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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 MATTHEW ROBERT
9 DESCAMPS,

Petitioner,

10 vs.

11 UNITED STATES OF AMERICA
12 and FRED VAN SICKLE,

13 Respondent.

NO. 13-CV-00424-FVS

ORDER TO PROCEED *IN FORMA*
PAUPERIS AND ORDER DISMISSING
PETITION

14 BEFORE THE COURT is Petitioner's *pro se* Petition for Writ of Habeas Corpus
15 under 28 U.S.C. § 2241. Petitioner, a federal prisoner currently housed at the Spokane
16 County Jail pending re-sentencing in cause number 05-CR-00104-FVS-1, seeks leave to
17 proceed *in forma pauperis*. Because it appears Petitioner lacks sufficient funds to
18 prosecute this action, **IT IS ORDERED** that the District Court Executive shall file the
19 Petition without payment of the filing fee.

20 On the Petition form, Mr. Descamps claims that his Tenth Amendment rights were
21 violated while he was a pretrial detainee. He also asserts unspecified Sixth, Eighth, and
22 Fourteenth Amendment violations, due to the alleged misrepresentation of an
23 unidentified attorney. Petitioner claims that he is being unlawfully held and assaulted by
24 Guards. Complaints about the conditions of a prisoner's confinement are more properly
25 pursued separately in either a § 1983 civil rights complaint (against state actors) or in an
26 action pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971)

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1 (against federal actors) in the jurisdiction where the alleged assaults occurred. Claims
2 concerning the conditions of one's confinement are generally not cognizable on habeas
3 review. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991).

4 In addition, Petitioner appears to be challenging charges of attempted escape and
5 threatening his wife. It does not appear that either of these charges arose in the Eastern
6 District of Washington. Therefore, if Petitioner wishes to challenge pending charges, he
7 should do so in the jurisdiction in which they arose.

8 Petitioner also complains that the undersigned judicial officer has not provided
9 hearings for his various motions and complaints. He apparently seeks to have another
10 judge hear his case. Mr. Descamps' previous requests to have the undersigned judicial
11 officer removed from his criminal case were denied. *See* 05-CR-00104-FVS-1, ECF Nos.
12 303 and 384. He has presented no new basis warranting recusal under 28 U.S.C. §
13 455(a). Once again, a party may not obtain recusal based upon an adverse
14 ruling. *Leslie v. Grupo ICA*, 198 F.3d 1152, 1160 (9th Cir. 1999). To the extent
15 Petitioner is seeking to recuse the undersigned judicial officer, his request is **DENIED**.

16 **HABEAS PETITION**

17 The Court is obliged to screen Mr. Descamps' petition to determine whether he is
18 entitled to relief under § 2241. *See* Rule 4, Rules Governing 28 U.S.C. § 2254 Cases;
19 (applicable to § 2241 petitions under Rule 1(b)); *see also* 28 U.S.C. § 2243. The Court
20 may summarily dismiss a petition if it appears from its face that Petitioner is not entitled
21 to relief. *See* 28 U.S.C. § 2243.

22 The four asserted grounds for relief on the petition form appear confused. First,
23 Petitioner asserts that "judicial misconduct prejudice against poor people" caused his
24 father to have a heart attack and die. Next, he claims he has "never justfully [sic] and
25 legally been represented by a[n] attorney that has done as [he] ask[ed]." In his third
26 ground for relief, Petitioner asserts that "all the facts" were not "constitutional[ly]

1 presented by [his] attorneys for state all through federal court.” He also claims the
2 undersigned judicial officer “unlawfully unconstitutionally dismissed” all of his motions
3 without hearing them. None of these assertions are supported by facts which would
4 entitled Mr. Descamps to relief.

5 In his request for relief, Petitioner states merely that he “need[s] a[n] attorney to
6 represent [him] properly.” The Court notes that attorney Chris Bugby has been appointed
7 to represent him in the criminal matter. He is at least the sixth attorney appointed in
8 cause number 05-CR-00104-FVS-1. A court-appointed attorney is appointed solely for
9 the purpose of representing the accused in a criminal matter. To the extent Mr. Descamps
10 may have believed that appointed attorney was available to represent him in the
11 investigation and/or filing of a civil rights complaint under 42 U.S.C. § 1983, he was
12 mistaken.

