

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JULIO CEASAR AGUIRRE,

Petitioner,

v.

CASE NO. 6:07-cv-861-Orl-19KRS

STATE OF FLORIDA, et al.,

Respondents.

ORDER

This case is before the Court on the following matters:

1. Petitioner filed a handwritten application for habeas corpus relief pursuant to 28 U.S.C. §§ 2254 and 2241. Petitioner is a prisoner in custody pursuant to a judgment of a State court and is challenging his conviction. (Doc. No. 2.) The Eleventh Circuit Court of Appeals has recognized that 28 U.S.C. § 2254 is the appropriate manner in which state prisoners “in custody pursuant to judgment of a State court” must challenge their convictions. *See Medberry v. Crosby*, 351 F.3d 1049, 1060-61 (11th Cir. 2003) (noting that “no state prisoner would choose to run the gauntlet of § 2254 restrictions when he could avoid those limitations simply by writing ‘§ 2241’ on his petition for federal post-conviction relief”). Thus, within **FIFTEEN (15) DAYS** from the date of this Order, Petitioner shall notify the Court of why his habeas petition raised pursuant to 28 U.S.C. §§ 2254 and 2241 should not be raised solely pursuant to 28 U.S.C. § 2254. If Petitioner intends to proceed pursuant to 28 U.S.C. § 2254, he must complete the habeas form as instructed below and file it within the fifteen day time period.

2. In the event Petitioner intends to proceed pursuant to 28 U.S.C. § 2254, Rule 2(c) of The Rules Governing Section 2254 Cases in United States Courts requires that the form of the habeas corpus petition be substantially in the form approved by the Judicial Conference of the United States. Although the instrument filed by Petitioner is neatly written and otherwise legible, the Court finds that the standard pre-printed form is more useful in helping the Court to evaluate habeas claims.

Accordingly, if Petitioner intends to proceed pursuant to § 2254, not later than **FIFTEEN (15) DAYS** from the date of this Order, he shall refile his habeas corpus petition on the habeas corpus form provided as an attachment to this Order by the Clerk. Petitioner shall also provide the Clerk with one (1) additional copy of the revised petition for each named Respondent. Failure to notify the Court of whether Petitioner intends to proceed pursuant to 28 U.S.C. § 2241 or to file the revised 28 U.S.C. § 2254 petition within this time will result in the dismissal of this case without further notice.

DONE AND ORDERED at Orlando, Florida, this 30th day of May, 2007.

Karla R. Spaulding _____
KARLA R. SPAULDING
UNITED STATES MAGISTRATE JUDGE

Copies to:
sc 5/30
Julio Ceasar Aguirre