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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

RICHARD A. RENTERIA,)	No. EDCV 08-747-VBK
)	
Petitioner,)	MEMORANDUM OPINION, AND ORDER
)	THEREON
v.)	
)	
JOSEPH K. WOODRING, Warden,)	
)	
)	
Respondent.)	

This matter is before the Court on Respondent's Motion to Dismiss. Pursuant to 28 U.S.C. § 636(c), the parties have consented that the case may be handled by the undersigned.

On June 4, 2008, Richard Renteria (hereinafter referred to as "Petitioner") filed a document entitled "Petition for Credit Early Release Successful Completion of Residential Drug and Alcohol Treatment Program" in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 2241 ("Petition"). On July 9, 2008, Respondent filed a "Motion to Dismiss Petition for Writ of Habeas Corpus For Failure to Exhaust Administrative Remedies and Declaration of Eliezer Ben-Shmuel" ("MTD"). Respondent attached

1 Exhibits in support of the MTD. On July 9, 2008, this Court issued a
2 Minute Order directing Petitioner to file an Opposition or Statement
3 of Non-Opposition to the MTD within 30 days. Petitioner has not filed
4 an Opposition or Statement of Non-Opposition as of the date of this
5 Memorandum Opinion and Order.

6 After reviewing the matter, the Court concludes that the MTD must
7 be granted, and this matter be dismissed.

8
9 **BACKGROUND**

10 Petitioner is currently incarcerated in the Federal Correctional
11 Institution at Terminal Island, California. (Declaration of Eliezer
12 Ben-Shmuel ["Ben-Shmuel Dec."], ¶ 4, Exhibit ["Ex."] A.) On June 4,
13 2008, Petitioner filed a Petition for Writ of Habeas Corpus pursuant
14 to 28 U.S.C. §2241 claiming that the Bureau of Prisons ("BOP") has
15 unlawfully denied him a sentence reduction for participation in the
16 Residential Drug Abuse Treatment Program ("RDAP").

17 Petitioner pleaded guilty to 21 U.S.C. §§841(a)(1) and
18 846(b)(2)(D) (distribution or possession with intent to distribute a
19 controlled substance), and 21 U.S.C. § 846 (conspiracy to possess with
20 intent to distribute) in the United States District Court for the
21 Eastern District of California. (Petition at 2; Ben-Shmuel Dec. ¶ 4,
22 Ex. A at 2). On September 11, 2006, United States District Judge
23 Wanger sentenced Petitioner to 37 months imprisonment, with 5 years
24 supervised release. (Petition at 2; Ben Shmuel Dec. ¶ 4, Ex. A at 2.)
25 Petitioner's projected date for release through good-conduct credit is
26 May 9, 2009. (Ben Shmuel Dec. ¶ 4, Ex. A at 1).

1 DISCUSSION

2 **A. Standard of Review.**

3 A writ of habeas corpus relief extends to a person in custody
4 under the authority of the United States. See 28 U.S.C. §2241. A
5 writ of habeas corpus relief is available if a federal prisoner can
6 show he is "in custody in violation of the Constitution or laws or
7 treaties of the United States." 28 U.S.C. §2241(c)(3). Petitioner's
8 claim is proper under 28 U.S.C. §2241 because it concerns the manner,
9 location or conditions of the execution of Petitioner's sentence and
10 not the fact of Petitioner's conviction or sentence. Tucker v.
11 Carlson, 925 F.2d 330, 331 (9th Cir. 1991) (stating that a challenge
12 to the execution of a sentence is "maintainable only in a petition for
13 habeas corpus filed pursuant to 28 U.S.C. §2241").

14
15 **B. Petitioner Has Failed To Fully Exhaust His Administrative**
16 **Remedies.**

17 A petitioner who is in federal custody and wishes to seek habeas
18 relief pursuant to 28 U.S.C. §2241 ordinarily must first exhaust
19 available federal administrative remedies. Martinez v. Roberts, 804
20 F.2d 570, 571 (9th Cir. 1986). Because the exhaustion requirement is
21 not a statutory requirement but a judicial creation, "the District
22 Court must determine whether to excuse the faulty exhaustion and reach
23 the merits, or require the petitioner to exhaust his administrative
24 remedies before proceeding in court." Brown v. Rison, 895 F.2d 533,
25 535 (9th Cir. 1990) (citing, inter alia, Chua Han Mow v. United
26 States, 730 F.2d 1308, 1313 (9th Cir. 1984); Morrison-Knudsen Co.,
27 Inc. v. CHG Int'l, Inc., 811 F.2d 1209, 1223 (9th Cir. 1987)).

