

RECEIVED
IN LAKE CHARLES, LA

JUL - 2 2009

TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

IN RE: PETITIONER, EVERETT : DOCKET NO. 2:09 CV 0781
LEON STOUT
VS. : JUDGE MINALDI
JOE P. YOUNG, ET AL. : MAGISTRATE JUDGE KAY

MEMORANDUM ORDER

Before the court is the petitioner's "Notice of Violations of 28 U.S.C. §2243" [doc. 7] in which the petitioner, Everett Leon Stout ("Stout") seeks immediate release. Stout filed a Petition for Writ of Habeas Corpus pursuant to 29 U.S.C §2241¹ on May 13, 2009. This petition was reviewed by the Magistrate Judge and a Report and Recommendation was issued on June 17, 2009. The time for the petitioner to lodge objections to the ruling of the court has not yet lapsed.

In the interim, Stout is arguing that the Magistrate Judge does not have authority to review the habeas petition. A judge may designate a United States magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, and this delegation does not violate article III of the Constitution so long as the district court ultimately decides the referred matter. 28 U.S.C. §636(b)(1); CJS USMAG § 9; *Ford v. Estelle*, 740 F.2d 374, 378 (5th Cir. 1984); *Zinberg v. Washington Bancorp, Inc.*, 138 F.R.D. 397 (D.N.J. 1990).

The petitioner makes a demand for immediate release. Immediate release is the ultimate

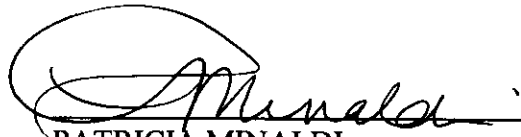
¹ Considering the substance of the petition, this was considered by the Magistrate Judge as an action pursuant to §2255.

purpose of the *habeas* petition. There is no basis in law or fact, however, for immediate release pending a final judgment on his *habeas* claim. Accordingly,

IT IS ORDERED that the petitioner's motion for immediate release pending a ruling on his *habeas* petition is DENIED.

IT IS FURTHER ORDERED that a final judgment on his *habeas* will be deferred until the time for filing objections to the Magistrate Judge's Report and Recommendation has lapsed and a *de novo* review has been conducted by this court.

Lake Charles, Louisiana, this 26 day of June, 2009.


PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE