

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

KEVIN WIEDERHOLD \$
VS. \$ CIVIL ACTION NO. 1:05cv576
STEVE MORRIS \$

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Kevin Wiederhold, formerly an inmate confined at the Federal Correctional Complex at Beaumont, Texas, proceeding pro se, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Factual Background

In 2002, following a jury trial conducted in the United States District Court for the Middle District of Florida, petitioner was convicted of making obscene or harassing telephone calls, in violation of 47 U.S.C. § 223, and of making threatening telephone calls, in violation of 18 U.S.C. § 875. He was sentenced to 31 months imprisonment and a three year term of supervised release.

Petitioner was subsequently released from confinement and began serving his term of supervised release. On November 18, 2003, petitioner's placement on supervised release was revoked. He was sentenced to a nine month term of imprisonment, to be followed by a two year term of supervised release.

After completing the nine month term of imprisonment, petitioner was again released from confinement. On January 27, 2005, petitioner's placement on supervised release was again revoked. He was sentenced to 12 months imprisonment. An additional term of supervised release was not imposed. While the current petition has been pending, petitioner notified the court he has been released from confinement.

Petitioner currently challenges his criminal convictions. He also challenges the 2003 and 2005 revocations of his placement on supervised release.

Analysis

Challenge to Convictions

Petitioner is not challenging the method in which his sentence is being executed. Instead, petitioner is attacking his convictions themselves. While a petition for writ of habeas corpus filed under 28 U.S.C. § 2241 is the proper method for challenging the manner in which a sentence is being executed, *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992), a motion to vacate, set aside or correct sentence filed pursuant to 28 U.S.C. § 2255 is normally the proper method for challenging a conviction or sentence itself. *Cox v. Warden*, 911 F.2d 1111,

1113 (5th Cir. 1990) ("Section 2255 provides the primary means of collateral attack on a federal sentence."). There is one exception to this general rule. A prisoner may utilize Section 2241 as a vehicle for attacking a conviction or sentence if it appears the remedy afforded by Section 2255 "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255.¹ However, as a petition filed pursuant to Section 2241 may not be used merely as a substitute for a motion to vacate filed under Section 2255, the burden is on the petitioner to come forward with evidence to show the inadequacy or ineffectiveness of a motion filed under Section 2255. *McGhee v. Hanberry*, 604 F.2d 9, 10 (5th Cir. 1979).

The United States Court of Appeals for the Fifth Circuit has recognized one circumstance in which Section 2255 is inadequate to test the legality of a prisoner's detention. In *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001), the Fifth Circuit held Section 2255 was inadequate or ineffective with respect to a claim which: (a) is based on a retroactively applicable Supreme Court decision which establishes the petitioner may have been convicted of a nonexistent offense and (b) was foreclosed by established circuit law at the time when the claim should have been raised during the petitioner's trial,

¹ The fifth paragraph of Section 2255 provides as follows: (a) "An application for writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

direct appeal or initial motion to vacate filed under Section 2255.

Petitioner's grounds for review does not meet the test set forth in *Reyes-Requena*. His grounds for review are not based on a retroactively applicable Supreme Court decision which demonstrates he was convicted of a nonexistent offense. Accordingly, petitioner has not demonstrated Section 2255 is inadequate to challenge his detention with respect to his grounds for review. His grounds for review challenging his convictions therefore may not be asserted in a Section 2241 petition.

Challenge to Revocation of Placement on Supervised Release

Petitioner also challenges actions taken by his trial court in 2003 and 2005 which caused his placement on supervised release to be revoked. However, as stated above, petitioner has been released from confinement and is no longer subject to a term of supervised release. As petitioner has been released and is no longer subject to a term of supervised release, his challenge to the revocations of his placement on supervised release is moot. See *Spencer v. Kenna*, 523 U.S. 1 (1998); *United States v. Clark*, 193 F.3d 845 (5th Cir. 1999).

Recommendation

This petition for writ of habeas corpus should be dismissed.

Objections

Within ten (10) days after receipt of the magistrate judge's report, any party may serve and file written objections to the

findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636 (b)(1)(C).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within ten days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by the district court except on grounds of plain error. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SIGNED this 21 day of July, 2006.


