

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHRISTOPHER PIERCE,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-06-375-R
)	
RAY ROBERTS and PHIL KLINE,)	
)	
Respondents.)	

REPORT AND RECOMMENDATION

In this habeas action, a Kansas prisoner challenges the execution of his Kansas sentence.¹ According to the petition, Mr. Pierce had been temporarily housed in Oklahoma.² During that time, the Petitioner allegedly sent the Oklahoma Pardon and Parole Board documents proving his innocence, and Oklahoma officials were going to grant him parole on his Kansas conviction.³ Before he could be paroled, Mr. Pierce was transferred to

¹ Mr. Pierce filed the petition on a 28 U.S.C. § 2254 form. *See* Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody (Apr. 6, 2006). While the Petitioner maintains his innocence, he is not attacking his Kansas conviction. Instead, Mr. Pierce is challenging a prison transfer, which allegedly interrupted his pending parole. *See id.* at p. 6. This claim is governed by 28 U.S.C. § 2241. *See United States v. Furman*, 112 F.3d 435, 438 (10th Cir. 1997) (claims “concerning . . . parole . . . , go to the execution of sentence and, thus, should be brought against defendant’s custodian under 28 U.S.C. § 2241”).

² Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at p. 6 & Exhibit C (Apr. 6, 2006).

³ Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at p. 6 (Apr. 6, 2006).

Kansas.⁴ Thus, the Petitioner seeks an “order releasing him from incarceration.”⁵ The Court should transfer the action to the District of Kansas.

The Court must have jurisdiction over the Petitioner’s custodian.⁶ Mr. Pierce was convicted in Kansas, and his Kansas custodian is not subject to jurisdiction in the Western District of Oklahoma.⁷ Thus, the Court should transfer the action to the District of Kansas in the interest of justice.⁸

The Petitioner is advised of his right to object to this report and recommendation by May 4, 2006.⁹ If the Petitioner does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma.¹⁰ The Petitioner is further advised that if he does not timely object, he would waive his right to appeal the suggested transfer to the District of Kansas.¹¹

⁴ Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at p. 6 (Apr. 6, 2006).

⁵ Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at p. 6 (Apr. 6, 2006).

⁶ See *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 495 (1973).

⁷ See *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (“In habeas challenges to *present* physical confinement, . . . , the district of confinement is *synonymous* with the district court that has territorial jurisdiction over the proper respondent.” (emphasis in original)); see also *Griggs v. United States*, 79 Fed. Appx. 359, 362 (10th Cir. Oct. 17, 2003) (unpublished op.) (Western District of Oklahoma lacked jurisdiction over a 2241 petition when the petitioner was housed in Texas).

⁸ See 28 U.S.C. § 1631 (2000).

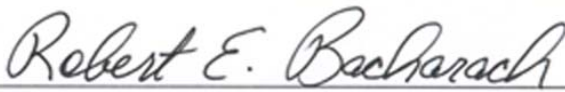
⁹ See W.D. Okla. Local Civil Rule 72.1(a).

¹⁰ See *Haney v. Addison*, 175 F.3d 1217, 1219-20 (10th Cir. 1999).

¹¹ See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The referral to the undersigned has been terminated.

Entered this 14th day of April, 2006.

A handwritten signature in cursive script that reads "Robert E. Bacharach". The signature is written in black ink and is positioned above a horizontal line.

Robert E. Bacharach

United States Magistrate Judge