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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

JOE LOUIS BYRD,

Petitioner,

vs.

STATE OF IOWA and JOHN FAYRAM,
Warden, et al.,

Respondents.

No. C12-99 EJM

ORDER

This matter is before the court on Petitioner's resisted motion for certificate of appealability, filed September 15, 2014. Denied.

Plaintiff, presently confined in the Anamosa State Penitentiary, Anamosa, Iowa, (ASP) brings this habeas corpus action under 28 U.S.C. §2254 claiming that the procedure during a disciplinary action for the petitioner's involvement in a rape assault violated his constitutional rights. Jurisdiction under 28 USC §1331.

On August 20, 2014, this court filed an order finding that the Iowa Department of Corrections' transfer of Petitioner's disciplinary case in the middle of a hearing after it saw where the ASP Administrative Law Judge (ALJ) was headed, to a different ALJ at a different prison, was a denial of due process. The court voided the transfer and remanded the case back to an ASP ALJ. Petitioner asserts that remanding the case back to the successor ASP ALJ, since the original one resigned, will not cure the violation, and moved this court to amend its judgment to enter judgment of expungement of the disciplinary action. The court denied that motion. Harmon v. Auger, 768 F.2d 270, 277 (8th Cir. 1985.)

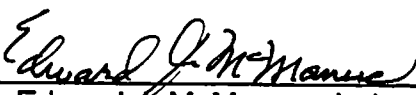
Petitioner now moves for a certificate of appealability, claiming the return of the case to anyone other than the original judge (now a private citizen) fails to cure the violation. Moving a case from one judge to another judge because a party sees where the first judge is headed is unlawful. Green v. Branson, 108 F.3d 1296 (10th Cir. 1997). Moving a case from one judge to his lawful successor when the first judge retires is lawful. See e.g. State v. Henderson, 243 La. 233, 142 So.2d 407 (1962.) This case will proceed with the successor ASP ALJ. The court finds that this result is reasonably clear and a certificate of appealability is not appropriate. Garrett v. U.S., 211 F.3d 1075 (8th Cir. 2000.)

It is therefore

ORDERED

Denied.

October 2, 2014



Edward J. McManus, Judge
UNITED STATES DISTRICT COURT