

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

RANDY ROBERTS §
VS. § CIVIL ACTION NO. 1:11cv524
WARDEN, FCC BEAUMONT MEDIUM §

**ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Randy Roberts, an inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record and pleadings. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes petitioner's objections are without merit and should be overruled. Unlike the cases petitioner cites in support of his position, petitioner was charged with possession of a hazardous tool when he was found in possession of an unauthorized item, a homemade candle or burner, which could produce an open flame capable of starting a fire, destroying security devices, or can be used to burn staff and inmates. The charging officer asserted

in the incident report that petitioner was found while the flame was burning on his desk. As the decision of the Disciplinary Hearing Officer was based on some evidence and was not arbitrary and capricious, the Court will not overturn the decision. *See Superintendent v. Hill*, 472 U.S. 445, 454–55 (1985); *Gibbs v. King*, 779 F.2d 1040, 1046 (5th Cir. 1986), *cert. denied*, 476 U.S. 1117 (1986).

O R D E R

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So **ORDERED** and **SIGNED** this **16** day of **October, 2012**.



Ron Clark, United States District Judge