

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

KELLY TURAN BROOKS, #42586-037

PETITIONER

VS.

CIVIL ACTION NO. 5:08-cv-235(DCB)(MTP)

BRUCE PEARSON, Warden

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 25**), and on the petitioner Kelly Turan Brooks ("Brooks")'s objections thereto. Having carefully considered the report and recommendations of the magistrate judge and the petitioner's objections, and being fully advised in the premises, the Court finds as follows:

In his 28 U.S.C. § 2241 petition, Brooks challenges an Incident Report dated October 5, 2007, charging him with Encouraging a Group Demonstration in violation of Bureau Code 212, and a related disciplinary proceeding in which he was found guilty of the offense and received the following sanctions: loss of commissary privileges for one year; disallowance of 27 days of Good Conduct Time; 30 days disciplinary segregation; and loss of visitation privileges for six months. Brooks claims that he was issued an "unsubstantive" incident report in retaliation for voicing concerns about food services, that there was no evidence of a group demonstration, and that his unit counselor tried to coerce

him into pleading guilty. Petitioner seeks to have the incident report expunged, his Good Conduct Time and visitation privileges restored, and the Food Services Administrator reprimanded, among other relief.

In a thorough report and recommendation, Magistrate Judge Parker discusses due process in the context of prison discipline proceedings, and finds that Brooks was afforded all due process required by the Constitution and the courts. Further, Brooks has presented no evidence of coercion and, in any event, he pleaded not guilty to the charges. Finally, upon review of the record the magistrate judge finds that there was "some evidence" to support the findings of the disciplinary board. See Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 455 (1985). In conclusion, the magistrate judge recommends that the petition be denied and dismissed with prejudice.

At the time he filed his objections, Brooks also filed a motion to supplement his pleadings to add a claim that he "was denied the ability to utilize the administrative remedy process for over thirty days after the date of the incident (October 4, 2007)." In the motion, and in his objections, the petitioner continues to argue that his due process rights were violated. The Court will grant the motion to supplement. As found in the report and recommendation, however, the petitioner was afforded the process that was due him and was not deprived of the ability to utilize the

administrative remedy process. See Exhibits to Petition; Declaration of Esther Slater and Exhibits thereto. The objections are not well taken. Accordingly,

IT IS HEREBY ORDERED that the petitioner's motion to supplement pleadings (**docket entry 27**) is granted;

FURTHER ORDERED that the Report and Recommendation of United States Magistrate Judge Michael T. Parker (**docket entry 25**) is hereby adopted as the finding of this Court, and the petitioner's objections thereto are denied;

FURTHER ORDERED that the 28 U.S.C. § 2241 petition is denied. A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure, dismissing this action with prejudice.

SO ORDERED, this the 18th day of October, 2010.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE