

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

DARIUS T. HILL : CIVIL ACTION
 :
 v. :
 :
 UNITED STATES PROBATION :
 OFFICE, JACKSONVILLE, :
 NORTH CAROLINA, et al. : NO. 01-3866

Reed, S.J.

August 30, 2001

MEMORANDUM

Before this Court is the respondents' motion to dismiss or transfer for lack of jurisdiction (Document No. 2) and the response of petitioner thereto. For the reasons set forth below, the motion will be granted.

Background

The petitioner, Darius T. Hill ("petitioner"), was a sergeant in the United States Marine Corps at Camp Lejeune, North Carolina. He seeks a collateral review of his court-martial conviction by way of habeas corpus under 28 U.S.C. §2241. While in the Marine Corps, petitioner worked at the rifle range at Camp Lejeune. Sometime in 1997 he was charged with stealing small-arms ammunition and pyrotechnics from the Marine Corps. The commanding general of the base convened a General Court-Martial (GCM), and petitioner pleaded guilty to various charges. Petitioner was sentenced to four years imprisonment, his rank was reduced to the grade of private, he forfeited all pay and allowances, and he was dishonorably discharged.

Petitioner appealed the criminal conviction to the U.S. Navy-Marine Corps Court

of Criminal Appeals. In his appeal, he raised essentially the issues he now raises in this petition. On appeal, petitioner was represented by counsel. The Court of Criminal Appeals analyzed the record and rejected all of petitioner's contentions. United States v. Hill, 2001 WL 81995, *1 (NMCCCA Dec. 12, 2000). His petition for review to the United States Court of Appeal for the Armed Forces (U.S.C.A.A.F.) was denied on April 4, 2001. See 55 M.J. 44.

On or about October 18, 1999 petitioner was released on parole at the order of the Naval Clemency and Parole Board. Because petitioner lives and works in North Carolina, his parole is supervised by the United States Probation Office at Jacksonville, North Carolina. Specifically, Hill is supervised by Mr. Rick Marshburn, the officer-in-charge of that U.S. Probation Office. Petitioner presently resides in North Carolina. Both petitioner and his wife work in North Carolina, and he has a driver's license in that state. (See letter of Aug. 1, 2001 of Officer-In-Charge U.S. Probation Office, attachment to motion of government). Petitioner's parole expires on October 15, 2001.

The government contends that because this Court lacks *in personam* jurisdiction over the probation officer, the Court should dismiss the petition or, in the alternative, transfer the petition to the United States District Court for the Eastern District of North Carolina. The petitioner contends that because he is a lifelong domiciliary of Pennsylvania, that he is only absent while he is in the service or temporarily under parole in North Carolina, and that he intends to return to Pennsylvania when his parole ends, the petition should remain in this Court.

Analysis

Title 28 of the United States Code § 2241(a) gives inter alia the district courts

general jurisdiction and the resulting power to grant writs of habeas corpus “within their respective jurisdictions.” 28 U.S.C. § 2241(a). A petition for writ of habeas corpus “does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody.” Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 494-95, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973). An application for a writ of habeas corpus “shall allege . . . the name of the person who has custody over him and by virtue of what claim or authority, if known.” 28 U.S.C. § 2242. See, e.g., United States v. Kennedy, 851 F.2d 689, 690 (3d Cir. 1988) (“Such a petition is brought in the district where the prisoner is confined”); cf. Garcia v. Pugh, 948 F.Supp. 20, 22 (E.D. Pa. 1996) (Pollak, J.) (petition may be brought in another district *within* state of custody).

There is no dispute that petitioner’s parole constitutes “custody” for purposes of § 2241(c). Jones v. Cunningham, 371 U.S. 236, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963); Barry v. Bergen County Probation Dep’t, 128 F.3d 152, 161 (3rd Cir. 1997) (“an individual who is required to be in a certain place - or in one of several places - to attend meetings or to perform services, is clearly subject to restraints on his liberty not shared by the public generally.”) Moreover, petitioner points to the only proper respondent in his habeas corpus proceeding, albeit without naming him. Yi v. Maugans, 24 F.3d 500, 507 (3d Cir. 1994) (3d Cir. 1994) (stating “[i]t is the warden of the prison or the facility where the detainee is held that is considered the custodian for purposes of habeas action . . . [[a] writ is directed to [the] prisoner’s jailer”) (citations omitted).

Rule 12(b)(2) of the Federal Rules of Civil Procedure provides that a court may dismiss a motion for “lack of jurisdiction over the person.” Fed. R. Civ. P. 12(b)(2). Mr.

Marshburn, the United States Probation Officer controlling petitioner, lives and works in North Carolina. Because this Court lack personal jurisdiction over Mr. Marshburn, the petition will be transferred. Both parties here rely upon the decision in Braden, 410 U.S. at 493-94, 93 S.Ct. 1123 that courts should apply “traditional venue considerations” in habeas proceeding where venue is not fixed by statute, including (1) where the material events occurred; (2) where records and witnesses pertinent to the claim are likely to be found; (3) the convenience of the forum for respondent and petitioner; and (4) familiarity of the court with the applicable laws.

The material events to the petition occurred in North Carolina. The witnesses to the events underlying the issues raised in the habeas petition such as trial counsel, the presiding military judge of the G.C.M., the witnesses to the alleged inducement to plead guilty, all are connected to the Marine Corps and/or Camp Lejeune, North Carolina. The records of the Court Martial are in North Carolina. The petitioner now lives and works in North Carolina and presumably can readily continue to do so for his own convenience until the habeas matter is resolved.

I conclude that there is no personal jurisdiction over the custodian of petitioner in this district and that the most convenient forum is the United States District Court for the Eastern District of North Carolina.

Conclusion

For the foregoing reasons, the petition will be transferred.

An appropriate Order follows.

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ORDER

AND NOW, this 30th day of August, 2001, upon consideration of the motion of the government to dismiss or transfer (Document No. 2) and the response of the petitioner thereto, based upon the findings and conclusions set forth in the foregoing memorandum, it is hereby **ORDERED** that the petition for habeas corpus (Document No. 1) is **TRANSFERRED** to the United States District Court for the Eastern District of North Carolina pursuant to 28 U.S.C. §1406.

LOWELL A. REED, JR., S.J.