

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

RAYMOND CHESTNUT,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-16-1367-R
)	
JOHN FOX, Warden,)	
)	
Respondent.)	

ORDER

Before the Court is the Supplemental Report and Recommendation of United States Magistrate Gary M. Purcell entered February 9, 2017. [Doc. 14]. Petitioner has neither objected to the Report and Recommendation nor moved for an extension of time in which to object. After careful review of the record, the Court **ADOPTS IN PART and DENIES IN PART** the Report and Recommendation of the Magistrate Judge. This matter is **DISMISSED WITHOUT PREJUDICE**.

Petitioner, a federal prisoner proceeding pro se under 28 U.S.C. § 2241, believes that several of his institutional disciplinary proceedings violated his due process rights. These proceedings allegedly resulted in further disciplinary sanctions, including the loss of good-conduct credits. Magistrate Judge Purcell recommended that the Court dismiss Petitioner’s § 2241 [Doc. 1] as untimely. The Court declines to adopt that recommendation because, as explained below, Petitioner is currently incarcerated within the judicial confines of the United State Court of Appeals for the Seventh Circuit; and under Seventh Circuit precedent, there is no statute of limitations for federal prisoners filing habeas

petitions pursuant to 28 U.S.C. § 2241. *See Morales v. Bezy*, 499 F.3d 668, 672 (7th Cir. 2007); *see also Wooten v. Caulty*, 677 F.3d 303, 306 (6th Cir. 2012) (accord). However, though the Court declines to dismiss the Petition on timeliness grounds, it does find that dismissal is still appropriate.

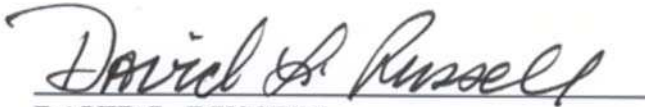
“A petition brought under 28 U.S.C. § 2241 typically attacks the execution of a sentence[.]” *Brace v. United States*, 634 F.3d 1167, 1169 (10th Cir. 2010) (internal quotation marks and citation omitted). “A federal prisoner may use a § 2241 application to restore good-time credits that were lost as a result of a prison disciplinary hearing lacking due process.” *Lane v. Maye*, No. 16-3287, ___ F.Appx. ___, 2016 WL 6595904, at *2 (10th Cir. Nov. 8, 2016) (unpublished) (citation omitted). A § 2241 petition must be filed in the district where the prisoner is confined. *Brace*, 634 F.3d at 1169. Though Petitioner was temporarily confined at the Federal Transfer Center in Oklahoma City, Oklahoma, when he filed this action, he was later transferred to a facility in Terre Haute, Indiana, where he now resides.

Precedent establishes, however, that “jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change.” *Santillanes v. U.S. Parole Comm’n*, 754 F.2d 887, 888 (10th Cir. 1985). Nonetheless, Petitioner’s transfer deprives this Court of enforcing any “effectual relief” that might be available. Respondent, Warden Fox, is no longer Petitioner’s custodian and this Court lacks jurisdiction over Petitioner’s current custodian in Indiana. *See Rumsfield v. Padilla*, 542 U.S. 426, 442 (2004); *see also Gorbey v. Warden of the Federal Transfer Center*, 580 F.Appx. 682, 682–683 (10th Cir. 2014) (affirming

dismissal of § 2241 petition due to lack of jurisdiction over Kentucky custodian and inability to enforce any effectual relief and recognizing that petitioner’s transfer from the FTC to a federal facility in Kentucky “did not divest [the] Court of jurisdiction over the petition, nor did it destroy the Court’s jurisdiction over the FTC Warden[,] [b]ut once Petitioner was transferred, the FTC Warden became powerless to effect any relief [the] Court might order”); *Griffin v. Kastner*, 507 F.Appx. 801, 802 (10th Cir. 2013) (finding claim for relief brought pursuant to § 2241 moot with no effectual relief possible where the FTC warden no longer had custody of petitioner and would be powerless to provide any relief and where petitioner was currently detained in Missouri “outside the ‘district of confinement’ and therefore outside the scope of the district court’s habeas jurisdiction”).

Accordingly, the Report and Recommendation [Doc. 14] is ADOPTED IN PART and DENIED IN PART. Petitioner’s petition for a writ of habeas corpus under 28 U.S.C. § 2241 [Doc. 1] is DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction. Petitioner’s remaining Motion to Show Cause [Doc. 15] is DENIED as moot.

IT IS SO ORDERED this 5th day of April 2017.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE