

FILED
United States Court of Appeals
Tenth Circuit

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TENTH CIRCUIT

January 4, 2006

Elisabeth A. Shumaker
Clerk of Court

CHRISTOPHER JOHN MOORE,
Petitioner-Appellant.

v.

SAM CALBONE, Warden,
Respondent-Appellee.

No. 05-6097

(D.C. No. 04-CV-1270-M)

(W.D. Okla.)

ORDER

Before **EBEL**, **McKAY**, and **HENRY**, Circuit Judges.

This is a pro se prisoner appeal. Although Petitioner initially brought this action pursuant to 28 U.S.C. § 2254, the district court construed the petition as being properly raised under 28 U.S.C. § 2241. Because Petitioner challenges the execution of his sentence rather than the validity of the underlying conviction, we also recognize this petition under § 2241. In his application to the district court, Petitioner challenged a loss of “good time” credits he had earned for his satisfactory performance in prison. Those credits were taken away as a result of the prison disciplinary proceeding. Specifically, Petitioner was charged with fraternizing with a prison guard. The alleged fraternization occurred when a

female guard came to Petitioner's cell and gave him a softball glove which he agreed to "break in" for her. Following the prison disciplinary proceeding, Petitioner brought his claim to the district court where he maintained that there was insufficient evidence to find him guilty of the disciplinary infraction. In his Report and Recommendation (R&R), the magistrate judge disagreed with Petitioner and recommended that the district court deny the petition. The district court adopted the magistrate judge's R&R in full and denied Petitioner's request for a certificate of appealability. Petitioner now renews his request for a certificate of appealability with this court. The issues which he raises on appeal are identical to those brought before the district court.

In order for this court to grant a certificate of appealability, Petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To do so, Petitioner must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal citation and quotation omitted).

We have carefully reviewed Petitioner's brief, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner's filing raises an issue which meets our standards for the grant of a

certificate of appealability. For substantially the same reasons as set forth by the magistrate judge's R&R which the district court adopted in its April 5, 2005 Order, we cannot say that it is "debatable whether the district court was correct in its procedural ruling." *Id.* Nor can we say "that reasonable jurists could debate whether the petition should have been resolved in a different manner." *Id.*

Accordingly, we **DENY** Petitioner's request for a certificate of appealability and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay
Circuit Judge