

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RANDY RUSSELL YBARRA,

Petitioner,

v.

WARDEN,

Respondent.

CAUSE NO. 3:21-CV-37-JD-MGG

OPINION AND ORDER

Randy Russell Ybarra, a prisoner without a lawyer, filed a habeas corpus petition attempting to challenge a prison disciplinary hearing where a Disciplinary Hearing Officer (DHO) found him guilty of Battery in violation of Indiana Department of Correction offense B-212 on February 17, 2020. However, the petition says he was not punished with either the loss of Earned Credit Time or a demotion in Credit Class. ECF 1 at 1.

A prison disciplinary action can only be challenged in a habeas corpus proceeding where it results in the lengthening of the duration of confinement. *Hadley v. Holmes*, 341 F.3d 661, 664 (7th Cir. 2003). Because the duration of his confinement was not lengthened as a result of this prison disciplinary proceeding, this case must be dismissed.

However, before doing so, one other issue needs to be addressed. Ybarra alleges he was moved from segregation to general population on December 3, 2020, and is in

danger of being attacked by other inmates. Therefore, a copy of this order and the petition will be sent to the Warden so he can take appropriate action.

If Ybarra wants to appeal this decision, he does not need a certificate of appealability because he is challenging a prison disciplinary proceeding. *See Evans v. Circuit Court*, 569 F.3d 665, 666 (7th Cir. 2009). However, he may not proceed in forma pauperis on appeal because, pursuant to 28 U.S.C. § 1915(a)(3), an appeal in this case could not be taken in good faith. Nevertheless, if he files a notice of appeal, he may ask the United States Court of Appeals for leave to proceed in forma pauperis by filing a motion with the Circuit Court along with a copy of this order demonstrating that he has already been denied leave to proceed in forma pauperis by the District Court.

For these reasons, the court:

- (1) DENIES the habeas corpus petition pursuant to Section 2254 Habeas Corpus Rule 4;
- (2) DIRECTS the clerk to enter judgment;
- (3) DENIES the Petitioner leave to proceed in forma pauperis on appeal; and
- (4) DIRECTS the clerk to fax or email a copy of this order and the petition (ECF 1 at 1-3) to both the Indiana State Prison Warden and the Indiana Department of Correction.

SO ORDERED on January 19, 2021

/s/JON E. DEGUILIO
CHIEF JUDGE
UNITED STATES DISTRICT COURT