1 In Ruviwat v. Smith, 701 F.2d 844, 845 (9th Cir. 1983) (per
2 curiam), the Ninth Circuit explained why a petitioner must first
3 exhaust his administrative remedies before filing for habeas relief:
4 "The requirement of exhaustion of remedies will aid judicial review by
5 allowing the appropriate development of a factual record in an expert
6 form; conserve the court's time because of the possibility that the
7 relief applied for may be granted at the administrative level; and
8 allow the administrative agency an opportunity to correct errors
9 occurring in the course of an administrative proceeding."

10 The BOP has established an administrative remedy program
11 governing prisoner complaints, which is set forth at 28 C.F.R. §
12 542.10 et seq. See also Ben-Shmuel Dec. ¶ 5. First, an inmate must
13 attempt to resolve the issue informally by presenting it to staff
14 before submitting a request for administrative remedy. 28 C.F.R. §
15 542.13. If dissatisfied with the response, the prisoner may proceed
16 with the formal filing of an administrative remedy request on a BP-9
17 form. 28 C.F.R. § 542.14. Upon denial by the institution, the
18 prisoner may appeal the decision by filing a BP-10 Appeal with the
19 Regional Director of the BOP. 28 C.F.R. § 542.15. The Regional
20 Director's decision can then be appealed by submitting a BP-11 Appeal
21 to the BOP General Counsel in Washington, D.C., which constitutes the
22 final step in the administrative remedy process. Id. A BP-11 Appeal
23 must contain only issues raised at every lower level of the
24 administrative remedy process. Id. Although the procedure sets forth
25 deadlines at each step of the administrative remedy program,
26 extensions in filing time may be granted. 28 C.F.R. §§ 542.14(b);
27 542.15(a).

1 Here, Respondent has submitted BOP records that show Petitioner
2 has failed to exhaust his administrative remedies with respect to the
3 issues raised in the Petition. (Ben-Shmuel Dec. ¶¶ 6, 8; Ex. B.)

4 Although Petitioner attaches to the Petition two "Inmate Request to
5 Staff" forms as exhibits, these do not constitute exhaustion of
6 administrative remedies. (Ben-Shmuel Dec. ¶ 6).

7 Both forms were submitted to Dr. Holly Ihle, Director of the
8 RDAP. (Petition, Exs. 2, 4). An "Inmate Request to Staff" form
9 represents an attempt at a BP-8 informal resolution, which is only the
10 first step in the four-step administrative remedy process. (Ben-
11 Shmuel Dec. ¶ 6.) Petitioner has failed to file any formal
12 administrative requests regarding the issues raised in the Petition at
13 the BP-9, BP-10, or BP-11 level. (Ben-Shmuel Dec. ¶ 8,9). Thus,
14 Petitioner's "Inmate Request to Staff" forms do not constitute proper
15 exhaustion of his administrative remedies.

16 As such, Petitioner has failed to exhaust his administrative
17 remedies with the BOP concerning the RDAP early release issue raised
18 in the Petition. As Petitioner has not yet begun the formal
19 administrative remedy process, all the levels of the administrative
20 remedy process remain open to him. (Ben-Shmuel Dec. ¶ 9).

21 Although failure to exhaust administrative remedies may be
22 excused where such remedies would be futile, where the agency's
23 actions "clearly and unambiguously" violated statutory or
24 constitutional rights, or where the administrative procedure is
25 clearly shown to be inadequate to prevent irreparable injury, Terrell
26 v. Brewer, 935 F.2d 1015, 1019 (9th Cir. 1991), none of these
27 exceptions appears to apply here. Furthermore, Petitioner failed to
28 file an Opposition to the MTD, nor did he provide any explanation in

1 his Petition as to why he did not pursue his administrative remedies
2 at the BP-9, BP-10, or BP-11 stages. In particular, Petitioner has
3 not alleged that the BOP could not provide him with the relief he
4 seeks.

5 Based on the foregoing, Respondent's Motion to Dismiss is
6 granted, and the Petition is dismissed without prejudice for failure
7 to exhaust administrative remedies.

8
9 DATED: 10-6-2008

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13 VICTOR B. KENTON
14 UNITED STATES MAGISTRATE JUDGE
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