

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

CARMEN GRICCO,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 10-3198-CV-S-ODS-H
MARTY ANDERSON, Warden,)	
United States Medical Center for)	
Federal Prisoners,)	
)	
Respondent.)	

**ORDER AND JUDGMENT DENYING LEAVE TO PROCEED IN FORMA PAUPERIS
AND DISMISSING PETITION WITHOUT PREJUDICE**

Magistrate Judge James C. England has submitted a report and recommendation that Petitioner's application for a writ of habeas corpus under 28 U.S.C. § 2241 be dismissed without prejudice. Petitioner has filed pro se exceptions in which he continues to assert that this Court should address his claims that he was denied the right to appeal and the right to counsel on appeal. Petitioner previously made this same argument to the Fifth Circuit, which rejected it. *See Gricco v. Keffer*, 335 Fed. Appx. 423, 424 (5th Cir. 2009). The Court has conducted a de novo review of Judge England's report and recommendation and has considered Petitioner's exceptions. The Court holds that Petitioner has failed to demonstrate that the 28 U.S.C. §2255 remedy is an ineffective or inadequate vehicle to test the legality of his conviction. The sentencing court is the appropriate forum for Petitioner to raise his claims. *See Lopez-Lopez v. Sanders*, 590 F.3d 905, 907 (8th Cir. 2010). Petitioner is denied leave to proceed in forma pauperis, and his petition for writ of habeas corpus is dismissed without prejudice.

IT IS SO ORDERED.

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT

DATE: June 14, 2010