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**UNITED STATES DISTRICT COURT****EASTERN DISTRICT OF TEXAS**

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PATRICK ESTER,

Petitioner,

*versus*

DALLAS JONES,

Respondent.

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CIVIL ACTION NO. 1:17-CV-106

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

Petitioner Patrick Ester, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court referred this matter to the Honorable Keith F. Gibling, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court.

Petitioner is challenging a prison disciplinary conviction for fighting with his cell mate. The respondent filed a motion to dismiss or, in the alternative, motion for summary judgment. Construing the filing as a motion for summary judgment, the magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motion be granted.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections asserted by petitioner. After careful consideration, the court is of the opinion the objections are without merit. Petitioner contends there was insufficient evidence to support the disciplinary conviction. He states he was giving his cell mate a hug to congratulate him for being designated for placement in a camp rather than fighting with him.

The charging officer's report stated the charging officer saw petitioner wrestling with another inmate in an aggressive manner and that the inmates were knocking each other into a locker and a bunk. Petitioner denied the allegation and provided arguments to support his denial. However, as the magistrate judge pointed out, the determination as to how to weigh the conflicting evidence was for the Discipline Hearing Officer. As the charging officer's report provided "some evidence" to support the disciplinary conviction, this court may not reweigh the evidence. *Richards v. Dretke*, 394 F.3d 291, 294 (5th Cir. 2004).

ORDER

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**. The respondent's motion for summary judgment is **GRANTED**. A final judgment shall be entered denying the petition.

SIGNED at Beaumont, Texas, this 12th day of January, 2018.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE