

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

<p>JERRY QUINN DAVIS,</p>)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 09-3313-CV-S-RED-H
<p>MARTY C. ANDERSON, Warden, United States Medical Center for Federal Prisoners,</p>)	
)	
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 exceptions to the report and recommendation of the Magistrate in which he continues to assert that his claim is properly filed pursuant to 28 U.S.C. § 2241, and that he has been denied access to the courts.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed. The most recent mental health evaluation report, dated June 15, 2009, indicates that petitioner was committed to the Medical Center, pursuant to 18 U.S.C. § 4241(d)(2)(A), following a judicial finding that he was not competent to proceed in his legal case.

The Medical Center has requested an extension of the period of commitment for 60 days, which was ordered by United States District Judge Gary A. Fenner, on August 10, 2009. This extension was based on the treating psychologist's opinion that while defendant is still not competent to stand trial, he has made progress, is voluntarily taking his medication, and regularly attends the competency restoration group. United States v. Davis, 08-03126-01-CR-S-GAF (W.D. Mo. August 10, 2009). Therefore, it is clear that petitioner's claims of denial of access to the courts are without merit, that he is lawfully confined at the Medical Center at this time, and that his allegations regarding his right to challenge the underlying criminal charges are not properly before this Court.

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 petitioner be denied leave to proceed in forma pauperis, and that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

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

Date: October 23, 2009