

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

<p>BYRON KEITH RED KETTLE, a/k/a Byron K. Red Kettle,</p> <p style="text-align: center;">Movant,</p> <p style="text-align: center;">vs.</p> <p>ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA,</p> <p style="text-align: center;">Respondents.</p>	<p style="text-align: center;">4:17-CV-05039-KES</p> <p style="text-align: center;">ORDER FOR SERVICE</p>
---	---

Petitioner, Byron Keith Red Kettle, an inmate housed by the Nebraska Department of Corrections in Omaha, Nebraska, has filed various pro se pleadings which were originally construed as a motion pursuant to 28 U.S.C. § 2255. The court now, however, construes the case as an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹

FACTS

Along with Mr. Red Kettle's submissions, the court has taken judicial notice of the following facts pertinent to this case. Mr. Red Kettle robbed a convenience store in Box Elder, South Dakota, on September 30, 1987, and kidnapped the clerk of the store. He fled to Sheridan County, Nebraska, where he sexually assaulted the clerk. The clerk eventually escaped and Mr. Red

¹ A § 2255 petition seeks release from federal custody while a § 2254 petition attacks custody pursuant to a state judgment of conviction. As will be seen in the FACTS section of this opinion, Mr. Red Kettle is no longer subject to federal custody, having been released on both of his federal sentences. Therefore, the court concludes he is in custody pursuant to a state judgment only.

Kettle was taken into custody. While in custody at the Pennington County Jail in Rapid City, South Dakota, under federal kidnapping charges he attacked a corrections officer in an attempt to escape. Three different jurisdictions prosecuted Mr. Red Kettle as follows:

United States District Court, District of South Dakota: Mr. Red Kettle pled guilty to kidnapping as well as assaulting a federal officer. On April 1, 1988, he received a life sentence for the kidnapping and on August 24, 1988, he was sentenced to 92 months in prison for the assault. The assault sentence was ordered to be served consecutively to the kidnapping sentence. See United States v. Red Kettle, CR. 87-50067-RHB and CR. 88-50014-RHB (D.S.D.).

South Dakota State Court: After the federal conviction and sentencing, Mr. Red Kettle was prosecuted in South Dakota state court. He pled guilty to kidnapping and assault and was sentenced to life in prison for the kidnapping conviction and 30 years in prison for the assault. After an appeal, both sentences were ultimately ordered to run concurrently to the corresponding federal sentence. See State v. Red Kettle, 452 N.W.2d 774 (S.D. 1990).

Nebraska State Court: Mr. Red Kettle was convicted by a jury of first degree sexual assault (Count 1), operating a motor vehicle to avoid arrest (Count 2), and receiving or retaining stolen property (Count 3). On May 15, 1990, Mr. Red Kettle was sentenced to 15 to 25 years on Count 1, to be served consecutively with any federal or South Dakota sentence, and 1-3 years each on Counts 2 and 3, to be served consecutive to Count 1 and concurrent with each other. See State v. Red Kettle, 476 N.W.2d 220 (Neb. 1991).

Mr. Red Kettle was released from federal custody on June 13, 2009, and began serving his Nebraska state sentence on that same date. See Red Kettle v. United States of America, CIV. 8:11CV264 (D. Neb. 2012) at Docket 12. He is in the custody of Nebraska authorities at present.

Following his convictions, Mr. Red Kettle filed numerous actions in federal court including petitions for relief under 28 U.S.C. § 2241, 28 U.S.C. § 2254, and 28 U.S.C. § 2255. See CIV. 06-5094, 08-5075, 08-5035, 09-5105 (D.S.D.); CIV. 08-2029 (D. La.); CIV. 04-257 (D. Colo); and CIV. 11-264 and 13-171 (D. Neb). In this case, Mr. Red Kettle's request for relief is less than clear. It appears he is arguing that the State of South Dakota has a detainer lodged against him illegally and that the South Dakota detainer is operating to prevent his release on parole in Nebraska and to prevent his access to rehabilitation services in Nebraska.

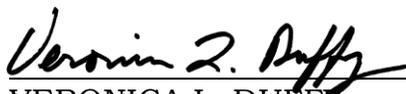
Accordingly, it is hereby

ORDERED that:

- (1) this case shall be construed as a petition under 28 U.S.C. § 2254;
- (2) the Clerk of Court is directed to serve the Attorney General of the State of South Dakota a copy of all pleadings filed by Mr. Red Kettle to date along with this Order; and
- (3) respondents will file and serve a response to the petition within thirty (30) days after receipt of this Order.

DATED this 13th day of June, 2017.

BY THE COURT:



VERONICA L. DUFFY
United States Magistrate Judge