IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DOUGLAS WAYNE THOMPSON,

Petitioner,

v. **CASE NO. 05-3087-RDR**

WARDEN, USP LEAVENWORTH,

Respondent.

O R D E R

This matter is before the court on a petition for habeas corpus filed pursuant to 28 U.S.C. 2241 by a prisoner at the United States Penitentiary, Leavenworth, Kansas. By its earlier order, the court directed petitioner to show cause why this matter should not be dismissed due to the successive nature of his claims for relief.

Petitioner has filed a response, and the court, having examined the record, enters the following findings and order.

Petitioner is serving a federal sentence which is not at issue. He also is subject to a detainer lodged by Missouri state authorities, and upon his release by federal authorities, he will be transferred to the custody of Missouri authorities to serve a state sentence imposed following his 1984 conviction of first-degree murder for the death of Missouri police officer, Herbert

L. Goss, in 1961.

In this action, petitioner asserts that the Missouri state courts, the federal district court sitting in Missouri, and the United States Court of Appeals for the Eighth Circuit have failed to properly adjudicate his claims arising from the Missouri state conviction.

Having examined the petition, the court finds the present action must be dismissed. Petitioner's claims in this action are challenges to the constitutionality of his state court conviction. Such challenges must be presented in an action pursuant to 28 U.S.C. 2254, and it is apparent that petitioner already has pursued relief under that remedy. See Thompson v. Nixon, 272 F.3d 1098, 1099 (8th Cir. 2001)(citing petitioner's "extensive post-conviction history"). The present action appears to be an effort to relitigate the claims petitioner presented in an earlier action presented in state and federal courts in Missouri, as he alleges "a 'cover-up' by the state, and an acquiescence to that tactic by the federal judges in Missouri in the way and manner in which they have deliberately ignored, or misapplied state and federal law in this case." (Doc. 7, p. 3.)

It is settled that an action under section 2241 should not be used to avoid the requirements of an action under section 2254. See Greenawalt v. Stewart, 105 4.3d 1287 (9th Cir.

1997)(action under section 2241 could not be used to avoid limitation on successive actions under section 2254). Accordingly, petitioner may not use the remedy under section 2241 to seek additional review of his claims challenging the constitutionality of the Missouri state conviction.

IT IS THEREFORE ORDERED the petition for habeas corpus is dismissed.

IT IS FURTHER ORDERED petitioner's motion for a temporary restraining order (Doc. 8) is denied.

A copy of this order shall be transmitted to the petitioner.

IT IS SO ORDERED.

DATED: This 3rd day of June, 2005, at Topeka, Kansas.

S/ Richard D. Rogers
RICHARD D. ROGERS
United States District Judge