

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7169

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY SHANE MORGAN,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Abingdon. Glen M. Williams, Senior District Judge. (1:99-cr-00076-gmw-1)

Submitted: November 21, 2008

Decided: December 12, 2008

Before TRAXLER, GREGORY, and SHEDD, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Larry Shane Morgan, Appellant Pro Se. Eric Matthew Hurt, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Shane Morgan appeals the district court's order denying his motion for clarification of the judgment and commitment order entered against him in the Western District of Virginia following his conviction for possession of explosives and stolen firearms and for maintaining a place to manufacture marijuana. In April 2000, the district court sentenced Morgan to a total of 151 months' imprisonment to be served concurrently with a state sentence. Morgan filed a motion for clarification in May 2008, in the federal district court in the Western District of Virginia, claiming that the Bureau of Prisons improperly failed to credit him with a portion of the time he served on his state sentence while awaiting sentencing on the federal charges. The district court denied Morgan's motion for clarification, finding that Morgan failed to exhaust administrative remedies with the Bureau of Prisons.

Our review of the record leads us to conclude that the district court should have treated Morgan's motion as a habeas corpus petition under 28 U.S.C. § 2241 (2000), because he attacked the execution of his sentence. A § 2241 petition, however, must be brought in the district of incarceration. See 28 U.S.C. § 2241(a); In re: Jones, 226 F.3d 328, 332 (4th Cir. 2000). Morgan is incarcerated at the Federal Correctional Institution in Butner, North Carolina, which lies in the Eastern

District of North Carolina. See 28 U.S.C. § 113(a) (2000). The district court in the Western District of Virginia therefore does not have jurisdiction over this § 2241 proceeding.

Accordingly, we vacate the district court's order and remand for the court to determine whether transferring Morgan's § 2241 petition to the proper federal district court would serve the interests of justice, see 28 U.S.C. § 1631 (2000), or whether the action should be dismissed without prejudice to Morgan's right to file his action in the appropriate district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED