

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

<p>DAVID ALLEN CORNELL,  Petitioner,  vs.  K. BENNETT, WARDEN YANKTON FPC,  Respondent.</p>	<p>4:21-CV-04056-RAL  OPINION AND ORDER GRANTING RESPONDENT'S MOTION TO DISMISS</p>
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On April 7, 2021, David Allen Cornell, an inmate at the Yankton Federal Prison Camp in Yankton, South Dakota, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. Doc. 1. Respondent moves to dismiss for lack of subject matter jurisdiction, for failure to state a claim, and for failure to exhaust. Doc. 12. Cornell opposes the motion. Doc. 15.

Cornell seeks the “immediate application of [his] earned time credits” and claims that he is entitled to immediate release. Doc. 1 at 8. Under the First Step Act (FSA) time credits may be earned by eligible prisoners who successfully complete “evidence-based recidivism reduction programming” or “productive activities.” 18 U.S.C. § 3632(d)(4)(A). The Bureau of Prisons (BOP) has a phase-in period until January 15, 2022, to provide evidence-based recidivism programs and productive activities to *all* prisoners. *Id.* § 3621(h)(2) (emphasis added). In Holt v. Warden, this Court held that it cannot force the BOP to apply earned time credits toward prerelease custody before January 15, 2022. No. 20-4064, 2021 WL 1925503, at \*5-6 (D.S.D. May 13, 2021). Thus, an inmate that seeks to have the Court compel the BOP to apply the credits

before January 15, 2022, does not have standing and his/her petition must be dismissed for lack of subject matter jurisdiction. See id.


Here, Cornell seeks the immediate application of his earned time credits. See Doc. 1 at 8. In his opposition to Respondent's motion, Cornell relies on the minority position, Goodman v. Ortiz, Civ. No. 20-7582, 2020 WL 5015613 (D.N.J. Aug. 25, 2020), to support his proposition that his earned time credits must be applied due to the FSA's statutory language. Doc. 15. But this Court already considered Goodman and specifically sided with the majority position and against Goodman's interpretation of the FSA. See Holt, 2020 WL 5015613 at \*5. At this time, the Court cannot compel the BOP to apply earned time credits.

Therefore, it is hereby

ORDERED that Respondent's motion to dismiss for lack of subject matter jurisdiction, Doc. 12, is granted.

DATED July 21<sup>st</sup>, 2021

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE