

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN CARTER,

Petitioner,

v.

FEDERAL MEDICAL CENTER DEVENS
and JEFF GRONDOLSKY

Respondents.

No. 16-cv-11910-RGS

REPORT AND RECOMMENDATION ON: (1) RESPONDENTS' MOTION TO DISMISS (Dkt. No. 18); (2) PETITIONER'S MOTION FOR SUMMARY JUDGMENT (Dkt. No. 21); (3) RESPONDENTS' CROSS MOTION FOR SUMMARY JUDGMENT (Dkt. No. 33); AND (4) PETITIONER'S MOTION FOR ORDER TO SHOW CAUSE (Dkt. No. 35)

CABELL, U.S.M.J.

Petitioner John Carter ("the petitioner") has brought a habeas action under 28 U.S.C. § 2241 against the Federal Medical Center at Devens ("FMC Devens") and Jeff Grondolsky ("Grondolsky"), the Warden of FMC Devens (collectively "the respondents"). He contends that his forced participation in a program known as the Inmate Financial Responsibility Program, through which funds are taken from an inmate's account to satisfy their court imposed financial obligations, violates the terms of his sentence, which, he contends, deferred the obligation to make

any such payments until after he is released from prison. The respondents move to dismiss the petition for failure to state a claim. (Dkt. No. 18). Because I conclude that the sentencing court ordered the petitioner's payment obligations to begin immediately and did not defer them until after his imprisonment, I find that the petition lacks merit and accordingly recommend that the motion to dismiss be granted.¹

RELEVANT BACKGROUND

I. The Petitioner's Sentence

Following a guilty plea on two counts of mail fraud and one count of tax evasion, a judge sitting in the U.S. District Court for the Eastern District of Pennsylvania sentenced the petitioner to a 180-month term of imprisonment, to be followed by a three-year term of supervised release. (Dkt. No. 1). The court also ordered the petitioner to (1) make restitution in the amount of

¹The motion to dismiss has spawned three successive motions, all of which are derivative of the habeas petition and which would become moot should the Report and Recommendation be adopted and the habeas petition dismissed. First, the petitioner moved for summary judgment, presumably in response to the respondents' motion to dismiss. (Dkt. No. 21). The respondents then cross-moved for summary judgment. (Dkt. No. 33). Lastly, the petitioner moved for an order to show cause why the respondents should not be defaulted for filing what the petitioner believes was an untimely opposition to his motion for summary judgment. (Dkt. No. 35). Because this Report and Recommendation recommends that the motion to dismiss the habeas petition be granted, it is further recommended that these three motions be denied as moot.

\$1,330,011, (2) pay a fine in the amount of \$30,000, and (3) pay a \$300 special assessment. (Id.).

According to the "Schedule of Payments" set out in the "Judgment in a Criminal Case" (the "Judgment"), the sentencing court checked Box A to indicate that the petitioner was to make a lump sum payment of \$300.00 immediately. The sentencing court also checked Box D to indicate that the petitioner was to make monthly installments of \$500.00 "over a period of 36 months . . . to commence 30 days . . . after release from imprisonment to a term of supervision . . ."

Underneath the Schedule of Payments section, but separate from that section, the following language appears:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

II. The Inmate Financial Responsibility Program

The petitioner arrived at FMC Devens on January 4, 2008. In time, the Bureau of Prisons ("BOP") set about collecting money from the petitioner to satisfy his financial obligations, through the program referenced above, the Inmate Financial Responsibility Program ("IFRP"). The IFRP was created to assist "each sentenced

inmate to meet his or her legitimate financial obligations." 28 C.F.R. § 545.10. Under the program, BOP staff develop a financial plan in conjunction with the inmate to fulfill monetary obligations as ordered by the sentencing court. *Id.* The inmate is then responsible for making payments according to their personalized financial responsibility plan. 28 C.F.R. § 545.11(b).

An inmate may elect to make partial payments under their personalized financial responsibility plan, or may elect to forego participation in the program altogether. 28 C.F.R. § 545.11(d). However, when an inmate refuses to participate in the program or to comply with the provisions of their financial responsibility plan, he may become ineligible to enjoy certain privileges. 28 C.F.R. § 545.11(d)(1)-(11).

According to the petitioner, he was advised upon his arrival at FMC Devens that he was not required to participate in the IFRP, because the sentencing court had ordered that all criminal monetary penalty obligations be deferred until the start of his term of supervised release. Dkt. No. 1. However, BOP officials informed the petitioner at some point in April of 2014 that he would be required to participate in the IFRP, and negotiated with him a rate of \$75.00 per month. *Id.* The monthly rate subsequently increased to \$212.00 due to the petitioner's increased total inmate earnings and financial support from outside sources. *Id.* The

petitioner refused to meet his monthly obligations and prison officials subsequently placed him on "refusal status," which in turn led to the loss of several inmate privileges. *Id.* After exhausting his administrative remedies, the petitioner commenced this action challenging the requirement that he participate in the IFRP.

LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, the complaint must include sufficient factual allegations that, when taken as true, demonstrate a plausible claim of relief. *Bell Atlantic v. Twombly*, 550 U.S. 544, 555-58 (2007). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* The "plausibility" standard is met where "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556).

