

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

FRED ERBY,)	
)	
)	Petitioner,
v.)	Civil Action
)	No. 09-3132-CV-S-RED-H
)	
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 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 and has submitted to the undersigned a report and recommendation that the petition be dismissed without prejudice.

Petitioner has filed exceptions to the Magistrate’s Report and Recommendation, in which he continues to challenge his mental health commitment.

Having fully reviewed the record de novo, this Court agrees with the Magistrate's findings that the petition should be dismissed without prejudice. The record indicates that petitioner is lawfully committed pursuant to 18 U.S.C. § 4246. Accordingly, the Magistrate correctly found that petitioner’s allegations regarding being illegally confined are without merit.

Therefore, after a full review of the report and recommendation and the files 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. Accordingly, it is

ORDERED that petitioner's exceptions should be, and they are hereby, overruled. It is further

ORDERED that petitioner should be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein should be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr
RICHARD E. DORR
United States District Judge

Date: November 10, 2009