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

MARCUS D. WOODSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. CIV-17-261-R**
	)	
	)	
JOE M. ALLBAUGH, Director of Oklahoma Dept. of Corrections,	)	
	)	
	)	
Respondent.	)	

ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Shon Erwin [Doc. 12] that Mr. Woodson's petition for habeas relief under 28 U.S.C. § 2241 be dismissed for failure to state a claim. Mr. Woodson has filed an Objection, Doc. 13.[1] Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court has reviewed de novo those portions of the Report and Recommendation to which Petitioner has objected. It has also liberally construed Mr. Woodson's pro se filings pursuant to *Haines v. Kerner*, 404 U.S. 519, 520 (1972). In doing so, it concurs with the Magistrate Judge's findings, ADOPTS the Report and Recommendation, and dismisses Mr. Woodson's Petition. The Court also notes that there appears to be a jurisdictional defect with the Petition. Mr. Woodson is incarcerated at the Davis Correctional Facility in Holdenville, Oklahoma. Doc. 1, at 1. That facility lies within the judicial confines of the United States District Court for the Eastern District of

[1] As explained in the Court's Order, Doc. 11, in the other case Mr. Woodson has filed against Defendant Allbaugh, No. CIV-17-365-R, Mr. Woodson mistakenly filed his Objection to the Report and Recommendation in that case rather than this one, No. CIV-17-261-R. The Clerk of the Court has since remedied the problem by refiling the Objection in this case.

Oklahoma. "A petition under 28 U.S.C. § . . . *must be filed in the district where the prisoner is confined*." *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996). Mr. Woodson needed to file his Petition in the United States District Court for the Eastern District of Oklahoma. Because the Magistrate Judge did not address this jurisdictional problem, neither did Mr. Woodson in his Objection. But at any rate, even if this Court had jurisdiction, it would still dismiss Mr. Woodson's Petition for failure to state a claim.

Mr. Woodson's Petition complains of a series of disciplinary convictions, which he deems unconstitutional, and which he argues caused officials with the Oklahoma Department of Corrections (DOC) to reassign him to a higher security classification. Not only was he apparently reclassified without a hearing and labeled a "management problem," but worse, his new, higher status meant that he was no longer eligible to earn credits toward early release and to appear before the parole board. He also protests prison officials' decision to transfer him to a restricted housing unit while they investigated the disciplinary charges against him. Mr. Woodson asks the Court to order two things: first, that prison officials award him credits that he would have earned had he not been improperly reclassified to a higher security level, and second, that prison officials hold an evidentiary hearing where he can present evidence on the DOC's flagrant disregard of his rights.

The Magistrate Judge recommended dismissal for a simple reason. Because § 2241 provides habeas corpus review if an individual is "in custody in violation of the Constitution or laws or treaties of the United States," 28 U.S.C. § 2241(c)(3), a prisoner's complaints have to implicate those rights, specifically a protected liberty interest. Mr.

Woodson's allegations, the Magistrate Judge found, did not implicate any such interest. A prisoner's protected liberty interests will be implicated only where the prisoner is subject to (1) conditions that "impose[] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life" or (2) disciplinary actions that "inevitably affect the duration of his sentence." *Sandin v. Conner*, 515 U.S. 472, 548 (1995).

The Court fully concurs with the Magistrate Judge's finding that Mr. Woodson's allegations do not fall within either scenario. Though Mr. Woodson repeatedly claims that his security reclassification invariably affected the duration of his sentence, nowhere does he explain how that is so.

Aside from this conclusory allegation, Mr. Woodson's objections to the Report and Recommendation are essentially twofold. The first involves prison officials' alleged failure to comply with prison policies when they reclassified his security status without giving him a hearing before the Administrative Committee. Yet even assuming these allegations are true, they are of no moment. To state a claim under § 2241(c)(3), Mr. Woodson must allege that a state official has violated the federal constitution, a federal statute, or a federal treaty. A departmental policy is none of these things. *See, e.g., Harrison v. Williams*, No. CIV-09-1145-R, 2009 WL 4016104, at *1 (W.D. Okla. Nov. 18, 2009) (Russell, J.) ("failure to adhere to the 7-day hearing requirement of prison policy does not amount to a constitutional violation because the prison policy neither creates a liberty interest nor defines the process due before a liberty interest can be impacted or deprived" (citation omitted)); *Henderson v. Workman*, No. CIV-05-1486-T, 2006 WL 2545815, at *4 (W.D. Okla. Aug. 31, 2006) (holding that a habeas petition failed to state a federal constitutional

violation when the claim was based on failure to comply with "DOC regulations concerning the timing of disciplinary hearings"). Simply put, even if DOC officials discarded their own department's policy, this is not in and of itself grounds for habeas relief.

Mr. Woodson's second objection rests on a line of cases he believes the Magistrate Judge overlooked. He seems to rely on the first two of his cases, *Gamble v. Calbone*, 375 F.3d 1021 (10th Cir. 2004), and *Wilson v. Jones*, 430 F.3d 1113 (10th Cir. 2005), to argue that the Court is constitutionally obligated to review the parole board's disciplinary actions for sufficiency of the evidence. That, though, is not the law. Granted, the Court must sometimes undertake that review. But there has to be, first and foremost, an implication of a protected liberty interest and deprivation of due process rights. The Tenth Circuit in *Gamble*, for example, examined whether prison officials had sufficient evidence to *revoke* prisoners' earned credits. *Gamble*, 375 F.3d at 1023. But note the distinction here: while "it is well settled that an inmate must be afforded due process prior to the revocation of his earned credits," Mr. Woodson is not alleging that his credits were revoked. *Wilson v. Jones*, 430 F.3d at 1120. Rather, he argues that his changed (and higher) security classification barred him from earning credits he otherwise would have had the opportunity to earn. An inmate, however, "has no constitutionally-protected liberty interest in earning . . . credits" so long as he is not being denied *mandatory* earned time credits, *i.e.,* those to which he is entitled. *Fogle v. Pierson*, 435 F.3d 1252, 1262 (10th Cir. 2006); *also see Dopp v. Jones*, 562 Fed.Appx. 637, 640 (10th Cir. 2014) (distinguishing *Wilson v. Jones*—Mr. Woodson's second cited case—on the grounds that a prisoner only has a "liberty interest in his credit-

earning classification level" when the "prisoner's demotion [is] not discretionary and [does] inevitably affect the duration of his sentence").

The last two cases Mr. Woodson cites *Sandin v. Connor*, 515 U.S. 472 (1995), and *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445 (1985), stand for the uncontroversial notions that prisoners do in fact retain due process rights and prison officials must afford them certain procedural and evidentiary safeguards before depriving them of protected liberty interests. But as the Court has shown, Mr. Woodson has not alleged the violation of any protected liberty interest. His Petition for habeas relief under §2241 is therefore denied.

In order to appeal the Court's denial of his § 2241 petition as a state prisoner, Mr. Woodson must obtain a Certificate of Appealability (COA). *See Montez v. McKinna*, 208 F.3d 862, 869 (10th Cir. 2000). He is "entitled to a COA only upon making a 'substantial showing of the denial of a constitutional right.'" *Id.* (quoting 28 U.S.C. § 2253(c)(2)). He has not done so, and the Court therefore declines to issue him a COA.

IT IS SO ORDERED this 18th day of July, 2017.

DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE