

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Christine M. Arguello**

Civil Action No. 13-cv-02379-CMA-MEH

DWAUNE GRAVELY,

Applicant,

v.

HON. D. BERKIBILE, Warden,

Respondent.

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**ORDER ADOPTING AND AFFIRMING JANUARY 13, 2014  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

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This matter is before the Court on the January 13, 2014 Recommendation by United States Magistrate Judge Michael E. Hegarty that Applicant Dwaune Gravely's "[Amended] Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241" be denied. (Doc. # 29.) The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). On January 24, 2014, Mr. Gravely filed an objection to the Recommendation (Doc. # 30), to which Berkibile responded on February 4, 2014 (Doc. # 31).

"When a magistrate judge issues a recommendation on a dispositive matter, Fed. R. Civ. P. 72(b)(3) requires that the district judge "determine *de novo* any part of the magistrate judge's [recommended] disposition that has been properly objected to." In conducting its review, "[t]he district judge may accept, reject, or modify the

recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” *Id.*

In the instant case, Gravely raises several improper objections that merely reiterate arguments that were before Magistrate Judge Hegarty at the time his Recommendation issued. With regard to Gravely’s argument that Judge Hegarty misapplied *Craft v. Jones*<sup>1</sup> in determining his disciplinary hearing and incident report claims are moot, the Court perceives no error. Gravely contends that Magistrate Judge Hegarty erred when he relied on *Craft* because the inmate in that case did not raise a constitutional claim, whereas Mr. Gravely did.<sup>2</sup> *Craft* stands for the broader principle that where an inmate challenges disciplinary proceedings that prison officials have since vacated and intend to re-adjudicate, such claims are moot. 473 F. App’x at 845-46. Accordingly, Gravely’s objections are unavailing and the Court agrees with Magistrate Judge Hegarty’s well-reasoned analysis.

The Court has conducted a *de novo* review of this matter, including reviewing all relevant pleadings, the Recommendation, Gravely’s objection, and Berkebile’s response. Based on this *de novo* review, the Court concludes that Judge Hegarty’s Recommendation is correct and is not called into question by Gravely’s objection. Accordingly, it is hereby ORDERED that Plaintiff’s objection (Doc. # 30) is OVERRULED. It is

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<sup>1</sup> 473 F. App’x 843 (10th Cir. 2012).

<sup>2</sup> The Court notes that the applicant in *Craft* raised an Eighth Amendment claim. *Id.* at 845.

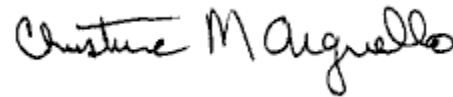
FURTHER ORDERED that the Recommendation of United States Magistrate Judge Michael E. Hegarty (Doc. # 29) is AFFIRMED and ADOPTED as an order of this Court. Pursuant to the Recommendation. It is

FURTHER ORDERED that “[Amended] Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241” (Doc. # 5) is DENIED. It is

FURTHER ORDERED that this case is DISMISSED in its entirety.

DATED: February 6, 2014

BY THE COURT:

A handwritten signature in black ink, reading "Christine M. Arguello". The signature is written in a cursive, flowing style. The first name "Christine" is written in a larger, more prominent script, followed by "M." and "Arguello".

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CHRISTINE M. ARGUELLO  
United States District Judge