

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

RICHARD VILLAR,

Petitioner,

v.

Civil Action No. 5:19CV207
(STAMP)

FCI GILMER, Warden,

Respondent.

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

I. Procedural History

The pro se¹ petitioner, Richard Villar ("Villar"), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1. Petitioner is a federal inmate incarcerated at FCI Gilmer in Glenville, West Virginia. For relief, petitioner seeks an emergency recalculation of good conduct time under the First Step Act. ECF No. 1 at 8.

This civil action was referred to United States Magistrate Judge James P. Mazzone under Local Rule of Prisoner Litigation Procedure 2. Magistrate Judge Mazzone issued a report and recommendation (ECF No. 7) recommending that the petitioner's petition (ECF No. 1) be denied and dismissed as moot. ECF No. 7 at 3. The petitioner did not file objections to the report and

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).

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).

III. Discussion

In his report and recommendation, the magistrate judge correctly noted that in the instant case, "[w]hen Petitioner filed his habeas petition, the BOP inmate locator indicated that his projected release date was October 27, 2020. ECF No. 7 at 2. The magistrate judge then determined that "[i]t has now been updated to reflect a release date of July 22, 2020." Id. Accordingly, the magistrate judge properly concluded that petitioner's good conduct time has been recalculated pursuant to the First Step Act, and the relief that he was requesting has been granted without court intervention. Id. Therefore, the magistrate judge recommended

that the petitioner's petition (ECF No. 1) be dismissed as moot Id. at 3.

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

IV. Conclusion

For the reasons set forth above, the report and recommendation of the magistrate judge (ECF No. 7) is AFFIRMED and ADOPTED in its entirety. Accordingly, the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (ECF No. 1) is DISMISSED AS MOOT. Further, the petitioner's motion for leave to proceed in forma pauperis (ECF No. 2) and motion to send copies of the pleadings to this Court electronically (ECF No. 6) are DENIED AS MOOT.

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: November 6, 2019

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