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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Isaias Fadi Fisher,

Petitioner,

vs.

Dennis R. Smith, Warden, FCI Phoenix,

Respondent.

No. CV11-0303-PHX-SRB

ORDER

Petitioner Isaias Fisher filed his original Petition for Writ of Habeas Corpus on February 15, 2011. After service, but before Respondent filed any response, Petitioner was granted leave to amend. Petitioner filed an Amended Petition on April 28, 2011. A response was filed on May 27, 2011. Subsequently Petitioner filed a reply. The only claim made in the Amended Petition is that the Bureau of Prisons (BOP) refused to consider Petitioner eligible for up to a one year reduction of his sentence upon completion of the BOP's Residential Drug Abuse Program. On May 24, 2011 Petitioner filed a Motion for Expedited Declaratory Judgment advising the Court that he had completed the Residential Drug Abuse Program and urging that he should now be eligible for immediate placement in a Residential Re-Entry Center.

On August 12, 2011 the Magistrate Judge issued his Report and Recommendation recommending that the Amended Petition for Writ of Habeas Corpus be dismissed with

1 prejudice because the Court lacks jurisdiction to review the BOP's individualized decision
2 denying Petitioner eligibility for a sentence reduction upon completion of the Residential
3 Drug Abuse Program and recommending that the Motion for Declaratory Judgment be
4 denied. Petitioner filed timely objections to the Report and Recommendation on August 31,
5 2011. Respondent has responded to those objections.

6 Although Petitioner completed the BOP's Residential Drug Abuse Program the BOP
7 determined that he was not eligible for the sentence reduction of up to one year pursuant to
8 18 U.S.C. § 3621(e). This determination was made based on a prior misdemeanor conviction
9 Petitioner suffered for unlawful imprisonment. The BOP Designations and Sentence
10 Computations Center determined, based on information contained in Petitioner's presentence
11 report prepared in connection with the unlawful imprisonment conviction, that the facts
12 underlying his conviction for unlawful imprisonment met the federal definition of kidnaping.
13 Kidnaping is a disqualifying prior offense for eligibility for a sentence reduction after
14 completion of the Residential Drug Abuse Program. The Magistrate Judge concluded that
15 the Court lacks jurisdiction to review this individualized decision made by the BOP
16 concerning eligibility for a sentence reduction under the Residential Drug Abuse Program.

17 In Petitioner's objections he argues that the unlawful imprisonment misdemeanor
18 offense for which he was convicted and kidnaping do not equate and, therefore, the BOP
19 abused its discretion in denying him early release eligibility and the BOP decision is contrary
20 to law and reviewable by this Court pursuant to the Administrative Procedures Act. He
21 further argues that the *Reeb*¹ decision supports this view because of the Court's
22 acknowledgment in that opinion that judicial review is available when the BOP acts contrary
23 to established federal law, violates the constitution or exceeds statutory authority. In his
24 response to Petitioner's Objections, Respondent argues that Petitioner's case is not within the
25 exception acknowledged by *Reeb* because Petitioner is trying to suggest that there was a
26 ruling contrary to law in determining that a state conviction for unlawful imprisonment is the

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28 ¹*Reeb v. Thomas*, 636 F.3d 1224 (9th Cir. 2011).

1 equivalent of a kidnaping conviction under federal law. Respondent argues that the BOP
2 made an individualized determination that the facts of Petitioner's conviction were equivalent
3 to kidnaping and that determination not subject to APA review and under *Reeb* outside this
4 Court's jurisdiction.

5 The Court agrees with the Magistrate Judge that the decision of the BOP determining
6 Petitioner ineligible for a sentence reduction upon completion of the Residential Drug Abuse
7 Program was an individualized decision within the discretion of the BOP and over which this
8 Court has no jurisdiction.

9 IT IS ORDERED overruling Petitioner's Objections to the Report and
10 Recommendation of the Magistrate Judge.

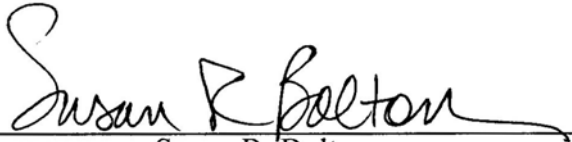
11 IT IS FURTHER ORDERED adopting the Report and Recommendation of the
12 Magistrate Judge as the Order of this Court.

13 IT IS FURTHER ORDERED that Petitioner's Amended Petition for Writ of Habeas
14 Corpus is denied and dismissed with prejudice.

15 IT IS FURTHER ORDERED that Petitioner's Motion for Declaratory Judgment is
16 denied.

17 IT IS FURTHER ORDERED that a Certificate of Appealability and leave to proceed
18 *in forma pauperis* on appeal be **denied** because dismissal of the Petition is justified by a plain
19 procedural bar and jurists of reason would not find the ruling debatable.

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21 DATED this 15th day of September, 2011.

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25 Susan R. Bolton
26 United States District Judge
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