

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

DARNELL C. MILLER, SR.,	)	
	)	
	)	
vs.	)	Case No. 1:13-cv-464-TWP-MJD
	)	
DUSHAN ZATECKY,	)	
	)	
Respondent.	)	

**ENTRY ON PETITION FOR WRIT OF HABEAS CORPUS**

**I.**

The petitioner's motion to proceed *in forma pauperis* [Dkt. 2] is **granted**.

**II.**

**DISCUSSION**

The petition of Darnell C. Miller, Sr. ("Mr. Miller"), for a writ of habeas corpus challenging an apparent adjunct of the prison disciplinary proceeding identified as No. ISR 11-03-0122 is **denied** and this action is dismissed pursuant to Rule 4 of the *Rules Governing Section 2254 Proceedings in the United States District Court*. This disposition is based on the following facts and circumstances:

Rule 4 provides that upon preliminary consideration by the district court judge, "[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall

make an order for its summary dismissal and cause the petitioner to be notified." *See Small v. Endicott*, 998 F.2d 411, 414 (7th Cir. 1993). A federal court may issue a writ of habeas corpus pursuant to 28 U.S.C. 2254(a) only if it finds the applicant is in custody in violation of the Constitution or laws or treaties of the United States. *Id.* In order to proceed, Mr. Miller must meet the "in custody" requirement of § 2254(a). Meeting this requirement is a matter of jurisdictional significance. *Maleng v. Cook*, 490 U.S. 488, 490 (1989) (per curiam). [T]he inquiry into whether a petitioner has satisfied the jurisdictional prerequisites for habeas review requires a court to judge the severity of an actual or potential restraint on liberty. *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 894 (2d Cir.), cert. denied, 519 U.S. 1041 (1996).

"A prisoner challenging the process he was afforded in a prison disciplinary proceeding must meet two requirements: (1) he has a liberty or property interest that the state has interfered with; and (2) the procedures he was afforded upon that deprivation were constitutionally deficient." *Scruggs v. Jordan*, 485 F.3d 934, 939 (7th Cir. 2007). A sanction which does not constitute custody" cannot be challenged in an action for habeas corpus relief. *Montgomery v. Anderson*, 262 F.3d 641, 644-45 (7th Cir. 2001). If a habeas petitioner has suffered the deprivation of a protected liberty interest the procedural protections delineated in *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974), are applicable and the decision must be supported by "some evidence." *Superintend., Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 454 (1985); see also

*Piggie v. Cotton*, 344 F.3d 674, 677 (7th Cir. 2003); *Webb v. Anderson*, 224 F.3d 649, 652 (7th Cir. 2000).

In this case, Mr. Miller was sanctioned in No. ISR 12-11-112 on December 4, 2012, with the loss of visitation, job and housing privileges. These sanctions were non-custodial. *Mamone v. United States*, 559 F.3d 1209 (11th Cir. 2009); *Virsnieks v. Smith*, 521 F.3d 707, 713 (7th Cir. 2008). Because of this, a challenge to these sanctions does not lie within the scope of an action for habeas corpus relief.

State prisoners who want to challenge their convictions, their sentences, or administrative orders revoking good-time credits or equivalent sentence-shortening devices, must seek habeas corpus, because they contest the fact or duration of custody. *See, e.g., Preiser v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827, 36 L.Ed.2d 439 (1973); *Edwards v. Balisok*, 520 U.S. 641, 117 S. Ct. 1584, 137 L.Ed.2d 906 (1997). State prisoners who want to raise a constitutional challenge to any other decision, such as transfer to a new prison, administrative segregation, exclusion from prison programs, or suspension of privileges, must instead employ [42 U.S.C.] 1983 or another statute authorizing damages or injunctions--when the decision may be challenged at all, which under *Sandin v. Conner*, 515 U.S. 472, 115 S. Ct. 2293, 132 L.Ed.2d 418 (1995), and *Meachum v. Fano*, 427 U.S. 215, 96 S. Ct. 2532, 49 L.Ed.2d 451 (1976), will be uncommon.

*Cochran v. Buss*, 381 F.3d 637, 639 (7th Cir. 2004) (quoting *Moran v. Sondalle*, 218 F.3d 647, 650-51 (7th Cir. 2000)).

## CONCLUSION

Because Miller's habeas petition shows on its face that he is not entitled to the relief he seeks, the action is **summarily dismissed** pursuant to Rule 4.

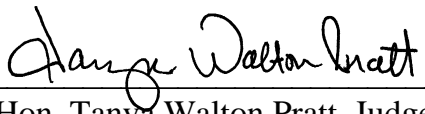
Judgment consistent with this Entry shall now issue.

**IT IS SO ORDERED.**

Date: 03/27/2013

Distribution:

Darnell C. Miller, Sr.  
#935261  
Pendleton Correctional Facility  
4490 West Reformatory Road  
Pendleton, IN 46064

  
Hon. Tanya Walton Pratt, Judge  
United States District Court  
Southern District of Indiana