

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

VINCENT MARTINEZ,

Petitioner,

v.

Case No. 18-C-210

BRIAN FOSTER,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DISMISSING PETITION**

Petitioner Vincent Martinez filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On February 21, 2018, Magistrate Judge David E. Jones screened his petition and filed a Report and Recommendation, in which he recommends that the petition be dismissed. Petitioner filed an objection to the Report and Recommendation on March 8, 2018. He also filed motions to extend the deadline to file objections to the Report and Recommendation and to supplement the record. For the following reasons, the court adopts Judge Jones' Report and Recommendation in full.

Petitioner asserts his Sixth Amendment right to the assistance of counsel was unconstitutionally forfeited when the Fond du Lac County Circuit Court refused to appoint a fifth court-appointed lawyer for Petitioner's state criminal proceedings and only appointed standby counsel. Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 requesting that this court appoint counsel in his ongoing state criminal matter. As explained in Magistrate Judge Jones' Report and Recommendation, Petitioner is not entitled to relief pursuant

to 28 U.S.C. § 2241 because he is not challenging the legality of his custody, as required by 28 U.S.C. § 2241(c)(3). Though Petitioner may seek damages or an injunction for alleged constitutional violations under a statute that authorizes such relief, *Moran v. Sondalle*, 218 F.3d 647, 651 (7th Cir. 2000), he may not proceed under 28 U.S.C. § 2241.

Accordingly, the court adopts the Report and Recommendation of the Magistrate Judge and orders the petition dismissed. Petitioner's motion to extend the deadline to file objections to the Report and Recommendation (ECF No. 12) is **DENIED as moot** and his motion to supplement the record (ECF No. 13) is **DENIED**. A Certificate of Appealability is denied for the reasons recommended. The Clerk is directed to enter judgment forthwith.

SO ORDERED this 9th day of March, 2018.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court