EARL S. HINES
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Kevin A. Wiederhold, Petitioner,

Vs.

Civil Action No. 1:05 CV 0576
(Stop switching the number
from 00576 to 0576 to 576)

Steve Morris et al/GHWP, Respondents,
Beaumont Federal Correctional Complex
5830 Knauth Road (Medium)
Beaumont, Texas. 77720

PETITIONER'S WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS
OF FACTS CONCLUSIONS OF LAW AND RECOMMENDATIONS

COMES NOW the Innocent Petitioner, Kevin A. Wiederhold, proceeding herein pro se and submits his Written Objections (within 10 days from July 26th, 2006) to the PATHETIC 'Proposed Findings Of Facts, Conclusions Of Law and Recommendations', submitted by the racketeering enterprise.

REPLY TO THE RIDICULOUS 'FACTUAL BACKGROUND' WITH THE TRUTH
(See whole Petition)

Innocent petitioner was maliciously and unconstitutionally convicted of 'Harassing phone calls' and a 'Threatening Phone Call' by a pathetic, prejudicial, racketeering enterprise Jury on August 15th, 2001 and a pathetic GAY (GOP) racketeering enterprise American Judge on January 17th, 2002. Innocent petitioner was unconstitutionally and non-statutorily sentenced and (again) sent to a dangerous medium facility full of cowardly, violent, racketeering enterprise BOP staff members and false accusing government informants just because innocent and stable petitioner would not 'take

medication', (that the cowardly weak minded GAY American judge uses himself, see whole Petition). Innocent Petitioner asserts all 'evidence' in the Tampa District Court File which maliciously and unconstitutionally convicted him has been DESTROYED by the pathetic, cowardly (GOP) racketeering enterprise perpetrators (GHWB et al).

Innocent petitioner was released from the kidnapping and malicious unconstitutional imprisonment on July 1st, 2003 and illegally and unconstitutionally sent to Tampa , Fl, then viciously harassed/threatened and maliciously arrested over and over again by the pathetic (homosexual infested GOP) racketeering enterprise (Molly Mines et al, see whole petition). Petitioner asserts, there is a RACKETEERING enterprise cover up concerning the Carport Collapse Sept 2003 (See St. Pete Times/Shannon VanSICKler). Innocent petitioner was then sent to the corrupted American Federal prison called 'Springfield Federal Medical Center' where he was again viciously tortured by the pathetic, corrupt GOP/BOP staff by placing the innocent and straight/male petitioner in lock downs and 'Ward Restrictions' for over 5 months. The Transvestite/homosexual psychiatrists/psychologists Dr. Sarrizen et al, then maliciously defamed innocent petitioner over and over again on American government documents (See whole petition).

Innocent petitioner was then released from this pathetic kidnapping and unconstitutional imprisonment and FORCED back to Tampa Florida just to be kidnapped/maliciously imprisoned again (within 2 months) by the pathetic (GOP mental) homosexuals of the racketeering enterprise after they were nailed falsifying a computer disc with petitioner's resume on it to say 'I STARTED MY SMALL BUSINESS WHILE WORKING FOR GLACER WATER COMPANY' (See whole petition). Petitioner's payroll checks were then STOLEN by the pathetic homosexuals of the racketeering enterprise and now the corrupted IRS and Federal Dept of Labor has/is criminally conspiring with the racketeering enterprise to keep ALL W-2 wage forms from being sent to hard working petitioner

justifying the STOLEN payroll checks by Apollo Renovation and Sunshine Thrift. Petitioner will not file taxes until these STOLEN payroll checks are sent with the W-2s (See whole petition). Petitioner asserts, several corrupt individuals in Corpus Christi are conspiring with the IRS et al to harass, defame, threaten and attempt to intimidate him since about the beginning of the year. Petitioner will expose these corrupt individuals at a later date.

