

DOC NO
REC'D/FILED
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN JUL 28 AM 9:34

TYRONE DAVIS SMITH,

PETER OPPENECER
CLERK US DIST COURT
WD OF WI

Petitioner-Appellant,

v.

Case No. 17-cv-49-bbc

STATE OF WISCONSIN COURT OF APPEALS,
DISTRICT ONE

Respondent-Respondent.

NOTICE OF APPEAL
FROM DISMISSAL OF 28 U.S.C. §2241
PETITION FOR A WRIT OF HABEAS CORPUS

NOTICE IS HEREBY GIVEN THAT the above-said petitioner appeals to this United States Court of Appeals for the Seventh Circuit as follows:

1. Pursuant to 28 U.S.C. §2253, "in a habeas corpus proceeding . . . before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
2. On July 21, 2017 the United States District Court Western District of Wisconsin entered a final decision, dismissing/denying the petitioner's 28 U.S.C. §2241 petition for writ of habeas corpus alleging that

Because petitioner's challenges to the evidence

presented at trial and his allegations that his appellate counsel was ineffective for failing to raise those challenges on appeal affect the fact or duration of his custody, they must be brought under § 2254, and not § 2241.

3. Pursuant to 28 U.S.C. §1291, "the court of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District court for the District of the Canal Zone, the District Court of Guam, and the District Court the Virgin Islands, except where a direct review may be had in the Supreme Court.

4. Pursuant to 28 U.S.C. §1331, the district court had original jurisdiction of this matter arising under Constitution, laws and treaties of the United States which dealt with a federal question.

Dated this 26th day of July, 2017.

Respectfully submitted

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Tyrone Davis Smith

CC: TDS/files

United States Court of Appeals for Seventh Circuit