

F I L E D
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

January 2, 2007

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

DONALD JOHNSON,

Petitioner–Appellant,

v.

GLYNN BOOHER, Warden

Respondent–Appellee.

No. 06-6171

(D.C. No. 05-CV-1424-C)

(W.D. Okla.)

ORDER*

Before **KELLY, McKAY**, and **LUCERO**, Circuit Judges.

After examining Petitioner’s brief¹ and the appellate record, this panel has determined unanimously to honor Petitioner’s request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f). The case is therefore ordered submitted without oral argument.

Petitioner brings this pro se § 2241 appeal challenging his loss of earned credits on the basis of denial of due process rights under the Fourteenth

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 (eff. Dec. 1, 2006) and 10th Cir. R. 32.1 (eff. Jan. 1, 2007).

¹ Respondent did not file a brief in this appeal.

Amendment.² Petitioner argues that the prison disciplinary proceeding for possession of contraband (a syringe) failed to consider potentially exculpatory statements and violated the “some evidence” standard set by *Superintendent v. Hill*, 472 U.S. 445, 454 (1985).

Petitioner must obtain a certificate of appealability in order to challenge the district court’s denial of his habeas petition. *See Montez v. McKinna*, 208 F.3d 862, 867 (10th Cir. 2000). To obtain a certificate of appealability, Petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2) (2000). In order to meet this burden, 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) (quotation omitted).

After carefully reviewing Petitioner’s brief, the magistrate judge’s comprehensive and well-reasoned report and recommendation, the district court’s disposition, and the record on appeal, we find nothing that meets our standard for the grant of a certificate of appealability. For substantially the reasons set forth by the magistrate judge’s report and recommendation and by the district court’s

² We note that the district court correctly converted Petitioner’s action from § 2254 to § 2241. *See McIntosh v. U.S. Parole Comm’n*, 115 F.3d 809, 812 (10th Cir. 1997) (“[A] § 2241 action challenging prison disciplinary proceedings . . . is challenging an action affecting the fact or duration of the petitioner’s custody.”)

orders, we **DENY** Petitioner's request for a certificate of appealability and **DISMISS** the appeal. The petition to proceed in forma pauperis also is **DENIED** for substantially the reasons provided by the district court.

Entered for the Court

Monroe G. McKay
Circuit Judge