Innocent petitioner was maliciously, unconstitutionally and non-statutorily sentenced to 12 months imprisonment without 'good time' (12 months 1 day, or actually 10 ½ months) when the corrupt courts of this nation know NONE of this should have happening at all since 1990 (See Repealing of 18usc3059(a),3059A &3059B/P.L.101-647 and WHOLE PETITION). Petitioner asserts an additional term of 'Supervised Released was not imposed' because one of the main objectives of the pathetic, cowardly, racketeering enterprise is to ATTEMPT to keep him from suing the worthless (GOP loving) thieves Tom Taylor et al in Corpus Christi Texas for stealing all petitioners property as 'Past the State Statute of Limitations' (October 23, 2005). Innocent petitioner did contact the state of Texas about Tom Taylor thefts in 2003, The Nueces County City and Sheriffs in 2005-2006. Petitioner asserts his Civil Rights are being violated under 42 USC 1983 by these entities not taking action. Petitioner asserts there IS NO 'Statute of Limitations' as this is a Federal racketeering enterprise which includes extremely corrupt government cowards, criminals and morons he is up against.

Innocent petitioner asserts, another pathetic lie by this racketeering 'Recommendation' is that 'Petitioner then notified the court that he has been released from confinement'. Petitioner asserts this corrupted court knew all along of his release because AFTER the filing of the perfect petition and BEFORE the Hurricane destroyed Beaumont and its corrupt Prison you were involved with the BOP/GOP corrupted, cowardly, racketeering homosexuals Mr. Green et al in the cowardly, brutal assaults on petitioner and the sick perpetration of maliciously attempting to send innocent petitioner to

the corrupt GOP/BOP homosexuals at the Springfield Federal Medical Center. Petitioner asserts, ALL (Racketeering enterprise) were involved in having him brutally assaulted by the cowardly false accusing government informants Smith et al.

Petitioner asserts, the Beaumont Newspaper was also involved with the racketeering BOP/GOP cowards and your corrupt court personal as petitioner sent them a letter AFTER the petition was filed. Petitioner asserts, this corrupt court is lying and covering and now very much a part of the racketeering activity. Furthermore, your racketeering offices informed petitioner several months ago that this petition 'was going to be answered in 40 days' yet it was delayed because of the FACT that the perverted, prejudicial, racketeering enterprise American Judge James D(Dumb). Whittemore and some sick racketeering federal employees were nailed on the Answers.com government website with all sorts of criminal behavior.

Innocent and sane petitioner challenges much more than just pathetic, lying, unconstitutional convictions, he also challenges the pathetic, illegal, defaming, racketeering psychiatric stunts by James D(Dumb). Whittemore et al attempting to overturn the malicious convictions by 'reason of insanity or serious mental defect' that your racketeering foolish court personal are trying to perpetrate right now (See whole petition and your dumb reply). Petitioner also challenged more than just the illegal, unconstitutional, racketeering revocations of the defaming supervised release he has/is challenging the imposition and EXECUTION of the non-statutory, unconstitutional sentencing by the pathetic, racketeering enterprise judges, lawyers, 'Doctors' and even his own fired scum lawyers.

REPLY TO THE RIDICULOUS, UNINTELLIGENT 'ANALYSIS' WITH THE TRUTH
(See Whole petition)

Innocent petitioner has and is challenging the pathetic, defaming, illegal and unconstitutional

convictions and NOT by reason of insanity or mental defect. Petitioner asserts he has a constitutional and Statutory right (See :Dr. William E. Bonney exam) to do this, and to say he thinks YOU sick people have the mental defect and need to be imprisoned AND for mail fraud for sending this harassing, defaming, threatening ,racketeering enterprise reply over the United States mail system. Petitioner asserts, this is no 'plain error', this is a racketeering enterprise you are plainly a part of. Innocent petitioner asserts, attacking the malicious, unconstitutional convictions through a 28 USC 2241 is perfectly legal and constitutional and petitioner requests this court respond to the ENTIRE PETITION and exhibits just as he is responding point by point to your racketeering, illegal, defaming, lying, unconstitutional 'Recommendation, etc'.

Innocent petitioner asserts, your corrupt court people have AGAIN committed perjury and committed mail fraud by claiming that, 'petitioner did not challenge the Execution of the sentence' when it is plainly obvious all over the well done petition that petitioner DOES challenge the illegal, defaming, non-statutory, unconstitutional Execution of the sentence perpetrated by the racketeering enterprise. (See WHOLE PETITION, Cover page, and pages 11-13, 22-24, 28, 40-41,49 exhibits, letters etc). Petitioner asserts, it is not 'plain error' but a racketeering enterprise LIE claiming petitioner did not place attacks on the malicious, illegal, unconstitutional execution of the sentence perpetrated by the pathetic racketeering enterprise. Petitioner asserts, anyone who claims they did not see this in the well done petition after eleven months of delay is a racketeering LIAR.

