

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

SYDNEY SCALES,

Petitioner,

v.

Civil Action No. 2:08cv72

WARDEN WAYNE A. PHILLIPS,

Respondent.

ORDER

It will be recalled that on January 5, 2009, Magistrate Judge John S. Kaull filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Petitioner filed his objections to the Magistrate Judge's Report and Recommendation on January 12, 2009.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition, filed pursuant to 28 U.S.C. §2241, wherein Petitioner requests that the Court grant him one year off of his sentence for his successful completion of the Residential Drug Abuse Treatment Program, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation, as was the Respondent's Motion to Dismiss, the Petitioner's Motion for Summary Judgment, and the Petitioner's Motion for Immediate Injunctive Relief. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action.

Upon review of the Petitioner's objections, the Court finds that the Petitioner has not raised any issues that were not already fully considered and addressed by Magistrate Judge Kaull. As more fully set forth in Magistrate Judge Kaull's Report and Recommendation, the Court finds that regulation at issue, that is the regulation stating that, at the director's discretion, inmates convicted of felonies involving the carrying, possession or use of a firearm are not eligible for early release, is a valid regulation. Further, the Court finds that when an individual is convicted of a drug offense and receives a two-level enhancement for possession of a firearm, he or she is convicted of a felony involving the possession of a firearm. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that Respondent's Motion to Dismiss (Docket #6) shall be, and the same hereby is, **DENIED** in that it requests dismissal for failure to exhaust administrative remedies, because the discretion to grant early release rests solely with the BOP, and because the issues raised in the petition are not yet ripe for adjudication. It is further

ORDERED that the Petitioner's Motion for Summary Judgment (docket #18) shall be, and the same hereby is, **DENIED**. It is further

ORDERED that the Petitioner's Application for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241 shall be, and the same hereby is, **DENIED** and **DISMISSED with prejudice** for those reasons stated herein and in the Report and Recommendation. It is further

ORDERED that the Petitioner's Motion for Immediate Injunctive Relief (docket #19) shall be, and the same hereby is, **DENIED as moot**. It is further

ORDERED that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk shall enter judgment for the Respondent. It is further

ORDERED that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: January 23, 2009

/s/ Robert E. Maxwell
United States District Judge