

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-20816-CIV-MOORE
MAGISTRATE JUDGE P.A. WHITE

HERNAN D. PINEDA, :

Petitioner, : REPORT OF MAGISTRATE JUDGE
RE DISMISSAL

WALTER MCNEIL, :

Respondents. :

The pro-se petitioner, Hernan D. Pineda, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254, referring to his convictions in case no. F01-6737 for various money laundering offenses, entered in the Circuit Court of the Eleventh Judicial Circuit at Miami-Dade County. However, close review of the petition reveals that it is not correctly filed pursuant to 28 U.S.C. §2254. The petitioner states that he is collaterally attacking a civil forfeiture proceeding relating to his criminal case. Pineda claims that the South Florida task force failed to initiate a civil forfeiture proceeding within the statutory time period, and he was not given due notice. He seeks the return of his forfeited money, with interest and punitive damages.

A petition for writ of habeas corpus filed pursuant to 28 U.S.C. §2254 is an application filed on behalf of a person in custody pursuant to the judgement of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. See; 28 U.S.C. § 2254(a), Ozoroski v Klm, 2004 WL 1446046 (ED PA 2004) (Challenge to civil in rem forfeiture is not cognizable in habeas corpus). Further there is monetary relief in a habeas corpus petition. Therefore this petition must be dismissed.

To the extent that the petitioner may be attempting to attack his conviction in his criminal conviction F01-6737, the petition would be successive pursuant to the statutes governing §2254 cases, as amended on April 24, 1996. The pro-se petitioner filed two prior petitions for writ of habeas corpus attacking this same state conviction, case no. F01-6737. The first petition, assigned case No. 03-22965-Civ-Ungaro, was denied on July 30, 2004. The Eleventh Circuit Court of Appeals declined to issue a certificate of appealability on December 29, 2004, Case No. 04-14546-I. The second petition, Case no. 09-20033-Civ-Gold was dismissed as successive. To pursue a successive petition, the petitioner would need permission from the United States Eleventh Circuit Court of Appeals for the authorization required by 28 U.S.C. §2244(b)(3)(A).

For the reasons stated above, it is therefore recommended that this case be dismissed.

Objections to this report may be filed with the District Judge within ten days of receipt of a copy of the report.

Dated this 6th day of April, 2009.



UNITED STATES MAGISTRATE JUDGE

cc: Hernan D. Pineda, Pro Se
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