Petitioner he does not care about your opinion of the so called 'exception to this general rule' concerning not filing a 2255, or Reyes-Requena v, United States. Petitioner asserts, it is obvious your corrupt American court system has severely abused, illegally and unconstitutionally used this Title 18 USC 3059 Statute to destroy innocent petitioner since 1990. Petitioner asserts, this racketeering enterprise activity is PROVEN throughout the WHOLE PETITION and petitioner will

further prove this when he appeals (possibly from outside the country). Furthermore, innocent petitioner clearly proves that corrupt government people and corrupt media people are hiding the FACT that:

1. These three Statutes have been secretly repealed by the Supreme Court, Congress and others in November 2002.
2. These three Statutes have been repealed because petitioner nailed everyone racketeering from these three statutes building FALSE cases against him.
3. At least Title 18 USC 3059(a) must be brought back as it has been around since 1948 and the racketeering enterprise MUST desperately, defame, destroy and attempt to 'settle' with petitioner on THEIR terms before Title 18 USC 3059(a) is brought back or he will be unconstitutionally imprisoned and/or killed. Therefore a NEW 'exception to this general rule' must be made concerning NOT filing a 28 USC 2255. Petitioner made it clear on page 56, paragraph 2, that the repealing of these three statutes are retroactive in his pathetic 'case' (whatever it is)... 'Since unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection and justify NO acts performed under it'. Therefore, petitioner's grounds for attacking the malicious, unconstitutional convictions in a 28 USC 2241 petition ARE justified.

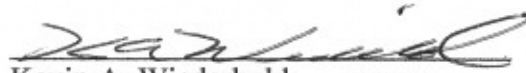
Petitioner asserts, the racketeering enterprise continually tried to make him sign racketeering, psych, halfway house material during his whole illegal and unconstitutional stay at Beaumont Prison right up to the destruction of the prison by the hurricane, then it finally stopped. Petitioner asserts, another LIE has been perpetrated in this 'recommendation' when it states 'no longer subject to a term of Supervised Release' when in FACT the racketeering psych/halfway house (Reality House) is a form of Supervised Release. Petitioner wants to know WHO it was that the racketeering 'counselors/case workers' were planning to use at the REALITY RANCH here in Downtown Corpus Christi, TX, (See Whole petition, exhibits, etc). Petitioner asserts, now lets see what the attitude will be when he goes to press charges at the Sheriffs Dept on Lorraine Guzman for racketeering/forgery and the GOP thieves Tom Taylor et al for racketeering, perjury, thefts etc.

REPLY TO THE FINAL 'RECOMENDATION, THIS PETITION SHOULD BE DISMISSED'

Petitioner asserts, this pathetic 'Recommendation' by a pathetic, corrupt lawyer or whomever created it, is a LIE and racketeering. Petitioner requests this corrupt individual be sanctioned, arrested, prosecuted, and imprisoned by the (corrupted) U.S. Attorneys office. Innocent petitioner demands that this WHOLE PETITION with exhibits be answered point for point and answered legally and correctly. Furthermore, the Motion To Exceed Page Limits was granted now WHY wouldn't this court want the whole 101 (plus) page petition answered correctly if it granted the filing of it.

Petitioner asserts, any Judicial official who deny's this 28 USC 2241 Petition For Writ of Habeas Corpus in whole or in part are a part of the racketeering enterprise and severely violating petitioner's civil rights. Innocent petitioner requests de novo review by this court. Petitioner does not want and rejects the appointment of ANY lawyer in the United States of America.

I, HEREBY CERTIFY, that a the statements made herein are true under penalty of perjury according to 28 USC 1746, Dated and executed this 15 day of August 2006.


Kevin A. Wiederhold pro se
1318 N. Mesquite #6
Corpus Christi, TX. 78401

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