FILED
JUN 19 2015
Clerk, U.S. District and Bankruptcy Courts

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Frank Johnson,

Petitioner,

v.

United States,[1]

Respondent.

Case: 1:15-cv-00945
Assigned To : Unassigned
Assign. Date : 6/19/2015
Description: Habeas Corpus

MEMORANDUM OPINION

Petitioner is a prisoner incarcerated at the Federal Correctional Institution in Loretto, Pennsylvania. He has submitted a "Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody," in which he challenges a conviction entered by the Superior Court of the District of Columbia. *See* Pet. ¶¶ 1-2. For the following reasons, the Court will grant the application to proceed *in forma pauperis* and will dismiss the case for lack of jurisdiction.

Unlike prisoners convicted in state courts or in a United States district court, "District of Columbia prisoner[s] ha[ve] no recourse to a federal judicial forum unless [it is shown that] the local remedy is inadequate or ineffective to test the legality of his detention." *Garris v. Lindsay*, 794 F.2d 722, 726 (D.C. Cir. 1986) (internal footnote and quotation marks omitted); *see Byrd v. Henderson*, 119 F.3d 34, 36–37 (D.C. Cir. 1997) ("In order to collaterally attack his sentence in an Article III court a District of Columbia prisoner faces a hurdle that a federal prisoner does not ."). Petitioner's recourse lies in the Superior Court via proceedings under D.C. Code § 23-110.

[1] The petition does not name a respondent, but the *in forma pauperis* application lists the United States. Hence, the Court, *sua sponte*, has added the United States to the case caption.

See Blair-Bey v. Quick, 151 F.3d 1036, 1042-43 (D.C. Cir. 1998) (describing § 23-110 as "a remedy analogous to 28 U.S.C. § 2255 for prisoners sentenced in D.C. Superior Court who wished to challenge their conviction or sentence"); *Byrd*, 119 F.3d at 36-37 ("Since passage of the Court Reform Act [in 1970], . . . a District of Columbia prisoner seeking to collaterally attack his sentence must do so by motion in the sentencing court - the Superior Court - pursuant to D.C. Code § 23-110."). Section 23-110 states:

> [an] application for a 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 by . . . any Federal . . . court if it appears . . . that the Superior 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.

D.C. Code § 23-110(g). This local statute "divests federal courts of jurisdiction to hear habeas petitions by prisoners who could have raised viable claims pursuant to § 23-110(a)," *Williams v. Martinez*, 586 F.3d 995, 998 (D.C. Cir. 2009), including a claim of ineffective assistance of trial counsel. *See Adams v. Middlebrooks*, 810 F. Supp. 2d 119, 123-25 (D.D.C. 2011).

To the extent that petitioner is raising a claim of ineffective assistance of appellate counsel, which is not a viable claim under D.C. Code § 23-110, it appears that petitioner has not exhausted that claim by filing a motion in the District of Columbia Court of Appeals to recall the mandate. *See* Pet. ¶ 10 (indicating no further petitions beyond a direct appeal). And the exhaustion of available state remedies is a prerequisite to obtaining relief under § 2254. *See* 28 U.S.C. § 2254(b)(1); *Martinez*, 586 F.3d at 999 (noting that "we clarified that after 'a cogent ruling from the D.C. Court of Appeals concerning local relief, if any . . . the District Court will be in a position to rule intelligently on [petitioner's] federal petition for habeas corpus.' ") (quoting *Streater v. Jackson*, 691 F.2d 1026, 1028 (D.C. Cir. 1982)).

Because the petitioner has not shown that his local remedy is inadequate to address his claims, this habeas action will be dismissed for want of jurisdiction. A separate Order accompanies this Memorandum Opinion.

United States District Judge

DATE: June 12, 2015