

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DWAYNE LEE LEVY §
v. § CIVIL ACTION NO. 6:11cv404
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Dwayne Levy, proceeding *pro se*, filed this application for the writ of habeas corpus apparently challenging a prison disciplinary proceeding. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Magistrate Judge ordered Levy to file an amended petition to set out facts concerning his claims. In his amended petition, Levy identifies the present habeas corpus petition as the judgment he is challenging. He says that the Legislature refused to grant him parole and complains that the toilet in his cell was backing up. Levy alludes to a disciplinary case for refusing to obey an order, but provides no facts concerning this case; instead, the only ground set out for relief is that “the Legislature back up my toilet with feces and urine, to refuse my parole.”

After reviewing the petition and amended petition, the Magistrate Judge issued a Report recommending that Levy’s request for habeas corpus relief be dismissed with prejudice as to his claim that he should be released and parole, and without prejudice as to any challenges to prison disciplinary action that he may wish to raise. A copy of this Report was sent to Levy’s last known address, return receipt requested, but no objections have been received; accordingly, he is

barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 9) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is hereby DISMISSED with prejudice as to Levy's claim that he should be released on parole, and DISMISSED without prejudice as to any challenges to prison disciplinary action which he may raise. It is further

ORDERED that any and all other motions which may be pending in this civil action are hereby DENIED.

It is SO ORDERED.

SIGNED this 15th day of February, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE