

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHERI WELCH,
Petitioner,

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VS.

CIVIL ACTION NO.4:07-CV-536-Y

W. ELAINE CHAPMAN, Warden,
FMC-Carswell,
Respondent.

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2241 of petitioner Cheri Welch, along with the July 31, 2008, findings, conclusions, and recommendation of the United States magistrate judge. The magistrate judge gave the parties until August 21 to file written objections to the findings, conclusions, and recommendation. As of the date of this order, no written objections have been filed.

The Court has reviewed the pleadings and the record in this case, and has reviewed for clear error the proposed findings, conclusions and recommendation of the United States magistrate judge filed on July 31, 2008. The Court concludes that the petition for writ of habeas corpus should be denied for the reasons stated in the magistrate judge's findings and conclusions.

Since the filing of the magistrate judge's report, an order of the United State District Court for the Southern District of Ohio in *Welch v. United States*, No.3:07-CV-005(3:90-CR-098) was filed on the docket of this case on August 25, 2008. By that order, transferred to this Court was a motion filed by Welch on March 5, 2008 (identified as docket no. 131¹ in the Ohio case), by which she seeks to correct the criminal judgment imposed upon her in case

¹THE docket of case number 3:07-CV-005-WHR-SLO indicates the motion is number 133.

number 3:90-CR-098. To the extent that motion asserts challenges to the calculation of her sentence, it is denied for the reasons stated in the July 31, 2008, findings and conclusions. To the extent that motion actually seeks to correct the criminal judgment filed on October 15, 1993, in the Ohio court in case number 3:90-CR-098, it must be dismissed without prejudice to Welch's right to seek such relief through a motion under 28 U.S.C. § 2255 in the Court of her conviction.

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

Cheri Welch's petition for writ of habeas corpus under 28 U.S.C. § 2241 is DENIED. To the extent Welch's March 5, 2008, motion for relief from judgment challenges the calculation of her sentence, such motion is DENIED; but to the extent such motion seeks to correct her judgment of conviction, it is DISMISSED WITHOUT PREJUDICE to Welch's right to seek such relief in the court of conviction.

SIGNED October 9, 2008.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE