

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CEDRIC TYRONE WALKER,	:	
	:	
Petitioner	:	
	:	No. 1:16-CV-00330
vs.	:	
	:	(Judge Rambo)
WARDEN DAVID J. EBBERT,	:	
	:	
Respondent	:	

MEMORANDUM

On February 2, 2016, Petitioner Cedric Tyrone Walker, a federal inmate formerly confined at the Special Management Unit (“SMU”) United States Penitentiary at Lewisburg, Pennsylvania (“USP-Lewisburg”)¹ filed the instant petition for writ of habeas corpus, pro se, pursuant to 28 U.S.C. § 2241. (Doc No. 1.) On October 6, 2016, Walker filed an amended petition for writ of habeas corpus. (Doc. No. 25.) On November 29, 2016, this Court granted Walker’s motion for leave to proceed in forma pauperis, and directed that the amended petition be served on Respondent. (Doc. No. 26.)

Respondent filed a response to the amended petition asserting that the petition should be dismissed for Walker’s failure to exhaust his administrative remedies. (Doc. No. 28.) Walker filed his traverse on January 30, 2017 (Doc. No.

¹ Walker is presently confined at the Federal Correctional Complex-USP I in Coleman, Florida.

32), and a document entitled supplement to traverse on February 15, 2017. (Doc. No. 33.) This matter having been fully briefed is now ripe for disposition.

I. Background

Walker's petition challenges the outcome of a proceeding before the Discipline Hearing Officer ("DHO") of the Federal Bureau of Prisons ("BOP") on May 11, 2015. (Doc. No. 25.) Specifically, Walker lists four incident reports involving assaultive and threatening behavior on his part and challenges the validity of the DHO's determination as to each incident report. (Id.) Walker provides that he was charged and found guilty by the DHO as to the following incident reports: (1) #2712996 charged him with threatening with bodily harm; (2) #2712189 charged him with assaulting without serious injury; (3) #2712080 charged him with threatening bodily harm; and (4) #2711970 also charged him with threatening bodily harm. (Id.) He further claims that he was not appointed a staff representative or provided with an opportunity to prepare a defense to the misconduct charges and that he lost 27 days of good conduct time with respect to each incident report. (Id.) Walker requests that the incident reports be expunged from his record because he alleges he is not guilty. (Id.)

Respondent argues that because Walker has not filed any administrative remedies concerning the above listed incident reports, his habeas petition should be dismissed for failure to exhaust. (Doc. No. 28.)

II. Discussion

Habeas corpus review under § 2241 “allows a federal prisoner to challenge the ‘execution’ of his sentence.” Woodall v. Federal Bureau of Prisons, 432 F.3d 235, 241 (3d Cir. 2005). A habeas corpus petition may be brought by a prisoner who seeks to challenge either the fact or duration of his confinement. Preiser v. Rodriguez, 411 U.S. 475 (1973); Telford v. Hepting, 980 F.2d 745, 748 (3d Cir. 1993). Federal habeas corpus review is available only “where the deprivation of rights is such that it necessarily impacts the fact or length of detention.” Leamer v. Fauver, 288 F.3d 532, 540 (3d Cir. 2002).

Courts have consistently required a petitioner to exhaust administrative remedies prior to filing a § 2241 petition. See Moscato v. Fed. Bureau of Prisons, 98 F.3d 757, 760 (3d Cir. 1996) (holding “that a prisoner’s procedural default of his administrative remedies bars judicial review of his habeas petition unless he can show cause for the default and prejudice attributable thereto”); Arias v. United States Parole Comm’n., 648 F.2d 196, 199 (3d Cir. 1981) (concluding that, in the context of a habeas petition filed under § 2241, “the district court should have dismissed appellant’s petition on exhaustion grounds”). Exhaustion of administrative remedies is required “for three reasons: (1) allowing the appropriate agency to develop a factual record and apply its expertise facilitates judicial review; (2) permitting agencies to grant the relief requested conserves judicial

resources; and (3) providing agencies the opportunity to correct their own errors fosters administrative autonomy.” Moscato, 98 F.3d at 761-62 (citing Bradshaw v. Carlson, 682 F.2d 1050, 1052 (3d Cir. 1981)). However, exhaustion is not required if there is no opportunity to obtain adequate redress; if the issue presented only pertains to statutory construction; or if the prisoner makes an affirmative showing of futility. Gambino v. Morris, 134 F.3d 156, 171 (3d Cir. 1998); Schandelmeier v. Cunningham, 819 F.2d 52, 53 (3d Cir. 1986); Bradshaw v. Carlson, 682 F.2d 1050, 1052 (3d Cir. 1981).

