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		
AUG 2 2 2006		
JOHN F. CORCOBAN, CLERK BY:		

TOMMY PABELLON,)
Petitioner,) Civil Action No. 7:06cv00491
v.	MEMORANDUM OPINION
TERRY O'BRIAN, WARDEN) By: Samuel G. Wilson
Respondent.) United States District Judge

Petitioner Tommy Pabellon, a federal inmate proceeding <u>prose</u>, brings this action pursuant to 28 U.S.C. § 2241. Pabellon was convicted in the United States District Court of South Carolina on two counts of aiding and abetting in the murder of a witness to prevent testimony, and was sentenced to life. Pabellon now alleges that his conviction is unconstitutional under <u>Crawford v. Washington</u>, 541 U.S. 36 (2004).

Ordinarily, a petition pursuant to 28 U.S.C. § 2255, not 28 U.S.C. § 2241, is the appropriate vehicle for challenging a conviction or the imposition of a sentence, unless a petition pursuant to 28 U.S.C. § 2255 is "inadequate and ineffective" for those purposes. In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000). A petition pursuant to § 2255 is "inadequate and ineffective" to challenge the imposition of a sentence only when (1) settled law established the legality of the conviction or sentence at the time imposed; (2) after the prisoner has completed his appeal and first § 2255 motion, a change in substantive law renders the conduct for which the prisoner was convicted no longer criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law made retroactively applicable to cases on collateral review. Id.

¹See U.S. v. Little, 392 F.3d 671, (4th Cir. 2004) ("[An] attack on the execution of [a] sentence and not a collateral attack on [a] conviction . . . [is] properly brought under 28 U.S.C.A. § 2241.").

[&]quot;A habeas petition under § 2241 must, however, be filed in the district in which the prisoner is confined." <u>In re Jones</u>, 226 F.3d at 332 (citing 28 U.S.C. § 2241(a)).

The Supreme Court's <u>Crawford</u> decision did not render legal the conduct for which Pabellon was convicted; therefore, he may not resort to § 2241. Accordingly, the court dismisses Pabellon's § 2241 petition.

ENTER: This 224 day of August, 2006.

UNITED STATES DISTRICT JUDGE