

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

FEB 14 2011

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

DREW GILLHAM,

Petitioner,

v.

J.C. HOLLAND,

Respondent.

Civil Action No.

**11 0372**

**MEMORANDUM OPINION**

This matter is before the Court on petitioner's petition for a writ of habeas corpus and application to proceed *in forma pauperis*.


Petitioner is serving a 78-month term of imprisonment imposed by the United States District Court for the Southern District of Ohio upon his conviction of tax evasion and obstruction of internal revenue laws. *See United States v. Gillham*, No. 08-3866 (6th Cir. Mar. 4, 2009) (affirming judgment of conviction and sentence). He alleges that he is detained "without lawful authority and in violation of the Constitution of the [U]nited States of America" because he "was arrested without a warrant supported by oath or affirmation that would comply with Constitutional mandates pursuant to the Fourth and Fifth Amendment[s]." Pet. at 2. Specifically, petitioner contends that the criminal indictment "was void as it has no probable cause indicia and is not signed by a foreman of the Grand Jury under oath." *Id.* at 5. He files his petition for a writ of habeas corpus under 28 U.S.C. § 2241. *Id.* at 1.

Generally, "[a] federal prisoner may file a habeas corpus petition under [§] 2241 only to challenge a decision by prison officials which affect the manner in which his sentence is

being carried out, such as the computation of sentence credits or parole eligibility.” *Gillham v. Cauley*, No. 09-83, 2009 WL 3247424, at \*1 (E.D. Ky. Oct. 6, 2009) (citing *United States v. Jalili*, 925 F.2d 889, 894 (6th Cir. 1999)). Where, as here, petitioner challenges the jurisdiction of the federal court imposing sentence or attacks on the constitutionality of his conviction, he must do so in a motion in the sentencing court under 28 U.S.C. § 2255. See *Ojo v. Immigration & Naturalization Serv.*, 106 F.3d 680, 683 (5th Cir. 1997); *Taylor v. U.S. Board of Parole*, 194 F.2d 882, 883 (D.C. Cir. 1952); see also *Gillham v. Cauley*, 2009 WL 3247424, at \*2 (denying petitioners habeas petition filed under § 2241).

The Court therefore will dismiss the petition without prejudice. An Order is issued separately.

Date: Feb 4, 2011

  
United States District Judge