

393 Fed.Appx. 32, 2010 WL 3511507 (C.A.3 (Pa.))
(Not Selected for publication in the Federal Reporter)

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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Third Circuit LAR, App. I, IOP 5.7. (Find CTA3 App. I, IOP 5.7)

United States Court of Appeals,

Third Circuit.

Andrew BEDENFIELD, Appellant

v.

Warden LEWISBURG.

No. 10-1750.

Submitted for Possible Dismissal Pursuant to [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#) or Summary Action

Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
Aug. 19, 2010.

Filed: Sept. 9, 2010.

Background: Federal prisoner petitioned for writ of habeas corpus, alleging prison officials violated his due process rights by failing to hold disciplinary hearing before placing him in the special management unit. The United States District Court for the Middle District of Pennsylvania, [Malcolm Muir](#), J., denied petition, and prisoner appealed.

Holding: The Court of Appeals held that prisoner's claim was not cognizable on habeas review.

Affirmed.

West Headnotes

Habeas Corpus 197  513

[197](#) Habeas Corpus

[197II](#) Grounds for Relief; Illegality of Restraint

[197II\(B\)](#) Particular Defects and Authority for Detention in General

[197k512](#) Nature and Place of Confinement

[197k513](#) k. Limitations and conditions; treatment and discipline. [Most Cited Cases](#)

Claim alleging prison officials violated federal prisoner's due process rights by failing to hold disciplinary hearing before placing him in prison's special management unit challenged condition of confinement, rather than basic fact or duration of imprisonment, and thus prisoner's claim was not cognizable on habeas review, since finding in prisoner's favor would not alter his sentence or undo his conviction. [U.S.C.A. Const.Amend. 5](#); [28 U.S.C.A. § 2241](#).

*32 On Appeal from the United States District Court for the Middle District of Pennsylvania (D.C. Civil No. 09-cv-02264), District Judge: Honorable [Malcolm Muir](#). Andrew Bedenfield, Lewisburg, PA, pro se.

[Stephen R. Cerutti, II](#), Esq., [Mark E. Morrison](#), Esq., Office of United States Attorney, Harrisburg, PA, for Warden Lewisburg.

Before: [BARRY](#), [FISHER](#) and [GREENAWAY, JR.](#), Circuit Judges.

OPINION

PER CURIAM.

*31 Petitioner Andrew Bedenfield, an inmate currently incarcerated at USP Lewisburg, appeals pro se from the District Court's dismissal of his petition for a writ of habeas corpus pursuant to [28 U.S.C. § 2241](#). Because we conclude that this appeal presents no substantial question, we will summarily affirm. See 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

In the petition, Bedenfield claimed that prison officials failed to hold a disciplinary hearing after he was allegedly involved in a gang fight at USP Atwater. As a result of his involvement in the fight, he was placed in the "Special Management Unit" *33 ("SMU") at USP

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Lewisburg.^{FN1} He argues that the prison officials' failure to hold a disciplinary hearing violated his due process rights, and further claims that he does not meet the criteria for placement in the SMU.

FN1. Bedenfield's projected release date from prison is October 20, 2012, via good conduct time release.

The respondent filed a response to the petition, arguing that the petition should be dismissed because Bedenfield's claims are not cognizable under [§ 2241](#). The District Court agreed and dismissed the petition. Bedenfield filed a timely appeal.

We have jurisdiction pursuant to [28 U.S.C. § 1291](#). Our review of the District Court's decision to dismiss Bedenfield's [§ 2241](#) petition is plenary. See [Cradle v. U.S. ex rel. Miner](#), 290 F.3d 536, 538 (3d Cir.2002).

Bedenfield's habeas petition does not challenge the basic fact or duration of his imprisonment, which is the “essence of habeas.” See [Preiser v. Rodriguez](#), 411 U.S. 475, 484, 498-99, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). “[W]hen the challenge is to a condition of confinement such that a finding in plaintiffs favor would not alter his sentence or undo his conviction, [a civil rights action] is appropriate.” [Leamer v. Fauver](#), 288 F.3d 532, 542 (3d Cir.2002) (dismissing civil rights action because claims should have been brought in a habeas petition). Bedenfield's challenge to his placement in the SMU is analogous to the “garden variety prison transfer” that we have indicated should be challenged in a civil rights action, not via a habeas petition. [Woodall v. Fed. Bureau of Prisons](#), 432 F.3d 235, 243 (3d Cir.2005). He has not raised a claim that involves the execution of his sentence. See [id.](#) at 243-44. Thus, we agree with the District Court that his claim is a challenge that should be brought in an action under [Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics](#), 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).^{FN2} See [id.](#) at 241-42; [Leamer](#), 288 F.3d at 542.

FN2. We note that the District Court considered that even if Bedenfield brings his claims in a [Bivens](#) action, he is not likely to prevail. See,

e.g., [Griffin v. Vaughn](#), 112 F.3d 703, 706 (3d Cir.1997) (15 months in administrative segregation did not implicate a liberty interest); [Fraise v. Terhune](#), 283 F.3d 506, 522-23 (3d Cir.2002) (transfer to Security Threat Group Management Unit “STGMU”), through which gang leaders are identified, isolated, and reprogrammed before release back into the general population, does not implicate protected liberty interest.

Because the appeal does not present a substantial question, we will summarily affirm the District Court's order dismissing the petition without prejudice. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

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