

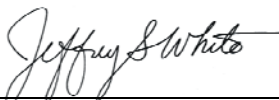
1 collaterally the validity of his conviction or sentence must do so by way of a motion to
2 vacate, set aside or correct the sentence pursuant to § 2255 in the court which imposed
3 the sentence. *See Tripati v. Henman*, 843 F.2d 1160, 1162 (9th Cir. 1988). Only the
4 sentencing court has jurisdiction. *See id.* at 1163. A prisoner may not attack collaterally
5 a federal conviction or sentence by way of a petition for a writ of habeas corpus pursuant
6 to 28 U.S.C. § 2241. *See Grady v. United States*, 929 F.2d 468, 470 (9th Cir. 1991)
7 (challenge to sentence following probation or parole revocation must be brought in
8 sentencing court via § 2255 motion); *Tripati*, 843 F.2d at 1162 (challenge to legality of
9 conviction must be brought in sentencing court via § 2255 motion); *see also United*
10 *States v. Flores*, 616 F.2d 840, 842 (5th Cir. 1980) (where challenge is to alleged errors
11 at or prior to sentencing remedy is § 2255 motion, not § 2241 writ). Petitioner does not
12 argue here that § 2255 is an inadequate remedy. *See*, 28 U.S.C. § 2255(e).

13 Therefore, the Court ORDERS that pursuant to 28 USC § 1406(a), the Clerk of
14 the Court shall TRANSFER this matter to the United States District Court for the
15 District of Maryland forthwith.

16 Petitioner is further advised that this Court's action to recharacterize his action as
17 a motion under § 2255 will subject subsequent § 2255 motions to the law's "second or
18 successive" restrictions. *Castro v. United States*, 540 U. S. 375, 377 (2003); *United*
19 *States v. Seesing*, 234 F.3d 456, 462-64 (9th Cir. 2001). Therefore, Petitioner is advised
20 that if he does not wish to proceed on this action as filed, he may voluntarily withdraw
21 the action, or amend his petition to comply with the mandates of that statute. *Id.*
22 However, any such requests by Petitioner must be undertaken in the District of
23 Maryland, where this case has been transferred.

24 IT IS SO ORDERED.

25 DATED: July 29, 2009

26 
27 _____
28 JEFFREY S. WHITE
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 LYDELL ROGERS,
6
7 Plaintiff,

Case Number: CV09-03233 JSW

CERTIFICATE OF SERVICE

8 v.

9 USA et al,
10 Defendant.
11

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
Court, Northern District of California.

13 That on July 29, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
receptacle located in the Clerk's office.

16
17 Lydell Rogers
18 31700-037
19 United States Penitentiary
20 P.O. Box 019001
Atwater, CA 95301

21 Dated: July 29, 2009



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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