When deciding a motion to dismiss under Rule 12(b)(6), the "plausibility" standard requires the court: (1) to distinguish between the complaint's factual allegations, which must be accepted as true, and its conclusory legal allegations which are afforded no credence, and (2) to determine whether the factual

allegations "are sufficient to support the reasonable inference that the defendant is liable for the misconduct alleged." *Garcia-Catalan v. U.S.*, 734 F.3d 100, 103 (1st Cir. 2013). The complaint should be dismissed only if "the pleading shows no set of facts which could entitle plaintiff to relief." *Zona v. Clark University*, 436 F. Supp. 2d 287, 288(D. Mass. 2006).

ANALYSIS

A habeas petition brought under § 2241 challenges the execution of a federal prisoner's sentence. *Thorton v. Sabol*, 620 F. Supp.2d 203, 206 (D. Mass. 2009). As the petitioner challenges the execution of his sentence by claiming that the BOP acted unlawfully in forcing him to participate in the IFRP to satisfy the monetary penalties the sentencing court imposed, his claim falls squarely within the purview of a section 2241 petition. See *Coady v. Vaughn*, 251 F.3d 480, 485 (3d Cir. 2001).

The petitioner does not contend that the IFRP is unconstitutional. Rather, he argues that he should not have been forced to participate in the IFRP because the sentencing court indicated that he would not have to begin making payments towards his monetary obligations until after his release from prison. The petitioner notes that Box D in the Schedule of Payments, which the sentencing court checked, "clearly states that [the petitioner's] criminal monetary responsibilities begin thirty days after

incarceration ends." The petitioner reads this language in conjunction with the standard provision providing that "payment of criminal monetary penalties is due during imprisonment" "[u]nless the court has expressly ordered otherwise . . . ," and argues, in essence, that the sentencing court, by checking Box D, expressly ordered otherwise in his case. As a result, so the petitioner argues, he should not have been required to participate in the IFRP.

The petitioner's argument is not facially outrageous. Arguably, the Judgment form is ambiguous to the extent it is not self-evident whether a sentencing court, by checking Box D and indicating a defendant is to "commence" making payments beginning 30 days after release, has "expressly ordered otherwise" and thus deferred payment of *all* criminal monetary penalties until after imprisonment. Still, this Court has no trouble concluding that the Judgment, read as a whole and in a common sense fashion, impels the conclusion that the sentencing court did not "expressly order otherwise" but in fact ordered that the petitioner's financial obligations begin immediately rather than be deferred until after imprisonment.

Specifically, where the sentencing court imposed a special assessment of \$300.00, and also checked Box A ordering the petitioner to make an immediate lump sum payment of \$300.00, it is

clear in context that the court was ordering that the petitioner pay the special assessment immediately. Similarly, where the sentencing court imposed a term of supervised release of three years, and also checked Box D requiring the petitioner make monthly payments of \$500 during that same three-year period, the most logical and reasonable inference is that the sentencing court merely meant to make it clear that the petitioner would also as a condition of his supervised release be required to make payments towards his fine and restitution.

By contrast, it would not be reasonable to view the Judgment (through the checked Box D) as purporting to defer all payments until after the petitioner is released from prison. Indeed, treating that provision as controlling the payment-obligation portion of the petitioner's sentence would, if interpreted literally, mean that the petitioner would only have to pay a total of \$18,000 towards the entire \$1.3 million fine and restitution penalty. Such a result would be patently absurd and in conflict with the Judgment as a whole. Other courts that have considered the issue have similarly found that there is no inconsistency between section D requiring payments to be made during the term of supervised release and the Judgment's standard paragraph requiring payments to be made immediately unless expressly ordered otherwise. See *Hickman v. Keffer*, 498 Fed. App'x 375 (5th Cir. 2012) (holding that "there is no necessary inconsistency between

line D, the payment schedule following [the petitioner's release], and the apparently standard paragraph requiring payments to be made during imprisonment unless expressly ordered otherwise"); *U.S. v. Paz*, 265 Fed. Appx. 333, 334 (5th Cir. 2008) (same); *Rashad v. Mosey*, 2014 WL 7339058, at *3 (S. D. Miss. 2014) ("There is no inconsistency between the language setting forth a payment schedule following [the petitioner's] release and the language requiring payments to be made during imprisonment contained in the judgment."). In short, the sentencing court did not defer the petitioner's payment obligations until after imprisonment and nothing in the Judgment prevented the BOP from requiring the petitioner to participate in the IFRP.

CONCLUSION

For the foregoing reasons, it is recommended that the respondents' motion to dismiss (Dkt. No. 18) be GRANTED. It is further recommended that the petitioner's motion for summary judgment (Dkt. No. 21), the respondents' cross motion for summary judgment (Dkt. No. 33), and the petitioner's motion to show cause (Dkt. No. 35) all be DENIED as moot.

The parties are hereby advised that under the provisions of Federal Rule of Civil Procedure 72(b), any party who objects to this recommendation must file specific written objections thereto with the Clerk of this Court within 14 days of the party's receipt of this Report and Recommendation. The written objections must

specifically identify the portion of the proposed findings, recommendations, or report to which objection is made and the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Rule 72(b) will preclude further appellate review of the District Court's order based on this Report and Recommendation. See *Keating v. Secretary of Health and Human Servs.*, 848 F.2d 271 (1st Cir. 1988); *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980); *United States v. Vega*, 678 F.2d 376, 378-379 (1st Cir. 1982); *Scott v. Schweiker*, 702 F.2d 13, 14 (1st Cir. 1983); see also *Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Donald L. Cabell
DONALD L. CABELL, U.S.M.J.

DATED: July 13, 2017