

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**ROBERT ALEXANDER,
06204-021,**

Petitioner,

vs.

**UNITED STATES PAROLE COMMISSION
and WARDEN B. TRUE,**

Respondents.

Case No. 17-cv-545-DRH

MEMORANDUM AND ORDER

HERNDON, District Judge:

Petitioner Robert Alexander is currently incarcerated in the United States Penitentiary at Marion, Illinois (USP-Marion). He brings this habeas corpus action pursuant to 28 U.S.C. § 2241, in order to challenge the decision of the United States Parole Commission to revoke his parole and continue his sentence beyond the term provided by the parole guidelines. This matter is now before the Court for review of the Petition (Doc. 1) pursuant to Rule 4 of the Rules Governing § 2254 Cases in United States District Courts, which provides that upon preliminary consideration by the district court judge, “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.” Rule 1(b) of those Rules gives this Court the authority to apply the rules to other habeas corpus cases. The Petition survives preliminary review.

I. Background

According to the Petition, Alexander was arrested in February 2000 in Chatham County, Georgia. (Doc. 1, pp. 1, 7). He was charged with rape (Count 1), child molestation (Count 2), and enticing a child for indecent purposes (Count 3). (Doc. 1, pp. 7, 12). Alexander agreed to plead guilty to a reduced charge of statutory rape on December 16, 2002. (Doc. 1, pp. 1, 7). In exchange, Counts 2 and 3 were dismissed. (Doc. 1, p. 8). He was sentenced to 20 years, with 13 years to be served and 7 years probated. (Doc. 1, pp. 1, 7).

After serving more than 11 years (*i.e.*, 142 months) in state custody, Alexander was released on parole by the Georgia Board of Pardons and Parole on February 12, 2012. (Doc. 1, p. 7). The United States Parole Commission then took him into custody for a federal parole violation stemming from his Georgia conviction. *Id.* The Parole Commission conducted a hearing on June 28, 2012, and decided to revoke his parole. (Doc. 1, pp. 3, 7, 12-15). Alexander was given no credit for time he spent on parole. *Id.* His sentence was “[c]ontinue[d] to expiration, after the service of approximately 239 months.” *Id.*

In arriving at this decision, the Parole Commission initially rated Alexander’s offense level as a category seven. (Doc. 1, pp. 7-8). The parole guidelines provided that an individual with Alexander’s salient factor score in category seven should be released in 78-110 months. (Doc. 1, p. 7). However, the Parole Commission departed from its allegedly “miscalculated guideline range [by] fixing Petitioner’s presumptive parole date at 2020,” *i.e.*, which was 92 months

beyond the guideline range. *Id.* The Parole Commission reasoned that the upward departure was warranted by the fact that Alexander drugged his victim, raped her, and gave her a sexually transmitted disease (STD). (Doc. 1, pp. 7, 12-15).

Alexander appealed the decision. (Doc. 1, pp. 4, 15). However, the National Appeals Board affirmed the Parole Commission's decision. (Doc. 1, p. 15). Alexander attended a second hearing before the Parole Commission on March 6, 2014. (Doc. 1, pp. 4, 16). The second hearing resulted in no change in the previous decision. (Doc. 1, p. 16). Alexander also appealed this decision, and the appeal was denied on December 9, 2014. (Doc. 1, p. 18).

He filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 in this District on February 21, 2014. *Alexander v. United States Parole Commission*, No. 14-cv-00382-DRH (S.D. Ill. 2014). However, Alexander later sought voluntary dismissal of the petition. (Doc. 7). This Court granted his request and dismissed the petition without prejudice on April 1, 2014. (Doc. 8).

II. Habeas Petition

In the instant § 2241 Petition, Alexander maintains that the Parole Commission's upward departure from the parole guidelines violated his due process rights and was arbitrary, capricious, and an abuse of discretion. (Doc. 1, p. 7). He offers several arguments in support of this assertion. (Doc. 1, pp. 7-11). First, he contends that the Parole Commission should not have categorized his severity level based on the rape charge or departed from the guideline range

based on a record that is devoid of any evidence -- other than the victim's own inconsistent statements -- that Alexander drugged his victim or gave her an STD. (Doc. 1, p. 7). Second, he maintains that the Parole Commission used the same information to establish the guideline range and to depart from it. (Doc. 1, p. 8). Third, the Parole Commission allegedly disregarded all evidence of his good inmate behavior and educational achievements when making its decision. (Doc. 1, p. 9). Finally, he claims that he was given ineffective assistance of counsel at his revocation hearing. (Doc. 1, p. 10).

