

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

| | | |
|---------------------------|---|------------------------------|
| MARCUS D. WOODSON, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. CIV-17-365-R |
| |) | |
| JOE ALLBAUGH, |) | |
| |) | |
| Respondent. |) | |

ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Gary Purcell [Doc. 6] that Mr. Woodson’s petition for habeas relief under 28 U.S.C. § 2241 be dismissed. The Magistrate Judge recommended dismissal for two reasons. One, the Court lacks jurisdiction over Mr. Woodson’s § 2241 petition because he is not confined within this judicial district. Two, § 2241 is an improper vehicle for challenging the conditions of confinement. In his Objection, Mr. Woodson insists that he is in fact *not* challenging the conditions of his confinement and therefore asks the Court to construe his Petition as one for habeas relief.

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). After doing so, the Court concludes that the Magistrate Judge was correct on both counts.

First, the Court lacks jurisdiction because Mr. Woodson is not confined within this judicial district. He is currently incarcerated at the Davis Correctional Facility in Holdenville, Oklahoma, which lies within the jurisdictional confines of the United States District Court for the Eastern District of Oklahoma. Mr. Woodson does not contest this point, and indeed, he continues to list his return address on court filings as Holdenville, Oklahoma. *See, e.g.*, Doc. 10; Doc. 12, Ex. 2.

Second, even if the Court could waive this jurisdictional defect, § 2241 is not a proper vehicle for Mr. Woodson to obtain his sought-after relief. What Mr. Woodson seeks is an order from this Court directing the Oklahoma Department of Corrections to transfer him to a medium-security prison. Because he claims he was transferred to a maximum-security facility without a hearing, in violation of his due process rights, he is effectively challenging the conditions of his confinement. *See, e.g., Antonelli v. Keffer*, 243 F. App'x 384, 385 (10th Cir. 2007) (characterizing petitioner's claims about his transfer to a maximum-security facility as challenges to his conditions of confinement). Challenges to conditions of confinement, however, may not be brought under § 2241. Instead, a prisoner must seek relief through civil rights actions. *See Standifer v. Ledezma*, 653 F.3d 1276, 1280 (10th Cir. 2011) (“It is well-settled law that prisoners who wish to challenge only the conditions of their confinement, as opposed to its fact or duration, must do so through civil rights lawsuits filed pursuant to 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971)—not through federal habeas proceedings”). And to the extent he seeks to challenge his recent disciplinary convictions—which Plaintiff invokes in his Motion for Leave to File an Amended Petition, Doc. 12—

those convictions are squarely addressed in the other case that Mr. Woodson has filed, No. CIV-17-261-R, also before the Court.

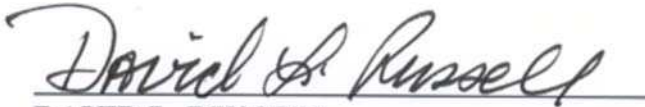
So Mr. Woodson faces a quandary. He cannot use § 2241 to challenge his housing in a maximum-security, rather than medium-security, facility. And he cannot use 42 U.S.C. § 1983 to challenge the conditions of his confinement because, if he did, he would be required to pay the \$400 filing fee: Mr. Woodson is not entitled to proceed in forma pauperis. As the Magistrate Judge pointed out, Mr. Woodson is a prolific litigant under 28 U.S.C. § 1915(g) and he therefore cannot proceed in forma pauperis in any civil action unless he shows that he is in imminent danger of serious physical injury. And though he has moved to proceed in forma pauperis, Doc. 2, he has not shown, let alone addressed, how he is in danger. Consequently, if he wishes to challenge the conditions of his confinement, his remedy is through a civil rights action, which requires him to pay the \$400 filing fee. The Court acknowledges that he has paid the \$5 filing fee for habeas petitions, but as the Court has explained, the relief he seeks is available only through civil actions.

In conclusion, Mr. Woodson's Petition for Writ of Habeas Corpus, Doc. 1, and his Motion to Proceed in Forma Pauperis, Doc. 2, are DENIED. Consequently, the Court DENIES his Motion to Amend his Petition, Doc. 12, as moot.

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