

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:09CV261-1-MU

JOHN FRANKLIN HELMS,)
)
 Petitioner,)
)
 v.)
)
 DAVID MITCHELL,)
)
 Respondent.)
_____)

ORDER

THIS MATTER comes before the Court for an initial review of Petitioner’s Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, filed July 15, 2009.

Pursuant to Rule 4 of the Rules Governing Section 2254 Proceedings, district courts are directed to promptly examine federal habeas petitions and any attached exhibits in order to determine whether a petitioner is entitled to any relief on the claims set forth therein. In the event it is determined that a petitioner is not entitled to relief, the reviewing Court must dismiss the motion. Following such directive, this Court has reviewed Petitioner’s federal habeas petition and the pertinent record evidence. As hereafter explained, such review clearly establishes that Petitioner is not entitled to any relief on his claim.

Petitioner alleges that in violation of North Carolina General Statute § 15A-1340(A) he was sentenced based upon an incorrect calculation of his prior record level. Petitioner requests that this Court order that he be granted a new sentencing hearing.

Petitioner’s claim is premised upon a misapplication of state law. Nowhere in his petition

does Petitioner cite to or reference federal law. It is well-settled law that misapplications of state law are not cognizable on federal habeas review. See Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions"); Wright v. Angelone, 151 F.3d 151, 157 (4th Cir. 1998) ("It is black letter law that a federal court may grant habeas relief only on the ground that [the petitioner] is in custody in violation of the Constitution or laws or treaties of the United States.") (quotation omitted). Consequently, Petitioner's claim is dismissed.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED**.

Signed: July 20, 2009



Graham C. Mullen
United States District Judge

