

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KERRY A. JONES

VERSUS

CIVIL ACTION

UNITED STATES OF AMERICA

NUMBER 10-747-RET-SCR

RULING

This matter is before the court on petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

Petitioner is a state prisoner incarcerated in the Assumption Parish Detention Center, Napoleonville, Louisiana, located in the Eastern District of Louisiana. Petitioner is currently serving an eight year sentence pursuant to a conviction on July 14, 2004, in the Twenty-fourth Judicial District Court for the Parish of Jefferson, Louisiana. On August 10, 2005, the petitioner pleaded guilty to a federal charge of filing a false claim for a federal tax refund, in violation of 18 U.S.C. § 287, in the United States District Court for the Eastern District of Louisiana. Petitioner was sentenced to a term of imprisonment of 37 months, to be served consecutively to the state sentence.

Petitioner sought credit towards his federal sentence for time served prior to sentencing on the federal charges and to have his federal sentence run concurrently with his state court sentence.

A petition for habeas corpus filed under § 2241 must be filed in the district with jurisdiction over the prisoner or his custodian. *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000). The district of incarceration is the only district that has jurisdiction to entertain a defendant's § 2241 petition. *Lee v. Wetzel*, 244 F.3d 370 (5th Cir. 2001). This court does not have jurisdiction over this claim because the petitioner is not incarcerated in this district.¹

Accordingly,

Petitioner Kerry A. Jones' habeas corpus application shall be dismissed for lack of subject matter jurisdiction.

Judgment shall be entered accordingly.

Baton Rouge, Louisiana, November 3, 2010.



RALPH E. TYSON, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

¹ Prior to filing his § 2241 application in this district, the petitioner filed *Kerry Anthony Jones v. United States of America*, CV 08-4987-S-1, a § 2241 application, in the United States District for the Eastern District of Louisiana. Judgment was entered in that matter on March 6, 2009, dismissing the petition without prejudice for lack of jurisdiction. The basis for the dismissal was not that the § 2241 application was brought in the wrong federal district court as asserted by the petitioner, but because it was filed prematurely. At the time the petitioner filed his § 2241 application in the Eastern District he was not in federal custody nor serving his federal sentence.