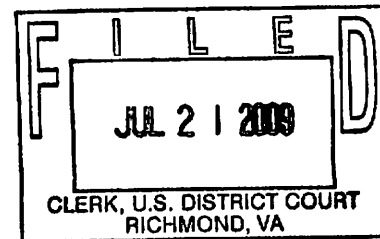


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



JAMES S. LESANE,

Petitioner,

v.

Civil Action No. **3:09cv265**

J.M. KILLIAN,

Respondent.

MEMORANDUM OPINION

On September 29, 2008, the Court sentenced Petitioner to a 140-month term of imprisonment. *See United States v. Lesane*, 3:08cr185 (E.D. Va. Sept. 29, 2008). Petitioner appealed his conviction and sentence and that appeal is currently pending before the United States Court of Appeals for the Fourth Circuit.

By Memorandum Order entered on September 5, 2008, the Court denied a 28 U.S.C. § 2241 petition by Petitioner challenging the above criminal proceedings. *See LeSane v. United States*, No. 3:08cv00247, 2008 WL 4154303, at *1 (E.D. Va. Sept. 5, 2008). The Court advised Petitioner that in order to obtain relief under 28 U.S.C. § 2241, he must first exhaust other available remedies such as a direct appeal. *Id.* Nevertheless, on April 27, 2009, the Court received another 28 U.S.C. § 2241 petition from Petitioner.

Petitioner has asked the Court to consider his petition under either 28 U.S.C. § 2241 or under 28 U.S.C. § 2255. As the Court noted in its denial of Petitioner's first § 2241 petition, Petitioner cannot proceed by way of 28 U.S.C. § 2241 unless he has exhausted his remedies available by direct appeal. *Id.* Similarly, "in the absence of extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a [§] 2255

motion while review of the direct appeal is still pending.” *United States v. Gordon*, 634 F.2d 638, 638-39 (1st Cir. 1980) (internal quotations omitted) (citing cases). Accordingly, by Memorandum Order entered on June 19, 2009, the Court directed Petitioner to show good cause why the present action should not be dismissed without prejudice.

Petitioner has responded, but he has failed to demonstrate any extraordinary circumstance that would warrant consideration of his present action prior to the resolution of his direct appeal. Accordingly, the action will be **DISMISSED WITHOUT PREJUDICE** to refile after the conclusion of his direct appeal. Petitioner’s outstanding motions (Docket Nos. 3, 6, 7, 9, 10, 11) will be **DENIED**.

An appropriate Order shall issue.

Dated: **JUL 21 2009**
Richmond, Virginia

<p><i>/s/</i> _____ Richard L. Williams United States District Judge</p>
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