

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT OWENSBORO  
CIVIL ACTION NO. 4:13CV-P49-M**

**KEITH BENNETT JOHNSON**

**PETITIONER**

**v.**

**UNITED STATES OF AMERICA**

**RESPONDENT**

**MEMORANDUM OPINION**

Petitioner Keith Bennett Johnson filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. For the reasons that follow, the Court will deny the motion and dismiss the action.

**I.**

Petitioner filed his § 2241 petition on May 6, 2013, and captioned it as an “emergency” petition. He states that he is incarcerated at Grayson County Detention Center (GCDC) on a conviction from the U.S. District Court in the Southern District of Illinois. He states that the conviction violated his rights. He states, “Clearly stated, such rights are ‘life, liberty, pursuit of happiness’ and most importantly and without question ‘inalienable rights’ provided through this petitioner’s Sovereign Lord and Father. This Sovereign Father is the exclusive and only true, correct, and just Judge in this matter before a Court of lesser jurisdiction.” Petitioner states that he seeks “Relief by way of Correction, Vacating or Set-Aside, of Conviction-Judgment-Sentence.” Petitioner states that he has an appeal pending before the Seventh Circuit Court of Appeals and that his appeal is a “‘Dead Bang Winner’ Argument/Claim/Appeal and that under this Court/Judge’s jurisdiction this is grounds to provide Relief in compliance with Habeas Corpus Rules.” He attaches to his petition a document he filed in the Seventh Circuit Court of

Appeals. The document indicates that he is appealing the denial of his 28 U.S.C. § 2255 motion by the U.S. District Court in the Southern District of Illinois.

Petitioner subsequently filed an “Addendum to 2241 motion” (DN 3) on May 10, 2013, wherein he seeks to be released immediately. He states that he is sleeping on a concrete floor on thin mattress pads without properly fitting linens and that he is “housed with [a] very violent young man who could pose a threat to [Petitioner’s] physical well-being.” He also states that he was formerly incarcerated at a federal medical center and that he is not receiving the medical care he needs at GCDC. Petitioner also states that he fell when exiting a transport van on May 3, 2013, and was not taken to the hospital. However, he states that he later received an x-ray, which revealed a “bone bruise.” Petitioner further states that he learned that his father is dying and requests to be released so that he can see him.

## II.

Generally, a federal defendant challenges his conviction and sentence by way of a motion to vacate, set aside, or correct sentence filed pursuant to 28 U.S.C. § 2255. Relief under § 2241 “is not an additional, alternative or supplemental remedy to that prescribed under § 2255.” *Charles v. Chandler*, 180 F.3d 753, 758 (6th Cir. 1999). A federal prisoner may challenge his conviction and imposition of sentence under § 2241, rather than under § 2255, only if he is able to establish that his remedy under § 2255 is “inadequate or ineffective to test the legality of his detention.” 28 U.S.C. § 2255(e) (the “savings clause”); *Charles*, 180 F.3d at 755-56. The petitioner bears the burden of proving that his remedy under § 2255 is inadequate or ineffective. *Id.* at 756.

Petitioner does not argue that § 2255 is inadequate or ineffective, and, in fact, he filed a § 2255 motion in the Court where he was convicted, which was denied, and his appeal of the

denial of his § 2255 motion is pending before the Seventh Circuit. He therefore has failed to show that § 2255 is inadequate or ineffective to challenge the legality of his sentence.

Accordingly, his petition will be denied and this action dismissed by separate Order.

### III.

Petitioner's request to be released to receive medical care and to visit his father might be construed as a request for "compassionate release" from federal custody. Such releases are permitted by statute, which provides that a federal court may, "upon motion of the Director of the [BOP], . . . reduce the term of imprisonment . . . if it finds that . . . extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A)(I) (emphasis added).


A federal prisoner begins the process by requesting a compassionate release from the Warden. 28 C.F.R. § 571.61. If the Warden determines that a compassionate release is warranted, his recommendation will be reviewed by the BOP's Office of General Counsel, then by either the Medical Director or Assistant Director, Correctional Programs Division, and then by the Director. 28 C.F.R. § 571.62(a)(1)-(3). If the Director of the BOP grants a compassionate release request under 18 U.S.C. § 3582(c)(1)(A), he will contact the U.S. Attorney in the district in which the inmate was sentenced and ask the attorney to file a motion in the sentencing court seeking a reduction of the inmate's sentence "to time served." 28 C.F.R. § 571.62(a)(4).

Petitioner is free to initiate the compassionate release process, but the Court lacks jurisdiction to order such relief in a § 2241 proceeding. *See Justice v. Sepanek*, No. 12-CV-74-HRW, 2013 U.S. Dist. LEXIS 33011, at \*12 (E.D. Ky. Mar. 11, 2013); *Srivastava v. United States*, No. 5:10-HC-2260-D, 2011 U.S. Dist. LEXIS 84375, at \*2 (E.D.N.C. Aug. 1, 2011) (finding that habeas petition seeking release because of allegedly inadequate medical treatment was not cognizable under § 2241). Petitioner is advised that if the BOP declines to request a

compassionate release on his behalf, its decision is not reviewable in federal court, given the “broad grant of discretion” which § 3582(c)(1)(A)(I) confers upon the Director of the BOP.

*Crowe v. United States*, 430 F. App’x 484, 485 (6th Cir. 2011).

Date: May 14, 2013

  
Joseph H. McKinley, Jr., Chief Judge  
United States District Court

cc: Petitioner, *pro se*  
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