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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Larry D Brown-Bey,

Petitioner,

v.

J.T. Startle, Warden,¹

Respondent.

No. CV-14-02038-TUC-FRZ

ORDER

Before the Court for consideration is the Report and Recommendation of the Magistrate Judge, recommending that the Amended Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus filed by Petitioner Larry D. Brown-Bey *pro se* – in which Petitioner challenges the calculation of his sentence by the Federal Bureau of Prisons (BOP) – be denied.

In its Order screening the Amended § 2241 Petition, the Court required the Respondent to answer the Amended Petition based on Petitioner’s contention that he has exhausted all available administrative remedies by using the Bureau of Prisons’ Administrative Remedies Process. (Doc. 15)

The Court issued its warnings, that Petitioner “must file and serve a notice of a change of address in accordance with Rule 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion for other relief with a notice of change of address” and that “[f]ailure to comply may result in dismissal of this action.”

¹ Warden J.T. Startle is substituted for Louis Winn.

1 The Court further warned that “[i]f Petitioner fails to timely comply with every
2 provision of this Order, including these warnings, the Court may dismiss this action
3 without further notice. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a
4 district court may dismiss an action for failure to comply with any order of the Court).”

5 This matter was referred to the Magistrate Judge pursuant to the provisions of 28
6 U.S.C. § 636(b); Rule 72 of the Federal Rules of Civil Procedure; and LRCiv 72.1 and
7 72.2 of the Rules of Practice of the United States District Court for the District of
8 Arizona, for further proceedings and Report and Recommendation.

9 Magistrate Judge Bruce G. Macdonald issued his Report and Recommendation on
10 May 1, 2017, recommending that the District Court enter an order:

- 11 (1) SUBSTITUTING J.T. Shartle, Warden, as Respondent for Louis Winn
12 pursuant to Rule 25(d) of the Federal Rules of Civil Procedure and Rule
13 43(c)(2) of the Federal Rules of Appellate Procedure; and
14 (2) DENYING Petitioner’s First Amended Petition Under 28 U.S.C. § 2241
for a Writ of Habeas Corpus by a Person in Federal Custody (Doc. 10).

15 The Report and Recommendation includes a thorough analysis on the merits of the
16 claim presented and sets forth the finding that the calculation of Petitioner’s parole
17 eligibility is correct and that “Petitioner has not met his burden to show that ‘[h]e is in
18 custody in violation of the Constitution or laws or treaties of the United States.’ 28
19 U.S.C. § 2241(c). [And] [a]s such, Petitioner is not entitled to habeas relief.”

20 The Report and Recommendation further advised in relevant part that “[p]ursuant
21 to 28 U.S.C. § 636(b) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, any
22 party may serve and file written objections within fourteen (14) days after being served
23 with a copy of this Report and Recommendation. ... [and that] [f]ailure to file timely
24 objections to any factual or legal determination of the Magistrate Judge may result in
25 waiver of the right of review.

26 No objections were filed.

27 The Report and Recommendation was filed on May 1, 2017 and a copy was
28 mailed to Petitioner at the last address provided that same date.

1 On May 22, 2017, the envelope addressed to Petitioner by the Clerk of Court at
2 the address provided at USP-Tucson and the Report and Recommendation were returned
3 as undeliverable. Despite the Court’s previous warning, no “notice of change of address”
4 was filed.

5 Upon consideration of the Amended Petition for writ of habeas corpus,
6 Respondent’s answer, Petitioner’s reply and the Report and Recommendation of the
7 Magistrate Judge, the Court finds, having made a full and independent review under 28
8 U.S.C. § 636(b)(1)(C), that the Amended Petition shall be denied on the merits.

9 IT IS THEREFORE ORDERED that the Report and Recommendation (Doc. 28)
10 is hereby ACCEPTED and ADOPTED as the findings of fact and conclusions of law of
11 this Court;

12 IT IS THEREBY ORDERED that J.T. Shartle, Warden, is substituted as
13 Respondent for Louis Winn pursuant to Rule 25(d), Fed.R.Civ.P. ;

14 IT IS FURTHER ORDERED that the First Amended Petition Under 28 U.S.C. §
15 2241 for a Writ of Habeas Corpus by a Person in Federal Custody (Doc. 10) is DENIED;

16 IT IS FURTHER ORDERED that this case is DISMISSED; the Clerk of Court is
17 directed to enter judgment accordingly.

18 Notwithstanding that no objection to the Report and Recommendation was filed,

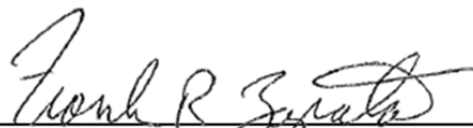
19 IT IS FURTHER ORDERED that a certificate of appealability shall not issue.
20 Before an appeal of this Court’s judgment, a certificate of appealability must issue. See
21 28 U.S.C. § 2254(c); Fed.R.App.P. 22(b)(1). A certificate may issue “only if the
22 applicant has made a substantial showing of the denial of a constitutional right.” 28
23 U.S.C. § 2253(c)(3). A substantial showing is made if “reasonable jurists could debate
24 whether . . . the petition should have been resolved in a different manner,” or if “the
25 issues presented were adequate to deserve encouragement to proceed further.” *Slack v.*
26 *McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation omitted).

27 Upon review of the record – in light of the standards for granting a certificate of
28 appealability – the Court concludes that a certificate shall not issue based on the Court’s

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finding that the resolution of the petition is not debatable among reasonable jurists and does not deserve further proceedings.

Dated this 10th day of August, 2017.



Honorable Frank R. Zapata
Senior United States District Judge