

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>RICKEY SABEDRA</b>	:	<b>CIVIL ACTION</b>
<b>v.</b>	:	
<b>CHRISTINE MEADOWS,</b>	:	
<b>PAROLE AGENT</b>	:	<b>NO. 07-cv-0366</b>

**MEMORANDUM AND ORDER**

On January 29, 2007, petitioner filed a petition in this court seeking habeas corpus relief pursuant to 28 U.S.C. §2254. Petitioner was convicted of aggravated robbery in a state court of the state of Texas<sup>1</sup> in 1985 and sentenced to 25 years imprisonment; petitioner is currently incarcerated in a Texas state prison.<sup>2</sup>

According to the Pennsylvania Board of Probation and Parole (hereinafter “PBOP”), the state of Texas paroled petitioner in 1995. Petitioner wanted to serve his parole time in Pennsylvania, so PBOP agreed with Texas officials to provide what PBOP refers to as “Courtesy Supervision” over petitioner; according to PBOP, this means that one state is in effect just doing a favor for another state, in the interest of interstate comity.

While in Pennsylvania under PBOP supervision, petitioner committed an infraction of some sort; it is utterly impossible from petitioner’s filing in 07-cv-0366 what this infraction was, and whether it involved the state of Pennsylvania, the state of Texas, or both. Petitioner does not indicate that he has had a Pennsylvania conviction;

---

<sup>1</sup>Located within the territorial confines of the United States District Court for the Northern District of Texas.

<sup>2</sup>Located within the territorial confines of the United States District Court for the Eastern District of Texas.

in fact, the only conviction talked about occurred in Texas. Based on what petitioner has so far presented to this court, it is utterly impossible to determine whether the decision to terminate petitioner's parole in Pennsylvania was made by Pennsylvania parole officers or by Texas parole officers. Petitioner's PBOP file was closed on April 30, 1996, which was the date he was handed over from Pennsylvania custody to Texas custody. Petitioner clearly states that this Texas custody is solely the result of his aforesaid 1985 Texas conviction and sentence. According to Texas state prison officers, petitioner is scheduled to be released from Texas custody in 2010 (which is 25 years after he received the aforesaid 25-year state sentence in Texas in 1985).

Based on what petitioner has stated, it is impossible to determine whether venue over this matter lies with the United States District Court for the Eastern District of Pennsylvania,<sup>3</sup> or with the United States District Court for the Northern District of Texas, or with the United States District Court for the Eastern District of Texas.

Habeas Corpus petitions (filed by a person in state custody pursuant to the judgment of a state court) attacking the execution of state custody, with an argument based on the federal Constitution are properly classified as seeking relief pursuant to 28 U.S.C. §2254. Benchoff v. Colleran, 404 F.3d 812 (3<sup>rd</sup> Cir. 2005); Coady v. Vaughn, 251 F.3d 480 (3<sup>rd</sup> Cir. 2001). We note that it is impossible to determine with certainty whether petitioner is raising arguments that are constitutional in nature; however, by raising issues related to state parole, petitioner is clearly attacking the execution of his state sentence. Coady v. Vaughn, 251 F.3d 480 (3<sup>d</sup>. Cir. 2001) stands for the

---

<sup>3</sup>The sole defendant named in this civil action is a former employee of PBOP who according to an PBOP agent "retired very many years ago" from PBOP.

proposition that attacks on a denial of state parole that do not attack a state conviction or sentence are properly brought under 28 U.S.C. §2254 and NOT under 28 U.S.C. §2241. We note moreover that petitioner himself calls this a 28 U.S.C. §2254 petition.

Contrary to Local Civil Rule 9.3(b) and Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts, this petition was not filed with the requisite current standard 28 U.S.C. §2254 form, prescribed by this Court, effective December 1, 2004. Aside from the dictate of the aforesaid rules of court, that use of this Court's current standard form in 28 U.S.C. §2254 habeas cases is necessary so as to guarantee that Petitioner is made aware of the specific warnings required from this Court at the commencement of any 28 U.S.C. §2254 habeas case pursuant to **USA v. Thomas**, 221 F.3d 430 (3rd Cir. 2000)(which relates to the **strict and short** statute of limitations, created by 28 U.S.C. §2244(d), that exists for filing a 28 U.S.C. §2254 petition); and **Mason v. Meyers**, 208 F.3d 414 (3rd Cir. 2000)(which relates to the **strict** restrictions, created by 28 U.S.C. §2244(b), on a District Court's ability to consider a "second or successive" 28 U.S.C. §2254 petition)(these specific **Thomas** and **Mason** warnings are contained in the introductory text of this Court's aforesaid current standard form). As 28 U.S.C. §2254 petitions, the so-called second or successive rule created by 28 U.S.C. §2244(b) generally precludes the consideration of second or successive petitions that attack a state denial of parole, even where the previous 28 U.S.C. §2254 petition had nothing to do with parole issues. **Benchoff v. Colleran**, 404 F.3d 812 (3<sup>rd</sup> Cir. 2005). Whereas all District Courts within the Third Circuit are required to give petitioners in 28 U.S.C. §2254 cases these **Thomas** and

Mason warnings before they may be considered on the merits, this court cannot “waive” the form requirements of Local Civil Rule 9.3(b).

Accordingly, this \_\_\_\_\_ Day of March, 2007, it is hereby

**ORDERED** that Petitioner is granted leave to proceed *in forma pauperis* in this matter for all purposes, including filing of a notice of appeal, and, it is further

**ORDERED** that the Clerk of Court furnish Petitioner with a blank copy of this Court’s current standard form for filing a petition pursuant to 28 U.S.C. §2254 (bearing the above-captioned civil action number), and, it is further

**ORDERED** that Petitioner shall complete this court’s current standard form as directed by Local Civil Rule 9.3(b) and Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts (that is, by setting forth the core of his argument on the form itself, without recourse to attachments, including information about his custodial status that would allow this court to reach a final and definitive conclusion as to whether it has venue over this matter pursuant to 28 U.S.C. §2241(d), and also containing an explanation as to why he believes his custody violates the United States Constitution), and return it to the Clerk of Court within thirty (30) days, or else this civil action will be dismissed.

**S/ ROBERT F. KELLY**  
\_\_\_\_\_  
**ROBERT F. KELLY, U.S. District Judge**