

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-6448

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JARVIS MCCOY, a/k/a Black Jarvis,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, Senior District Judge. (5:12-cr-00151-H-1)

Submitted: August 26, 2014

Decided: September 4, 2014

Before DUNCAN and WYNN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Jarvis McCoy, Appellant Pro Se. Rudy E. Renfer, Assistant United States Attorney, Shailika K. Shah, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jarvis McCoy appeals the district court's order denying his motion to modify payments of a fine. In his motion, McCoy sought a district court's order directing the Bureau of Prisons to modify the payment schedule under the Inmate Financial Responsibility Program. Because McCoy was challenging the execution of his sentence, such a request should have been made in a petition under 28 U.S.C. § 2241 (2012). See United States v. Diggs, 578 F.3d 318, 319 (5th Cir. 2009). Because McCoy is currently incarcerated at the MCFP Springfield in Springfield, Missouri, the district court in this instance did not have jurisdiction to entertain the request to modify the payment schedule because a § 2241 petition must be filed in the district of incarceration. See 28 U.S.C. § 2241(a); In re: Jones, 226 F.3d 328, 332 (4th Cir. 2000). However, a district court must "if it is in the interest of justice, transfer [the petition] . . . to any other such court in which [it] could have been brought at the time it was filed[.]" 28 U.S.C. § 1631 (2012).

We accordingly vacate the district court's order denying the motion to modify and remand to the district court to determine whether transferring McCoy's motion to modify to the proper federal district court would serve the interest of justice, see 28 U.S.C. § 1631, or whether the action is more

appropriately dismissed without prejudice to allow McCoy 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 this court and argument would not aid the decisional process.

VACATED AND REMANDED