

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-20258-CIV-JORDAN
MAGISTRATE JUDGE P.A. WHITE

EARNEST LEE COLEMAN	:	
	:	
Petitioner,	:	
	:	<u>REPORT RECOMMENDING TRANSFER</u>
v.	:	<u>OF VENUE</u>
	:	<u>28 U.S.C. §2241</u>
WALTER MCNEIL,	:	
	:	
Respondent.	:	

Earnest Lee Coleman, a prisoner confined at the Zephrhills Correctional Center in Zephrhills, Florida, has filed a pro se petition for writ of habeas corpus pursuant, incorrectly docketed pursuant to 28 U.S.C. §2254. This petition is, in legal effect filed pursuant to 28 U.S.C. §2241-43, alleging that the Department of Corrections has not correctly applied credit for jail time to the petitioner's sentence.

The petitioner is attacking the application of credit for jail time, and this issue may only be raised in a petition, pursuant to §2241. The petitioner is confined in Pasco County, in the Middle District of Florida, and that is the correct venue for this petition.

The applicable venue provision for a §2241 action is 28 U.S.C. §2241(d), which provides concurrent jurisdiction in the district of

confinement and the district of conviction, when a state conviction is attacked as unconstitutional. This petition does not attack the validity of a conviction, and the appropriate venue is therefore the district of confinement. See: Fernandez v. United States, 941 F.2d 1488, 1495 (11th Cir. 1991); Hajduk v. United States, 764 F.2d 795 (11 Cir. 1985); and United States v. Boccadisi, 468 F.Supp. 419 (E.D.N.Y. 1979).

It is therefore recommended that the Clerk be directed to transfer this case to the Middle District of Florida, pursuant to 28 U.S.C. §1406(a).

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

Dated this 29th day of January, 2010.



UNITED STATES MAGISTRATE JUDGE

cc: Earnest Lee Coleman, Pro Se
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Zephrhills CI
Zephrhills, FL
Address of record