Alexander now asks this Court to grant his Petition and order Warden True to release him from custody. (Doc. 1, p. 11). He also seeks an Order requiring the Parole Commission to close his case and take no further action on it. *Id.*

III. Discussion

A petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 is generally the proper vehicle for challenging “the fact or duration of confinement.” *Hill v. Werlinger*, 695 F.3d 644, 645 (7th Cir. 2012) (citing *Walker v. O'Brien*, 216 F.3d 626, 629 (7th Cir. 2000)). Section 2241 challenges are “usually reserved for attacking the execution, not imposition, of a sentence.” *Kramer v. Olson*, 347 F.3d 214, 217 (7th Cir. 2003). Petitions are generally appropriate when success would “spell speedier release.” *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005). A petition for review of a final determination made by the Parole Commission fits squarely within this category. *See Romano v. Baer*, 805 F.2d 268 (7th Cir. 1986) (§ 2241 petition appropriate method to challenge decision of Parole Commission

to continue petitioner beyond term provided by parole guidelines). *See also Clemente v. Allen*, 120 F.3d 703, 705 (7th Cir. 1997) (“[C]hallenges to the computation of a sentence must be brought under 28 U.S.C. § 2241.”); *Carnine v. United States*, 974 F.2d 924, 927 (7th Cir. 1992) (same); *Lewis v. United States Parole Commission*, 132 F. App’x 659, 660 (7th Cir. May 16, 2005) (*dicta*, miscalculation of petitioner’s parole date is a claim properly brought under § 2241 as a challenge to the execution of the sentence); *Docken v. Chase*, 393 F.3d 1024, 1031 (9th Cir. 2004) (challenge to the frequency of parole review could potentially affect the duration of confinement and is properly brought under habeas).

The instant Petition challenging the calculation made by the Parole Commission in 2012 and affirmed in 2014 is properly brought under § 2241. Moreover, venue is proper because Alexander is currently confined at a facility in this federal judicial district. *See Braden v. 30 Judicial Circuit Court of Kentucky*, 410 U.S. 484 (1973) (venue proper in district that imposed sentence or in district where inmate is imprisoned); *Mikolon v. United States*, 844 F.2d 456, 460-61 (7th Cir. 1988); *United States v. Mittelsteadt*, 790 F.2d 39, 40-41 (7th Cir. 1986); *Coates v. Smith*, 746 F.2d 393, 396 (7th Cir. 1984). The instant Petition survives preliminary review.

With that said, the United States Parole Commission shall be dismissed from this action. The only proper respondent in a habeas action is the person who has custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426, 436 (2004).

In this case, the person is Respondent B. True, who is identified as the Warden of USP-Marion.

IV. Disposition

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 survives preliminary review under Rule 4 and Rule 1(b) of the Rules Governing Section 2254 Cases in United States District Courts.

IT IS ORDERED that Respondent **UNITED STATES PAROLE COMMISSION** is **DISMISSED** as a party.

IT IS ORDERED that Respondent Warden B. True shall answer or otherwise plead within thirty (30) days of the date this order is entered (on or before August 21, 2017).¹ This preliminary order to respond does not, of course, preclude the Government from raising any objection or defense it may wish to present. Service upon the United States Attorney for the Southern District of Illinois, 750 Missouri Avenue, East St. Louis, Illinois, shall constitute sufficient service.

IT IS ORDERED that pursuant to Local Rule 72.1(a)(2), this cause is referred to United States Magistrate Judge **Clifford J. Proud** for further pre-trial proceedings and for disposition.

¹ The response date ordered herein is controlling. Any date that CM/ECF should generate in the course of this litigation is a guideline only. See SDIL-EFR 3.

IT IS ORDERED that this entire matter be **REFERRED** to United States Magistrate Judge **Proud** for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

Petitioner is **ADVISED** of his continuing obligation to keep the Clerk (and Respondent) informed of any change in his whereabouts during the pendency of this action. This notification shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs. Failure to provide such notice may result in dismissal of this action. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: July 21, 2017.

 Digitally signed by
Judge David R. Herndon
Date: 2017.07.21
13:10:39 -05'00'



District Judge
United States District Court