

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

BRIAN THOMAS LOWERY,)	
)	
Petitioner,)	
)	
vs.)	CIV-09-954-F
)	
THE ATTORNEY GENERAL OF)	
THE STATE OF OKLAHOMA,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, brings this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. The matter was referred to the undersigned Magistrate Judge by United States District Judge Friot on August 31, 2009, for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). The undersigned finds:

(1) That the Petitioner is presently a prisoner in the custody of the Oklahoma State Penitentiary, McAlester, Pittsburg County, Oklahoma, which is located within the territorial jurisdiction of the Eastern District of Oklahoma. 28 U.S.C. §116(b).

(2) That the Petitioner demands his release from such custody and as grounds therefore alleges he is being deprived of his liberty in violation of his rights under the Constitution of the United States.

(3) That the court which imposed upon Petitioner the judgment of conviction and sentence under attack was the District Court of Tulsa County, Oklahoma, which is located within the territorial jurisdiction of the Northern District of Oklahoma. 28 U.S.C. §116(a).

(4) The Northern District of Oklahoma, as the place of conviction, and the Eastern District of Oklahoma, as the place of custody, have concurrent jurisdiction to entertain the application for writ of habeas corpus. 28 U.S.C. §2241(d).

(5) The instant Petition is improperly filed in the Western District of Oklahoma and should be summarily dismissed without prejudice to filing in the appropriate district. 28 U.S.C. §1406(a).

RECOMMENDATION

Accordingly, it is recommended that this Petition for a Writ of Habeas Corpus be dismissed without prejudice to refile in the appropriate district. The Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court on or before September 23rd, 2009, in accordance with 28 U.S.C. §636 and LCvR 72.1. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th

Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendations are deemed waived.”).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 3rd day of September, 2009.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE