

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

EARNEST HANEY,

Petitioner,

v.

Civil Action No. 2:19CV684

J. ANDREWS, Warden,

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241, ECF No. 1, and Respondent's Motion to Dismiss. ECF No. 5. Petitioner is serving a 180-month sentence for Possession and Distribution of Child Pornography. ECF No. 1 at 1.

Petitioner is challenging a March 3, 2019 incident report which charged Petitioner with a violation of BOP disciplinary code 110, "refusing drug/alcohol test." *Id.* at 18. Petitioner claims his due process rights were violated when he was not provided a copy of the Discipline Hearing Officer's written report within the 15-day time frame. *Id.* at 2-3. Petitioner seeks his good conduct time be reinstated and that all relevant incident reports be expunged. *Id.* at 15.

The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation entered on December 7, 2020, the Magistrate Judge recommended the motion to dismiss be granted, and the petition be denied and dismissed with prejudice. ECF No. 14. The parties were advised of their right to file written objections to the Report and

Recommendation. On February 16, 2021, Petitioner filed objections to the Report and Recommendation. Respondent has not responded to Petitioner's objections and the time to do so has expired.

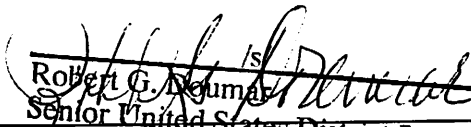
The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed December 7, 2020. It is, therefore, **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 5, is **GRANTED**, and the Petition, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of Respondent

Finding that the basis for dismissal of Petitioner's § 2241 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Final Order to Petitioner and to counsel of record for Respondent.

It is so **ORDERED**.


~~Robert G. Doumar~~
~~Senior United States District Judge~~
ROBERT G. DOUMAR
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March , 2021