

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMILA DIAZ,	:	
Petitioner,	:	
	:	PRISONER
v.	:	Case No. 3:04CV1321 (SRU)
	:	
KUMA J. DEBOO,	:	
Respondent.	:	

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, Jamila Diaz (“Diaz”), is currently confined at the Federal Correctional Institution in Danbury, Connecticut. She brings this action for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. The court concludes that it lacks jurisdiction under section 2241 to entertain Diaz’ claims.

Procedural Background

Diaz was convicted, pursuant to a plea bargain, in the United States District Court for the Eastern District of New York and sentenced to a term of imprisonment of 96 months. She did not appeal her conviction or file any motion pursuant to 28 U.S.C. § 2255.

By petition certified as mailed on July 29, 2004, Diaz commenced this action pursuant to 28 U.S.C. § 2241. She challenges her conviction on several grounds relating to the jurisdiction of the court in which she was convicted. Diaz claims that she was convicted in a court of admiralty that lacked jurisdiction to hear her case. She contends that a court of admiralty is identified by a flag with a fringe around it. Diaz also argues that she was convicted for violating a civil, not a criminal, statute because the statutes in her indictment were from Title 21 of the U.S. Code, not Title 18 which, she

assumes, contains all of the criminal statutes.

Discussion

As an initial matter, the court must determine whether it has jurisdiction to entertain Diaz' claim in a petition filed pursuant to 28 U.S.C. § 2241.

Since the enactment of the Judiciary Act of 1789, the federal court in the district in which a prisoner is incarcerated has been authorized to issue a writ of habeas corpus if the prisoner was in custody under the authority of the United States. See Triestman v. United States, 124 F.3d 361, 373 (2d Cir. 1997). Today, this authority is codified at 28 U.S.C. § 2241(c)(3). In 1948, however, Congress enacted 28 U.S.C. § 2255. That statute “channels collateral attacks by federal prisoners to the sentencing court (rather than to the court in the district of confinement) so that they can be addressed more efficiently.” Id.

Currently, “[a] motion pursuant to [section] 2241 generally challenges the *execution* of a federal prisoner’s sentence, including such matters as the administration of parole, computation of a prisoner’s sentence by prison officials, prison disciplinary actions, prison transfers, type of detention and prison conditions.” Jiminian v. Nash, 245 F.3d 144, 146 (2d Cir. 2001) (citing Chambers v. United States, 106 F.3d 472, 474-75 (2d Cir. 1997) (describing situations where a federal prisoner would properly file a section 2241 petition)). A section 2255 motion, on the other hand, is considered “the proper vehicle for a federal prisoner’s challenge to [the imposition of] his conviction and sentence.” Id. at 146-47. Thus, as a general rule, federal prisoners challenging the imposition of their sentences must do so by a motion filed pursuant to section 2255 rather than a petition filed pursuant to section 2241. See Triestman, 124 F.3d at 373.

In her section 2241 petition, Diaz challenges her conviction, a claim properly raised in a section 2255 motion, and, hence, with the sentencing court in New York. Section 2255 contains a “savings clause” that “permits the filing of a [section] 2241 petition when [section] 2255 provides *an inadequate or ineffective remedy* to test the legality of a federal prisoner’s detention.” Jiminian, 245 F.3d at 147 (emphasis added).

Diaz assumes that she cannot file a motion pursuant to section 2255 because there has been no substantive change in the law. A change in the law is not a prerequisite to filing a section 2255 motion. In addition, because Diaz indicates that she has not filed a motion pursuant to section 2255 in the sentencing court, section 2255 may still be available to her.¹ The court concludes that the "savings clause" exception does not apply in this case. Thus, the District of Connecticut lacks jurisdiction to entertain Diaz’ section 2241 petition.

The Second Circuit has held that, when a petitioner already has filed a section 2255 motion, the district court may construe a petition filed pursuant to section 2241 as a second section 2255 motion and transfer the motion to the Court of Appeals to enable that court to determine whether certification to file a second petition should be granted. See Jiminian, 245 F.3d at 148-49. When, as here, the petitioner has not previously filed a section 2255 motion, the court should follow the procedure set forth in Adams v. United States, 155 F.3d 582, 583-84 (2d Cir. 1998).

¹ The court notes that 28 U.S.C. § 2255 contains a one-year statute of limitations. Although it appears that the limitations period may have run in this case, there are exceptions to the statute of limitations as well as the possibility of equitable tolling. See 28 U.S.C. § 2255(1)-(4); Green v. United States, 260 F.3d 78, 82 (2d Cir. 2001) (citing Smith v. McGinnis, 208 F.3d 13 (2d Cir.), cert. denied, 531 U.S. 840 (2000)). If appropriate, Diaz may raise these arguments with the sentencing court.

In Adams, the Second Circuit held that, if the petitioner has never filed a section 2255 motion, the district court may not simply construe a petition for writ of habeas corpus brought pursuant to section 2241 as a section 2255 motion without providing notice to the petitioner. Thus, prior to recharacterizing a section 2241 petition as a section 2255 motion, this court must permit the petitioner either to: (1) agree to the recharacterization of her petition as a section 2255 motion, with the understanding that the matter will be transferred to the sentencing court; or (2) withdraw the petition "rather than have it so recharacterized." Adams, 155 F.3d at 584. See Castro v. United States, 124 S. Ct. 786, 792 (2003) (agreeing with circuits that have adopted this warning procedure before characterizing a section 2241 petition as a first section 2255 motion).

Conclusion

On or before **September 27, 2004**, Diaz shall file a Notice in which she either: (1) agrees to the recharacterization of her petition as a section 2255 motion with the understanding that the matter will be transferred to the United States District Court for the Eastern District of New York; or (2) withdraws the petition rather than have the court recharacterize it as a section 2255 motion. If Diaz fails to respond to this order, the court will recharacterize this petition as a section 2255 motion and transfer it to the Eastern District of New York.

SO ORDERED this 31st day of August 2004, at Bridgeport, Connecticut.

 /s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge