

**FILED**

AUG - 1 2008  
Clerk, U.S. District Court  
By: *[Signature]* Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-21610-CIV-MARTINEZ  
MAGISTRATE JUDGE P.A. WHITE

CLARENCE A. BROWN,

Petitioner,

v.

CLAUDE CHESTER, WARDEN,

Respondent.

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*08-3143-RDR*

REPORT RECOMMENDING TRANSFER

OF VENUE

28 U.S.C. §2241

Clarence A. Brown, a prisoner confined at the Federal Penitentiary in Leavenworth, Kansas, has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. §2241-43. The petitioner was convicted in the Southern District of Florida, of various drug charges in case no. 07-20451-Cr-Cooke, following a guilty plea. The petitioner claims that the Bureau of Prisons employs a selective and discriminatory policy in granting early release to only those inmates who were convicted of possession of a firearm and housed in the 9th Circuit. In support of his claim, the petitioner includes a response from Dr. Wells, Drug Program Coordinator at the Leavenworth Penitentiary, indicating that it was unclear whether the petitioner was entitled to early release, but that he was not eligible pursuant to Arrington v Daniels, 516 F.3d 1106 (9th Cir. 2008).

The institution where the petitioner is confined is located in the Judicial District of Kansas.

The applicable venue provision for a §2241 action is 28 U.S.C. §2241(d), which provides concurrent jurisdiction in the district of confinement and the district of conviction, when a state conviction is attacked as unconstitutional. This petition does not attack the validity of a conviction, and the appropriate venue is therefore the district of confinement. See: Fernandez v. United States, 941 F.2d 1488, 1495 (11<sup>th</sup> Cir. 1991); Hajduk v. United States, 764 F.2d 795 (11 Cir. 1985); and United States v. Boccadisi, 468 F.Supp. 419 (E.D.N.Y. 1979).

In this case, where the petitioner's conviction is not the subject of this petition, and the petitioner is attacking a policy by the Bureau of Prisons related to whether he will be granted early release, the venue should be where the petitioner is confined.

It is therefore recommended that the Clerk be directed to transfer this case to the Judicial District of Kansas, pursuant to 28 U.S.C. §1406(a).

Objections to this report may be filed with the District Judge within ten days of receipt of a copy of the report.

Dated this 25<sup>th</sup> day of June, 2008.

A handwritten signature in black ink, appearing to be "H. P. White", written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE

cc: Clarence Brown, Pro Se  
Reg #79547-004  
FPC-Leavenworth, Kansas

Lucy Lara, Case Assignment Administrator