

disciplinary hearing officer failed to consider allegedly exculpatory medical records. The petitioner contends his counsel substitute provided ineffective assistance by failing to ensure applicable regulations and policies were followed during the disciplinary proceedings. The petitioner also contends prison officials violated the Americans with Disabilities Act (ADA) during the disciplinary proceedings.

Prisoners charged with rule violations are entitled to certain due process rights when the disciplinary action results in a sanction that will impose upon a liberty interest. *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995); *Thompson v. Cockrell*, 263 F.3d 423, 425 (5th Cir. 2001). Generally, the only sanction that imposes upon a liberty interest is the loss of good time credits for an inmate whose release on mandatory supervision will be delayed by the loss of the credits. *Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir. 2000); *see also Teague v. Quarterman*, 482 F.3d 769, 774 (5th Cir. 2007). In this case, the Magistrate Judge correctly concluded that the petitioner was not entitled to due process before the imposition of sanctions because he is ineligible for release on mandatory supervision. Further, the failure of prison officials to follow prison policies does not rise to the level of a constitutional violation. *McFaul v. Valenzuela*, 684 F.3d 564, 579 (5th Cir. 2012). As a result, the petitioner's due process claims lack merit.

The petitioner's claim that his counsel substitute provided ineffective assistance lacks merit. A prisoner does not have a constitutional right to counsel in a disciplinary hearing. *Wolff v. McDonnell*, 418 U.S. 539, 570 (1974). Because the petitioner does not have the right to be appointed counsel or counsel substitute, he may not complain about the adequacy of his counsel substitute's performance.

The petitioner's ADA claims are not cognizable in a habeas proceeding because they do not impact the fact or duration of the petitioner's confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (petition for writ of habeas corpus is the appropriate means for a prisoner to challenge the fact or duration of his confinement); *Richardson v. Fleming*, 651 F.2d 366, 372 (5th Cir. 1981) (a civil rights action is an appropriate means for recovering damages resulting from illegal administrative procedures or the conditions of confinement). If the petitioner wishes to pursue the ADA claims, he may do so by filing a civil action.

Additionally, in this case, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). If the petition was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling.

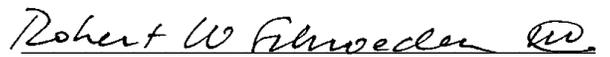
Slack, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. See *Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

The petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by the petitioner are not novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability.

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 recommendation. A certificate of appealability will not be issued.

SIGNED this 12th day of April, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE