

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

MICHAEL MAZZARA,

Petitioner,

v.

Civil Action No. 5:18CV117
(STAMP)

FREDERICK ENTZEL, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Procedural History

The pro se¹ petitioner, Michael Mazzara, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1. The petitioner is currently incarcerated at FCI Hazelton in Bruceton Mills, West Virginia. In his petition, petitioner alleges that his custody classification score has been improperly calculated. ECF No. 1 at 5. Accordingly, petitioner maintains that although he is currently scored at a level 19, his actual score should be 9. Id. For relief, petitioner is requesting that this Court order the Federal Bureau of Prisons ("BOP") to properly calculate his custody classification and transfer him to the appropriate level facility. ECF No. 1 at 8.

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1416 (10th ed. 2014).

This civil action was referred to United States Magistrate Judge James E. Seibert under Local Rule of Prisoner Litigation Procedure 2, and then reassigned to United States Magistrate Judge James P. Mazzone. Magistrate Judge Mazzone issued a report and recommendation (ECF No. 24) recommending that the respondent's motion to dismiss or for summary judgment (ECF No. 16) be granted and the petitioner's petition (ECF No. 1) be denied and dismissed without prejudice subject to petitioner's right to file a Bivens² action. The petitioner did not file objections to the report and recommendation. For the following reasons, this Court affirms and adopts the report and recommendation in its entirety.

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. As to findings where no objections were made, such findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). Because the petitioner did not file any objections to the report and recommendation, the magistrate judge's findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

²Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).

III. Discussion

In his report and recommendation, the magistrate judge correctly noted that in the instant case, the petitioner does not attack the execution of his sentence, but instead alleges that the BOP is improperly or unfairly calculating his custody classification, which in turn, causes him to be housed in a higher security facility. ECF No. 24 at 10. The magistrate judge determined that petitioner's claims are not in any way related to the execution of a sentence but instead relate solely to the conditions of his confinement. Id. Upon review, the magistrate judge, while noting that petitioner's argument that the BOP has violated the Accardi Doctrine³ is misguided, concluded that the petitioner's claims should have been raised pursuant to a civil rights complaint. Id. Thus, the magistrate judge recommended that the petitioner's petition (ECF No. 1) be denied and dismissed without prejudice subject to petitioner's right to file a Bivens action. ECF No. 24 at 11.

Upon review, this Court finds no clear error in the determinations of the magistrate judge and thus upholds his recommendation.

³See United States ex rel. Accardi v Shaughnessy, 347 U.S. 260 (1954).

IV. Conclusion

For the reasons set forth above, the report and recommendation of the magistrate judge (ECF No. 24) is AFFIRMED and ADOPTED in its entirety. The respondent's motion to dismiss or for summary judgment (ECF No. 16) is GRANTED. Accordingly, the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (ECF No. 1) is DENIED and DISMISSED WITHOUT PREJUDICE subject to petitioner's right to file a Bivens action.

This Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action would result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

It is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se petitioner 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 25, 2019

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