

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

WALTER HERNANDEZ, SR,

Petitioner,

v.

CASE NO. 5:11-cv-00270-MP-GRJ

PAIGE AUGUSTINE,

Respondent.

ORDER

This matter is before the Court on Doc. 5, the Report and Recommendation of the Magistrate Judge, recommending that the petition brought under 28 U.S.C. § 2241 be summarily dismissed as precluded by 28 U.S.C. § 2255(e). The petitioner filed objections, Doc. 6, and the Court has made a de novo determination of those portions of the Report and Recommendation to which objection was made. 28 U.S.C. § 636(b)(1)(C). Upon consideration, the undersigned agrees that the petition seeks to challenge the petitioner's judgment of conviction and thus falls within the purview of § 2255(e). Additionally, the undersigned agrees that the mere fact that the petitioner is certain that the trial judge will deny any § 2255 motion is not sufficient to trigger the savings clause of § 2255(e). Accordingly, it is hereby

ORDERED AND ADJUDGED:

The Report and Recommendation of the Magistrate Judge is accepted and incorporated herein. The petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, Doc. 1, is DISMISSED, and his motions for leave to proceed as a pauper (Docs. 2 & 4) are DENIED.

DONE AND ORDERED this 21st day of October, 2011

s/Maurice M. Paul

Maurice M. Paul, Senior District Judge