

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADOFILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

Civil Action No. 09-cv-02592-BNB

JOHN J. McCARTHY,
Applicant,

DEC 15 2009

GREGORY C. LANGHAM
CLERK

v.

WARDEN, FCI Florence,
Respondent.

ORDER TRANSFERRING CASE

Applicant John J. McCarthy is a prisoner in the custody of the United States Bureau of Prisons (BOP) at the Federal Correctional Institution in Florence, Colorado. Mr. McCarthy initiated this action by filing *pro se* a Petition for a Writ of Habeas Corpus by a Federal Prisoner. On December 7, 2009, Mr. McCarthy filed an amended pleading on the Court's Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 form.

The Court must construe the amended application liberally because Mr. McCarthy is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, this action will be transferred to the United States District Court for the District of Connecticut.


Mr. McCarthy is challenging the validity of his guilty plea and subsequent conviction in a State of Connecticut criminal case. The relief he seeks is to have his

guilty plea in the Connecticut state court criminal case vacated. Mr. McCarthy is not challenging in this action the execution of his state or federal sentence by the BOP. Therefore, the Court finds that Mr. McCarthy's claims properly are raised in an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 rather than 28 U.S.C. § 2241, that the proper Respondent to defend against Mr. McCarthy's claims challenging the validity of his guilty plea in the Connecticut state court criminal case is the Attorney General of the State of Connecticut, and that this action could have been brought in the United States District Court for the District of Connecticut. For these reasons, the Court also finds that it would be in the interest of justice to transfer this action to the United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 1404(a). Accordingly, it is

ORDERED that the clerk of the Court transfer this action to the United States District Court for the District of Connecticut.

DATED at Denver, Colorado, this 15 day of December, 2009.

BY THE COURT:



ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-02592-BNB

John J. McCarthy
Reg. No. 38051-066
FCI - Florence
P.O. Box 6000
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 12/15/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk