

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

ROBERT COTNER,)
)
 Petitioner,)
)
 vs.)
)
 WARDEN ANITA TRAMMELL,)
)
 Respondent.)

No. CIV-11-198-JHP-KEW

OPINION AND ORDER

This action comes before the Court on the Respondent’s Motion to Dismiss for Petitioner’s Failure to Comply with filing restrictions (Doc. # 9). Respondent also asserts Cotner’s Petition for Writ of Habeas Corpus Relief, pursuant to 28 U.S.C. § 2241, is frivolous. In response, Petitioner has filed seven new pleadings, to-wit: 1) Motion to Strike Respondent’s Answer (Doc. # 11); 2) Motion for Appointment of Counsel (Doc. # 10); 3) Response to the motion to dismiss entitled, “Motion to Over-Rule and Denie (sic) Respondents Motion to Dismiss for Failure to Comply (Doc. # 12); 4) Brief in Support of Response entitled, “Endex (sic) to Attached Exhabits (sic) and Descriptions (Doc. # 13); 5) Petition for Writ of Habeas Corpus ad Testificandum, entitled “Motion for Ad-Testicandum” (sic) (Doc. # 14); 6) Motion to Deem Confessed True ALL Habeas Claims (Doc. # 15); and 7) “Notice to Court of UNDISPUTABLE EVIDENCE” (Doc. # 16).

After carefully reviewing all of the pleadings filed herein, this Court finds Petitioner has filed yet another frivolous lawsuit. Petitioner, an inmate currently incarcerated at Mack

Alford Correctional Center in Stringtown, Oklahoma, is challenging the execution of his sentence, pursuant to 28 U.S.C. § 2241. He also alleges numerous civil rights complaints which he claims arise from the long-ended *Battles* class action¹ and which he alleges have effectively lengthened his state court sentences.

Respondent's Motion to Dismiss (Doc. # 9) requests dismissal for petitioner's failure to comply with the filing restrictions imposed on petitioner in *Cotner v. Campbell*, 618 F.Supp. 1091, 1098-1099 (E.D. Okla. 1985), *affirmed in part and vacated in part sub nom.*, *Cotner v. Hopkins*, 795 F.2d 900, 903 (10th Cir. 1986). After finding that petitioner had abused the legal process by filing vexatious litigation designed for malicious purpose, the Court imposed a number of restrictions on future lawsuits filed by the petitioner within this district, to-wit:

[1]. Plaintiff Cotner is barred from filing further actions in this court until the \$1,000.00 fine imposed above has been paid in full.

[2]. Henceforth, plaintiff Cotner shall carry a stronger burden of proving that he is economically unable to pay the initial filing and service fee, or some portion thereof.

[3]. Henceforth, prior to allowing plaintiff Cotner to proceed *in forma pauperis*, he must sufficiently demonstrate to the court that his action is in good faith and not "without arguable merit" or malicious.

[4]. All pleadings hereafter submitted by plaintiff Cotner for filing shall be verified, as provided for in Rule 11, Fed.R.Civ.P.

¹The civil rights action referred to by Plaintiff is *Williams v. Saffle*, No. CIV-72-095-JHP) (E.D. Okla. Jan. 30, 2001).

[5]. Plaintiff Cotner shall include in every complaint or petition hereafter filed a list, by style, docket number, court, date filed, description and disposition, of every action filed by him in this and every other court of law or equity.

[6]. Plaintiff Cotner shall personally send a copy of the complaint and every subsequent pleading to the defendants or defense counsel, and plaintiff shall submit documentary evidence of such service to the court in a supplementary pleading.

[7]. Hereafter, in every action filed in this court, plaintiff Cotner shall make specific reference to this order, and shall detail to the court how he has complied with each and every requirement imposed upon him by this order.

Id., at 1099 (citations omitted). On appeal, the Tenth Circuit vacated the \$1,000.00 fine, but left the remaining sanctions intact. *Cotner v. Hopkins*, 795 F.2d at 903.

Despite filing numerous pleadings since the Respondent filed her motion to dismiss, Petitioner makes absolutely no attempt to comply with any of the filing restrictions imposed by this court. Furthermore, based upon the documentation contained in Respondent's motion, it is clear that Petitioner's challenge to his sentence is once again frivolous.

ACCORDINGLY, the Respondent's Motion to Dismiss for Petitioner's Failure to Comply with filing restrictions (Doc. # 9) is **GRANTED**, and this action is **DISMISSED WITHOUT PREJUDICE** in all respects. All other pending motions are denied as moot.

IT IS SO ORDERED this 18th day of July 2011.


James H. Payne
United States District Judge
Eastern District of Oklahoma