

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED
JUN 24 2005
JOHN F. CORCORAN, CLERK
BY: [Signature] DEPUTY CLERK

MICHAEL P. WILLS,)
Petitioner,) Civil Action No. 7:05-CV-00399
v.)
DANIEL A. BRAXTON,) MEMORANDUM OPINION
Respondent.)
By: Hon. Glen E. Conrad
United States District Judge

Petitioner Michael P. Wills, a Virginia inmate proceeding pro se, brings this case as a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. However, because Wills's claims are properly brought under 28 U.S.C. § 2254, this court construes Wills's petition as an action under 28 U.S.C. § 2254. Because Wills's conviction occurred in the Eastern District of Virginia, normally this court would transfer this case to the United States District Court for the Eastern District of Virginia. However, Wills filed a prior action under 28 U.S.C. § 2254 and has not provided any evidence to suggest that the Court of Appeals for the Fourth Circuit has authorized Wills to file a second or successive petition as required by 28 U.S.C. § 2244(b)(3)(A). Therefore, this court will dismiss this petition rather than transferring it to the Eastern District of Virginia.

In his petition, Wills alleges that his convictions violated the double jeopardy clause and that his sentences are supposed to run concurrently, not consecutively. Because Wills contests the constitutionality of his incarceration, which is the result of a state conviction, Wills's proper remedy lies within 28 U.S.C. § 2254. See 28 U.S.C. § 2254(a).

Wills claims that the United States District Court for the Eastern District of Virginia dismissed Wills's petition for a writ of habeas corpus on February 8, 2005. Wills does not allege that the United States Court of Appeals for the Fourth Circuit granted Wills authorization to file a second or successive petition under 28 U.S.C. § 2254 as required by 28 U.S.C. § 2244(b)(3)(A).

Therefore, this court files and dismisses Wills's petition. An appropriate order will be entered this day.

ENTER: This 23rd day of June, 2005

John C. Conrad

UNITED STATES DISTRICT JUDGE