC.)

EXHIBIT NO./LTR.	WITNESS	DESCRIPTION	STIP.	OFFER	REC'D	REFUSED	RULING RESERVED	COMMENTS/ INFORMATION

