

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BOBBY ALLAN GREEN,)	
)	
Petitioner,)	
vs.)	NO. CIV-13-814-HE
)	
JUSTIN JONES, DOC Director,)	
)	
Respondent.)	

ORDER

Petitioner Bobby Allan Green, a state prisoner appearing *pro se*, filed this action pursuant to 28 U.S.C. § 2241,¹ challenging a prison disciplinary conviction. Consistent with 28 U.S.C. §636(b)(1)(B), (C), the matter was referred to Magistrate Judge Suzanne Mitchell, who recommends that a motion to dismiss filed by respondent be granted and the petition be dismissed without prejudice.


The respondent argued in his motion that petitioner had failed to show he had exhausted his state administrative and judicial remedies. Although he acknowledged his nonexhaustion in his petition, petitioner pleaded that he had no state remedy and that any attempt to exhaust would have been futile and dangerous. Doc. #1, p.8. He did not, though, respond to respondent's motion. As a result, the magistrate judge determined petitioner had failed to exhaust his state remedies had failed to explain adequately his inability to do so.

¹Although he filed his petition on the form used for § 2254 actions, the magistrate judge treated it as if filed under § 2241, as petitioner is challenging the execution of his prison term rather than the validity of his conviction or sentence.

Petitioner did not object to the Report and Recommendation and thereby waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). See 28 U.S.C. § 636(b)(1)(C). Accordingly, the court adopts Magistrate Judge Mitchell's Report and Recommendation, **GRANTS** respondent's motion to dismiss [Doc. #11] and **DISMISSES** this action without prejudice. The court also **DENIES** a certificate of appealability as it finds petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated this 28th day of May, 2014.



JOE HEATON
UNITED STATES DISTRICT JUDGE