

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|--------------------------|---|---------------------------|
| DANTE MORRIS |) | Case No.: 4:10 CV 470 |
| |) | |
| Petitioner, |) | |
| |) | JUDGE SOLOMON OLIVER, JR. |
| v. |) | |
| |) | |
| UNITED STATES OF AMERICA |) | MEMORANDUM OF OPINION |
| |) | <u>AND ORDER</u> |
| Respondent. |) | |

Petitioner *pro se* Dante Morris (“Morris”), a federal prisoner incarcerated in Corrections Corporation of America located in Youngstown, Ohio, brought this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.¹ He has not informed this court of the specifics of his federal court criminal case. Therefore, this court has no knowledge of the crime(s) he committed, the sentence received or whether he appealed his conviction or filed a Motion Attacking Sentence Pursuant to 28 U.S.C. § 2255. In a rambling and unclear narrative, Morris appears to be asserting that the federal court in which he was convicted had no jurisdiction. He claims to be immune from prosecution, was kidnaped and is being held hostage.

In 1948, Congress amended 28 U.S.C. § 2255 to allow the court that imposed sentence, rather than the court that happened to have jurisdiction over the prisoner’s custodian, to hear a collateral attack on that sentence. Although § 2255 was again amended in 1996 by the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214 (1996), it retained the crucial amendment passed in 1948 by the Judicial Conference, and thus currently provides in the

¹ Since Morris filed this Petition, he has ben transferred to the Federal Correctional Institution in Fort Dix, New Jersey.

fifth paragraph, that:

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

28 U.S.C. §2255 (1999).

Courts have uniformly held that claims asserted by federal prisoners seeking to challenge their convictions or imposition of their sentence shall be filed in the sentencing court under 28 U.S.C. § 2255, *see Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996); *Cabrera v. United States*, 972 F.2d 23, 25-26 (2d Cir. 1992); *Cohen v. United States*, 593 F.2d 766, 770 (6th Cir. 1979), and that claims seeking to challenge the execution or manner in which the sentence is served shall be filed in the court having jurisdiction over the prisoner's custodian under 28 U.S.C. § 2241. *Capaldi v. Pontesso*, 135 F.3d 1122, 1123 (6th Cir. 1998)(citing *United States v. Jalili*, 925 F.2d 889, 893 (6th Cir. 1991)); *Wright v. United States Bd. of Parole*, 557 F.2d 74, 77 (6th Cir. 1977). The remedy afforded under § 2241 is not an additional, alternative or supplemental remedy to that prescribed under § 2255. *See Bradshaw*, 86 F.3d at 166.

Still, § 2255 provides a safety valve wherein a federal prisoner may bring a § 2241 claim challenging his conviction or imposition of sentence, if it appears that the remedy afforded under § 2255 is "inadequate or ineffective to test the legality of his detention." *Accord United States v. Hayman*, 342 U.S. 205, 223 (1952); *In re Hanserd*, 123 F.3d 922, 929 (6th Cir. 1997). It is beyond question that § 2255 is not inadequate or ineffective merely because an individual is unable to obtain relief under that provision. *See e.g., Charles v. Chandler*, 180 F.3d 753, 756 (6th Cir. 1999) (per curiam). Indeed, the § 2255 remedy is not considered inadequate or ineffective simply because § 2255 relief has already been denied, *see In re Dorsainvil*, 119 F.3d 245, 251 (3d Cir. 1997), *Tripathi*

v. Henman, 843 F.2d 1160, 1162 (9th Cir. 1987), *cert. denied*, 488 U.S. 982 (1988), or because the petitioner is procedurally barred from pursuing relief under § 2255, *see In re Vial*, 115 F.3d 1192, 1194 n. 5 (4th Cir. 1997); *Garris v. Lindsay*, 794 F.2d 722, 726-27 (D.C.Cir. 1986) (per curiam), *cert. denied*, 479 U.S. 993 (1986), or because the petitioner has been denied permission to file a second or successive motion to vacate. *See In re Davenport*, 147 F.3d 605, 608 (7th Cir. 1998).

28 U.S.C. § 2255 grants a federal prisoner the right to move the court that imposed sentence to vacate, set aside sentence upon the ground that the court was without jurisdiction to impose that sentence. By contending that the federal court had no jurisdiction over his case, exactly one of the grounds mentioned in § 2255, he is challenging the imposition and not the execution of his sentence. *See Armstrong v. Stine*, 2009 WL 129783 * 1 (E.D. Ky., Jan 20, 2009) (citing *United States v. Jalili*, 925 F.2d 889, 893 (6th Cir. 1991)). Thus, a § 2241 action is inappropriate. He is not being held hostage as he contends, but is imprisoned in accordance with a legal sentence.

Accordingly, this action is dismissed pursuant to 28 U.S.C. § 2243.²

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

April 26, 2010

² 28 U.S.C. § 2243 requires the court to summarily hear and determine the facts and dispose of the matter as law and justice require.