13 Petitioner also contends that the U.S. Supreme Court decision, *Alleyne v. United*
14 *States*, ___ U.S. ___, 133 S.Ct. 2151 (2013)(because brandishing a firearm, rather than
15 merely carrying it, in connection with a crime of violence, increases the mandatory
16 minimum sentence by two years, it is an element of the offense which must be found by a
17 jury), applies to the circumstances of his case. Petitioner, however, fails to provide facts
18 showing how the *Alleyne* decision is applicable. Regardless, this is an issue which may
19 be presented in his pending criminal matter.

20 SUPPLEMENTAL DOCUMENTS

21 On January 3, 2014, the Court received numerous documents from Mr. Descamps,
22 including: “Statement of the Unlawful Unconstitutional Actions of Judge Fred Van
23 Sickle” (9 pages), ECF No. 6; “Table of Contents/Statement of the Case” (10 pages),
24 ECF No. 7, and “Miscellaneous Pages 1-35” (35 pages), ECF No. 8. On January 9, 2014,
25 the Court received an additional 32 pages of documents, ECF No. 5, consisting of
26 numerous declarations and certificates of service by mailing (6 pages); a “Statement to:

1 Newspapers” (1 page); a “Formal Complaint” to Attorneys General (1 page); a
2 “Declaration of Unconstitutionality” in which Petitioner asserts that he has complained
3 about the undersigned judicial officer to the Supreme Court and Ninth Circuit Court of
4 Appeals, claiming his many motions, writs and statements have been wrongfully
5 dismissed and that none of his attorneys has ever helped him as they have not appealed or
6 argued as he has asked them (7 pages); a document titled, “United States Judge Fred Van
7 Sickle!,” complaining that his sentence was unconstitutionally enhanced and he was
8 unlawfully charged booking fees (1 page); and a “Declaration of: . . . unconstitutionality
9 and outrageous government misconduct” (16 pages).

10 In these supplemental documents Mr. Descamps asserts that he objected to a “so-
11 called signed statement” at a suppression hearing, and appears to be asserting that he was
12 questioned unlawfully in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), and that
13 an ATF agent presented false information regarding this “signed statement” in violation
14 of 18 U.S.C. § 1001. ECF No. 6. He also appears to contend the undersigned judicial
15 officer lacked authority to order a mental evaluation. *Id.* This contention lacks merit. *See*
16 18 U.S.C. § 4241.

17 § 2241 PETITION

18 Mr. Descamps has successfully challenged the calculation of his sentence to the
19 U.S. Supreme Court in cause number 05-CR-00104-FVS-1. Because the judgment in
20 Petitioner’s criminal case is not yet final, the Court has not had an opportunity to rule on
21 a properly filed habeas petition. The Court notes that challenges to federal criminal
22 proceedings should be brought in the pending criminal matter.

23 The Court finds the present petition pursuant to 28 U.S.C. § 2241, even
24 supplemented with his additional documents, either does not assert claims which entitle
25 Mr. Descamps to relief or Petitioner may assert his claims in the pending criminal matter.
26 Therefore, **IT IS ORDERED** the Petition is **DENIED without prejudice** to raising

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1 issues appropriately in 05-CR-00104-FVS-1.¹ The Court finds there is no arguable basis
2 in law or fact for appealing this decision.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order, enter judgment, forward a copy to Petitioner and close this file.

5 **DATED** this 16th day of January 2014.

6
7 s/ Fred Van Sickle
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9 FRED VAN SICKLE
10 SENIOR UNITED STATES DISTRICT JUDGE
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23 Petitioner asserts that predicates out of Stevens and Pend Orielle Counties in
24 Washington State are being used unconstitutionally. ECF No. 8, page 2. Because Mr.
25 Descamps' re-sentencing in 05-CR-104-FVS is not scheduled until February 21, 2014,
26 this challenge in a separate habeas action is pre-mature and improper. Petitioner should
27 raise it appropriately through assigned counsel in the underlying criminal matter.

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