

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

LONNIE D. MORRIS,

Petitioner,

v.

Civil Action No. 5:10CV45
(STAMP)

KUMA J. DEBOO,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE AND
GRANTING PETITIONER'S MOTION TO DISMISS CLAIM

I. Background

On April 8, 2010, Lonnie D. Morris, an inmate at FCI Gilmer, filed a pro se¹ petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The case was referred to United States Magistrate Judge John S. Kaul for initial review and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09.

The petitioner asserts that the Bureau of Prisons ("BOP") failed to comply with its own rules and regulations with regard to computing his security classification score. In support, he states that the BOP improperly considered a 28 year old AWOL warrant and improperly counted a dismissed charge of aggravated battery with a firearm in determining the severity of violence from his criminal history. The petitioner believes that, as a result, he is unable

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1341 (9th ed. 2009).

to transfer to a facility closer to his home. As relief, the petitioner seeks that the alleged improper records be expunged from his file and a transfer to FCI Oxford.

The magistrate judge issued a report and recommendation recommending that the petitioner's petition be denied and that this case be dismissed without prejudice to the petitioner's right to re-file his claim as a civil rights action. The magistrate judge advised the parties that, pursuant to 28 U.S.C. § 636(b)(1)(C), any party may file written objections to his proposed findings and recommendations within fourteen days after being served with a copy of the magistrate judge's recommendation. The parties filed no objections. Instead, the petitioner filed a motion to dismiss his claim, in which he agreed with the magistrate judge's report and recommendation. For the reasons set forth below, this Court affirms and adopts the magistrate judge's report and recommendation, as submitted and without objection, and grants the petitioner's motion to dismiss claim.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendations permits the district court to review the recommendation under the standards that the district court believes

are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Here, no party filed objections. Accordingly, this Court reviews the report and recommendation of the magistrate judge for clear error.

III. Discussion

A § 2241 motion is used to attack the manner in which a sentence is executed. See Preiser v. Rodriguez, 411 U.S. 475, 499-500 (1973). This Court, therefore, agrees with the magistrate judge, that, because the petitioner's claim does not relate to the fact or length of confinement, but instead relates to the conditions of his confinement, the petitioner should have filed a civil rights action rather than a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Accordingly, the petitioner's petition is DENIED, his motion to dismiss claim is GRANTED, and this case is DISMISSED WITHOUT PREJUDICE.

IV. Conclusion

For the reasons set forth above, this Court finds that the magistrate judge's recommendation is not clearly erroneous and hereby AFFIRMS and ADOPTS the report and recommendation of the magistrate judge. The petitioner's motion to dismiss claim is GRANTED. Accordingly, it is ORDERED that this case be DISMISSED WITHOUT PREJUDICE and STRICKEN from the active docket of this Court.

Under Wright v. Collins, 766 F.2d 841, 845 (4th Cir. 1985), the petitioner's failure to object to the magistrate judge's proposed findings and recommendation bars the petitioner from appealing the judgment of this Court as to the matters addressed in the magistrate judge's report and recommendation.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se plaintiff by certified mail and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: July 30, 2010

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE