

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ERIC KYLES,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 08-3223-CV-S-ODS
MARTY C. ANDERSON, Warden,)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed pro se exceptions to the report and recommendation of the Magistrate in which he continues to challenge the disciplinary action taken against him. He asserts that he did not have time to prepare a defense; that his rights were violated when a prior infraction was used against him to find him guilty; that his actions did not pose any significant security risk; and that he was denied the right to call witnesses.

Having fully reviewed the record de novo, this Court agrees with the Magistrate that the petition should be dismissed because petitioner’s claims are without merit. The record clearly indicates that there was some evidence to support the disciplinary action taken in this case.

Further, regarding his due process rights, the Supreme Court made clear in Wolff v. McDonnell, 418 U.S. 539, 564 (U.S. 1974), that an inmate's due process rights are tempered by the fact of incarceration, and do not encompass the panoply of rights enjoyed by the general public. Despite petitioner's assertions, the record supports the Magistrate's conclusion that the rights enunciated in Wolff were granted him. Petitioner's beliefs regarding whether he posed a serious risk and what information should be relied upon in the punishment phase form no basis for habeas corpus relief.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, CONSIDERED and OVERRULED. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.¹

/s/ Ortrie D. Smith
ORTRIE D. SMITH
United States District Judge

Date: 2/24/09

¹Petitioner has prepaid the filing fee and does not seek leave to proceed in forma pauperis .