

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

MICHAEL WHALEY §
VS. § CIVIL ACTION NO. 5:08cv47
DIRECTOR, TDCJ-CID §

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

Petitioner Michael Whaley, an inmate confined at the Telford Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith F. Giblin, 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, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted 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.

Petitioner is not eligible for mandatory supervision. Thus, any loss of good conduct time did not impose upon a liberty interest. The loss of good time will not support relief to the extent that it adversely affects parole eligibility. *Sandin v. Conner*, 515 U.S. 472, 487 (1995). The loss of good

time will trigger the protection of the Constitution if, and only if, a prisoner is eligible for release on mandatory supervision. *Madison v. Parker*, 104 F.3d 765, 769 (5th Cir. 1997). Consequently, petitioner is not entitled to federal habeas corpus relief with respect to the disciplinary case.¹

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**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 7th day of January, 2009.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

¹ To the extent petitioner attempts to seek monetary damages in his objections, petitioner's claims fail to show the denial of due process. Thus, petitioner's claim fails to state a claim upon which relief may be granted. Accordingly, it is not in the interests of justice to sever petitioner's claims into a separate civil rights action.