

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

AMIN A. RASHID : CIVIL ACTION
 :
v. :
 :
UNITED STATES PAROLE :
COMMISSION, et al. : NO. 97-2666

MEMORANDUM AND ORDER

Fullam, Sr. J.

May , 1999

This case has an unusually checkered history. In 1994, petitioner was sentenced, by my colleague Judge (now Chief Judge) Giles, to a lengthy term of imprisonment. He unsuccessfully sought relief from that sentence by direct appeal and by collateral attacks under 28 U.S.C. § 2255. Earlier, in 1986 or so, petitioner had suffered a revocation of parole from an earlier (Texas) sentence. He alleges that his parole revocation was unconstitutionally obtained, and that the guideline range applicable to his 1994 conviction before Judge Giles was enhanced because of the earlier revocation (there was an increase of two points because the 1994 offense occurred within two years after the end of his earlier parole).

This action was originally filed in the United States District Court for the Middle District of Pennsylvania, the district in which petitioner was then confined. Chief Judge Rambo of that court concluded that, although purportedly filed pursuant to 28 U.S.C. §2241, petitioner's application was, in

essence, a challenge to the sentence imposed by Judge Giles, and should be treated as a collateral attack on that conviction, under 28 U.S.C. § 2255. She therefore ordered the case transferred to this district, for assignment to the sentencing judge.

When the case arrived in this court, since it was styled as a § 2241 action, the case was randomly assigned to my former colleague Judge Ditter, rather than to the sentencing judge. Judge Ditter, in turn, referred the application to Magistrate Judge Rueter. As a result of Judge Ditter's retirement from the bench, and recusals by various other colleagues, the case was ultimately assigned to my docket. Magistrate Judge Rueter filed a report and recommendation, which I approved and adopted, dismissing the case on the ground that it constituted a second successive § 2255 challenge to the same conviction, and its filing had not been authorized by the Third Circuit Court of Appeals. The dismissal was appealed to the Third Circuit.

On January 12, 1999, a panel of the Third Circuit Court of Appeals, by a two-to-one vote, entered the following order:

"The District Court's Order entered March 23, 1998, dismissing Appellant's petition as a second or successive motion under 28 U.S.C. § 2255, is hereby vacated. Appellant's petition for a writ of habeas corpus attacked his parole revocation pursuant to 28 U.S.C. § 2241, which is the appropriate method of raising such a

challenge. As such, the District Court should not have construed Appellant's § 2241 petition as a § 2255 motion. Accordingly, this matter is remanded for the District Court to reconsider Appellant's petition under 28 U.S.C. § 2241."

In a footnote, however, the Appellate Court added the following:

"In his petition, Appellant seeks to attack the execution of a sentence that he has fully served and for which he is not in custody. Given these facts, we note, without deciding, that it is doubtful that the District Court has jurisdiction to entertain Appellant's § 2241 petition. See Maleng v. Cook, 490 U.S. 488, 492-93 (1989)."

After the case returned to this court, I entered an order directing the government to file a further response to the petition. No response has been filed.

To further complicate matters, petitioner filed, and served upon counsel for the government, a motion seeking re-transfer of this case to the Middle District, on the ground that, since petitioner was in custody in that district, this court has no jurisdiction to entertain a § 2241 application. The government has not responded to that motion, either.

Thus, this Court is confronted with the following: (1) an order from the Court of Appeals directing this Court to consider petitioner's application under § 2241; (2) a pointed suggestion from the Court of Appeals that relief under § 2241 is not available because petitioner has fully served the sentence

for parole violation; and (3) a thus far unopposed motion to re-transfer the case to the Middle District. To add further confusion, my review of the record suggests that there may be an additional obstacle to petitioner's quest: An earlier challenge to the same parole revocation he is challenging here was dismissed in the Texas court as moot, and there was no appeal from that order. Thus, petitioner is probably barred by res judicata.

I believe the time has come to reach a final disposition of this case. Given the fact that the Circuit Court of Appeals has directed this Court to consider the petition, given the fact that the sentence petitioner is presently serving is the ultimate target of his challenge, and given the seeming inevitability of the outcome, I conclude that no useful purpose would be served in further troubling the Middle District with this litigation. Petitioner cannot obtain relief under § 2241 because his parole-violation sentence has been fully served. He cannot succeed for the further reason that his challenge to the parole-violation is barred by res judicata.

This action will be dismissed, with prejudice.

An Order follows.

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

AMIN A. RASHID	:	CIVIL ACTION
	:	
v.	:	
	:	
UNITED STATES PAROLE	:	
COMMISSION, et al.	:	NO. 97-2666

ORDER

AND NOW, this day of May, 1999, upon consideration of the petitioner of Amin A. Rashid, for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, IT IS ORDERED:

That the petition is DENIED.

There is no probable cause for appeal, or for the issuance of a certificate of appealability.

John P. Fullam, Sr. J.