In order for a prisoner to exhaust his administrative remedies, he must comply with 28 C.F.R. § 542.10 et seq., otherwise, the habeas petition should be dismissed. Arias, 648 F.2d at 199 (requiring federal prisoner to exhaust administrative remedies before bringing claim under § 2241). The BOP’s Administrative Remedy Program requires an inmate to first informally present his complaint to staff, and staff shall attempt to informally resolve any issue before an inmate files a request for administrative relief. 28 C.F.R. § 542.13(a). If unsuccessful at informal resolution, the inmate may raise his complaint with the warden of the institution where he is confined. Id. at § 542.14(a). If dissatisfied with the response, he may then appeal an adverse decision to the Regional Office and the Central Office of the BOP. Id. at §§ 542.15(a) and 542.18. No administrative appeal is considered finally exhausted until a decision is reached on

the merits by the BOP's Central Office. See Sharpe v. Costello, No. 08-1811, 2008 WL 2736782, at *3 (3d Cir. July 15, 2008).

With respect to disciplinary hearing decision appeals, a BOP inmate can initiate the first step of the administrative review process by filing a direct written appeal (thus bypassing the institutional level of review) to the BOP's Regional Director within twenty (20) days after receiving the DHO's written report. See 28 C.F.R. § 542.15(a). If not satisfied with the Regional Director's response, a Central Office Appeal may then be filed with the BOP's Office of General Counsel. This is the prisoner's final available administrative appeal.

In this case, it is undisputed that Walker has not exhausted his administrative remedies. Attached to Respondent's response to the habeas petition is a declaration of Jennifer Knepper, an attorney advisor at the USP-Lewisburg. (Doc. No. 28-1.) In utilizing the SENTRY records, Knepper has identified all administrative remedies filed by Petitioner. (Id.) She provides that although Walker has challenged other disciplinary hearings, he has not filed administrative remedies concerning incident reports 2711970, 2712080, 2712189, or 2712996. (Id.) Walker does not dispute that he failed to exhaust his administrative remedies as to these incident reports. (Doc. No. 32 at 2, traverse.) Rather, he now argues, for the first time in his traverse, that he failed to exhaust his administrative remedies because "staff does not comply with there [sic] job title duties for

whatever purposes....” (Id.) Walker appears to now allege that the staff did not provide him with the correct forms to complete his administrative remedies. (Id.)

Walker, however, does not provide any supportive evidence to demonstrate his attempts to appeal or otherwise question the DHO decision. See Beckford v. Martinez, No. 3:CV-08-2023, 2010 WL 1791182, at *4 (M.D. Pa. May 4, 2010) (finding petitioner failed to meet exhaustion requirements despite petitioner’s self-serving statement that his untimely filing of his administrative remedy was due to his late receipt of the DHO report). Moreover, general, unsupported assertions that prison staff interfered with his ability to pursue administrative remedies does not establish cause for his procedural default. See Beckford v. Martiniez, 408 F. App’x 518 (3d Cir. 2010); Brown v. Ebbert, No. 3:15-0122, 2016 WL 695193, at *5 (M.D. Pa. Feb. 18, 2016). Accordingly, because Walker has failed to properly exhaust his administrative remedies, review of the merits of his habeas petition is barred. See Brown, 2016 WL 695193, at *5.

III. Conclusion

For the foregoing reasons, Wrights petition for habeas corpus pursuant to § 2241 will be denied. An appropriate order follows.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: July 27, 2017