UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FREDERICK W. BAUER,

Plaintiff,

v.

U.S. ATTORNEY GENERAL,

Defendant.

CASE NO. C10-1176 MJP

ORDER DENYING CERTIFICATE OF APPEALABILITY

This comes before the Court on Petitioner's Notice of Appeal, (Dkt. No. 15), and the Ninth Circuit's order for limited remand. (Dkt. No. 23.) Pursuant to the Ninth Circuit's decision in United States v. Asrar, this Court treats Petitioner's notice as a request for a certificate of appealability. 116 F.3d 1268, 1270 (9th Cir. 1997). For the reasons set forth below, the Court DENIES Petitioner's request for a certificate of appealability.

28 U.S.C. § 2253(c)(2) provides that a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." To satisfy this standard, petitioners must show "that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were 'adequate to

deserve encouragement to proceed further.'" Slack v. McDaniel, 120 S.Ct. 1595, 1603-04 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). To make such a showing, Petitioner must demonstrate "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner of that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)) (internal quotations omitted) (further noting that this showing does not require a showing that the appeal will necessarily succeed).

Mr. Bauer's petition for habeas relief does not rise to the level that would merit a certificate of appealability. As Magistrate Judge Donohue discussed and this Court agreed, this Court does not have jurisdiction to consider his habeas petition. (See Dkt. No. 6.) A habeas petition filed pursuant to § 2241 or § 2255 must be heard in the district where petitioner is under custody. Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000). A district court typically has personal jurisdiction over a petitioner's warden only when the petitioner's place of confinement is within the territorial limits of the district court. Rumsfeld v. Padilla, 542 U.S. 426, 434-35 (2004). Here, Petitioner is incarcerated at the Federal Correctional Institution in Littleton, Colorado based on federal drug and tax convictions in the Western District of Washington. (Dkt. 1-2, at 1—2). The Western District of Washington has no connection to this matter. As such, the Western District of Washington has no jurisdiction to consider the merits and a reasonable jurist would not have resolved the petition in a different manner.

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It is ORDERED that Petitioner's request for a Certificate of Appealability is DENIED. The Clerk is directed to transmit a copy of this Order to all counsel of record and mail a copy to Petitioner.

Dated this 9th day of February, 2011.

Marsha J. Pechman
United States District Judge