

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-1937

Larry Blaine Painter,

Appellant,

v.

T. C. Outlaw, Warden,
Federal Correctional Complex,
Forrest City, Arkansas,

Appellee.

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Appeal from the United States
District Court for the
Eastern District of Arkansas.

[UNPUBLISHED]

Submitted: July 30, 2009
Filed: August 18, 2009

Before WOLLMAN, RILEY, and SMITH, Circuit Judges.

PER CURIAM.

Federal inmate Larry Painter appeals the district court's¹ dismissal of his 28 U.S.C. § 2241 petition challenging a 1981 Missouri escape conviction, which was used to enhance the federal sentence he is currently serving for firearm-possession offenses. The district court correctly found that it was without jurisdiction to consider

¹The Honorable Beth Deere, United States Magistrate Judge for the Eastern District of Arkansas, to whom the case was referred by consent of the parties pursuant to 28 U.S.C. § 636(c).

the petition, as Painter is no longer “in custody” on the state conviction. See Maleng v. Cook, 490 U.S. 488, 492-93 (1989) (per curiam) (habeas petitioner is no longer in custody after sentence has fully expired, even if prior conviction is used to enhance subsequent conviction); Love v. Tippy, 128 F.3d 1258, 1258-59 (8th Cir. 1997) (per curiam) (petitioner who completed serving state sentence before federal conviction is no longer in custody under state conviction).

Accordingly, the judgment is affirmed.
