

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

CHARLES N. HODGE
Reg. # 12114-074

PETITIONER

v.

No. 2:13-cv-5-DPM-BD

ANTHONY HAYNES, Warden,
Federal Correctional Complex,
Forrest City, Arkansas

RESPONDENT

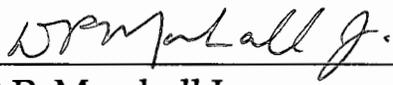
ORDER

Hodge has objected to Magistrate Judge Beth Deere's recommendation, *No. 8*, that the Court dismiss his petition without prejudice for containing claims not properly brought in a habeas corpus action. On *de novo* review, FED. R. CIV. P. 72(b)(3), the Court adopts Judge Deere's recommendation with a further word prompted by Hodge's objection and amendment, *No. 10*. If the Court is wrong about the scope of 28 U.S.C. § 2241, the Court would deny Hodge's clarified petition on the merits because the facts he alleges would not entitle him to habeas relief. The Bureau of Prisons relies on the criminal conduct involved in the offense, not the offense of conviction itself, to classify inmates. Personnel are instructed to "[e]nter the appropriate number of points that reflect the most severe documented instant offense behavior

regardless of the conviction offense.” UNITED STATES DEP’T OF JUSTICE, FEDERAL BUREAU OF PRISONS, Program Statement p5100.08 ch. 4 at 7 (2006) (Program Statement). Hodge admitted that he used the .22 caliber rifle he was convicted of unlawfully possessing to shoot another person in the head, though he says he did so in self defense. *No 7-2 at 7*. That admitted conduct qualifies him for a “Greatest Severity” safety factor under BOP regulations regardless of the disposition of state charges related to the shooting. Program Statement app. A at 1 (“serious bodily injury intended or permanent or life threatening bodily injury resulting”).

Hodge’s petition for a writ of habeas corpus is dismissed without prejudice; no certificate of appealability will issue. His motion for default judgment, *No 9*, is denied. Haynes’s response was timely.

So Ordered.



D.P. Marshall Jr.
United States District Judge



23 May 2013