

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

LUKE AMMON PREACHER,

Plaintiff,

v.

ERIC J. HOLDER, JR. and D.
BERKOBILE, Warden,

Respondents.

Case No. 4:14-cv-00295-BLW

**MEMORANDUM DECISION AND
ORDER**

Pending before the Court is Luke Ammon Preacher's ("Preacher") Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Dkt. 1). For the reasons set forth below, the Court enters the following Order transferring the Petition to the District of Colorado.

BACKGROUND

On December 18, 2000, the Court sentenced Preacher to a term of imprisonment of 168 months for the offense of aggravated sexual abuse of a child committed within Indian Country in violation of 18 U.S.C. §§ 2241(c) and 1153. *Judgment*, Dkt. 16 in Case No. 4:00-cr-00064-BLW. At the time he filed the Petition, he was an inmate at the United States Penitentiary ADMAX facility in Florence, Colorado. *Petition*, Dkt. 1-2.

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Preacher's Petition contains three claims. The first and third claims request a change in release date to April 25, 2014 from December 18, 2014 and release pursuant to that change. The second claim is unclear. It simply states that 18 U.S.C. § 4246, which addresses hospitalization of a person due for release but suffering from a mental disease or defect, was impliedly repealed by 18 U.S.C. § 4248, which addresses civil commitment of a sexually dangerous person. As best the Court can determine, Petitioner is challenging a proceeding under § 4246. However, it may be that he is challenging a proceeding instituted under § 4248 as well.

DISCUSSION

1. Sentence Calculation

A petition for a writ of habeas corpus filed under 28 U.S.C. § 2241 is the mechanism for challenging “the manner, location, or condition under which a sentence is executed” and must be filed in the *custodial* court. *Harrison v. Ollison*, 519 F.3d 952, 956 (citing *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000)). On the other hand, challenges to the legality of a sentence are filed in the *sentencing* court pursuant to 28 U.S.C. § 2255. *Id.*

Here, Preacher appears to be challenging the Bureau of Prison's calculation of his sentence in light of the Court's recommendation that he be given credit for time served in tribal court. *Petition, Ex. A., Sent. Tr. Excerpt*, Dkt. 1-1. He is not challenging the legality of the sentence.

Although a court may recommend credit for time served, it is the responsibility of the Bureau of Prisons rather than the district court to calculate that credit. *See United States v. Wilson*, 503 U.S. 329, 333 (1992). In order to challenge the Bureau of Prisons' decision regarding credit for time served, a prisoner must first exhaust his administrative remedies within the Bureau of Prisons. *See United States v. Pardue*, 363 F.3d 695, 699 (8th Cir. 2004); *Rogers v. United States*, 180 F.3d 349, 358 (1st Cir. 1999); 28 C.F.R. ss. 542.10 to 542.16. He may then seek judicial review of any adverse decision by filing a habeas petition under 28 U.S.C. § 2241 in the United States District Court in the district in which he is incarcerated. *Id.*

Here, Preacher indicates that he has exhausted his administrative remedies. *Petition* at 2. Hence, assuming he did so, he properly filed a § 2241 petition. The Court notes that Preacher properly named the Warden as a Respondent. However, he filed the petition in the *sentencing* court rather than the *custodial* court.

2. Hospitalization or Commitment Issue

As stated above, it is unclear to the Court what Preacher is asserting in his second claim. However, whether he is challenging a proceeding instituted pursuant to 18 U.S.C. § 4246 or one instituted pursuant to 18 U.S.C. § 4248, that challenge cannot be made before this Court. Proceedings under either statute are commenced in the court in the district in which a prisoner is incarcerated. *See* 18 U.S.C. § 4246(a) and § 4248(a). Accordingly, if a proceeding has been commenced against Preacher under either statute,

it would have been in the District of Colorado and any challenge must be made in that jurisdiction.

ORDER

IT IS ORDERED that Luke Ammon Preacher's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Dkt. 1) be **TRANSFERRED** to the District of Colorado and that this case be closed.



DATED: October 14, 2014

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
Chief Judge

United States District Court