

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

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA

FILED
for Roanoke
JUL 23 2009

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DONALD W. GOFF,
Petitioner,

Civil Action No. 7:09-cv-0028(BY:)

v.

MEMORANDUM OPINION

TERRY O'BRIEN, et al.,
Respondents.

By: Hon. Jackson L. Kiser
Senior United States District Judge

Donald W. Goff, a federal prisoner proceeding pro se, filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. Goff alleges that the military judge presiding over his court martial failed to properly instruct the jury to vote on the mandatory life sentence. Goff names as defendants Terry O'Brien, the warden of his present place of confinement; the Warden of the United States Disciplinary Barracks at Fort Leavenworth, Kansas; and the United States Secretary of the Army.

"In accord with the statutory language [of § 2241] and [the] Wales[v. Whitney, 114 U.S. 564, 574 (1885),] immediate custodian rule, longstanding practice confirms that in habeas challenges to present physical confinement . . . the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." Rumsfeld v. Padilla, 542 U.S. 426, 435-36 (2004). See 28 U.S.C. §§ 2242, 2243. Therefore, Goff improperly added a warden in Kansas and a Department of Defense official as respondents and fails to state a claim upon which relief may be granted against them. Accordingly, I terminate the Warden of the United States Disciplinary Barracks at Fort Leavenworth, Kansas, and the United States Secretary of the Army as respondents to this action. A separate order will issue this day.

The Clerk is directed to send copies of this memorandum opinion and the accompanying order to the petitioner.

ENTER: This 23rd day of July, 2009.

Jackson L. Kiser
Senior United States District Judge