

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TERESA CURRIE,)	
)	
<i>Petitioner</i>)	
v.)	<i>Civil No. 00-18-P-H</i>
)	
COMMISSIONER, MAINE)	
DEPARTMENT OF CORRECTIONS,)	
)	
<i>Respondent</i>)	

RECOMMENDED DECISION ON PETITION FOR WRIT OF HABEAS CORPUS

The *pro se* petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on the ground that she was transferred from a halfway house to prison because false evidence was introduced against her, in violation of due process, during an administrative hearing. Petition Under 28 USC § 2254 for Writ of Habeas Corpus by a Person in State Custody (“Petition”) (Docket No. 2) at 5. The respondent has moved to dismiss the petition and I recommend that the motion be granted, for although the petitioner has set forth a potentially viable civil rights claim pursuant to 42 U.S.C. § 1983, she may not challenge the condition of her incarceration under the habeas corpus statute.

I. Background

On November 16, 1998 the petitioner pled guilty to the following offenses: (i) two counts of Class C acquiring drugs by deception in violation of 17-A M.R.S.A. § 1108; and (ii) two counts of Class D attempting to acquire drugs by deception in violation of 17-A M.R.S.A. § 1108. Judgment and Commitment, *State of Maine v. Theresa Currie*, CR-98-393, Maine Superior Court (Cumberland County) at 1. On that same day the petitioner was sentenced to: (i) concurrent split

sentences of five years, with all but nine months and one day suspended, on Counts I and II, and (ii) concurrent nine month and one day terms on Counts III and IV to be served concurrently with the split sentences in Counts I and II. *Id.* The sentences were to run consecutively to a sentence of fifteen months that the petitioner had received a few weeks earlier resulting from a probation violation in another unrelated criminal matter. *Id.*; Docket Record, *State of Maine v. Theresa B. Currie*, CR-97-733, Maine Superior Court (Cumberland County) at 4.

On November 20, 1998 the petitioner began serving her fifteen-month sentence at the Maine Correctional Center in South Windham. Response to Petition For Writ of Habeas Corpus Pursuant To 28 U.S.C. 2254 Executed On January 3, 2000 And Filed On January 11, 2000 (“Response”) (Docket No. 5) at 3.¹ Then on January 4, 1999 the petitioner was transferred to the Charleston Correctional Facility in Charleston (“Charleston”). *Id.* Nine months later the petitioner’s fifteen-month sentence was discharged and she began to serve the concurrent sentences imposed on November 16, 1998. *Id.*

On November 18, 1999, the petitioner was transferred from Charleston to the Volunteers of America Center (the “halfway house”) in Portland. State of Maine, Department of Corrections Incident Report, Petitioner’s Statement at 1. The following day, however, the petitioner tested positive for a prohibited, non-prescribed scheduled drug. State of Maine, Department of Corrections Incident Report (“Incident Report”) at 4-5. Consequently, she was sent back to the Maine Correctional Center. *Id.*

On December 3, 1999 the petitioner went before the Maine Department of Corrections

¹Although there is no record support for this statement, the petitioner does not dispute the accuracy of the respondent’s factual assertion. Therefore, I will consider the statement as true in light of the absence of any contrary evidence in the record.

Disciplinary Committee (“Committee”) for a hearing concerning the November 19, 1999 positive drug test. Disciplinary Hearing: Summary and Findings (“Hearing”) at 1. During that hearing, evidence was presented that the petitioner on November 19th had been administered two separate drug tests. *Id.* The first test proved positive, while the second test came back negative. *Id.* at 2-3; Maine Department of Corrections, Appeal From Disciplinary Committee Decision at 1, 5. Based upon this evidence, the Committee found the petitioner guilty of the offense of use of a non-prescribed prescription drug in violation of the disciplinary code whereupon she was transferred back to Charleston. Hearing at 2-4; Response at 4.

II. Discussion

The petitioner contends that the Committee violated her due process rights by failing to take into account the second drug test administered on November 19th before reaching its conclusion that she had violated the disciplinary code. Petition at 5. She further asserts that her liberty interest in a transfer to the halfway house was denied as a result of the Committee’s violation of her due process rights. *Id.*

As a threshold issue, the respondent contends that the petitioner may not press her claim under the federal habeas corpus statute. Response at 9. Specifically, the respondent argues that a challenge to the conditions of a prisoner’s confinement may only be brought by way of a civil rights action and not by way of a petition for habeas corpus relief. *Id.* Therefore, the respondent contends, because the petitioner has challenged only the conditions of her confinement, and not the length or duration of her incarceration, her writ of habeas corpus must be dismissed. *Id.*

In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Supreme Court held that state prisoners who seek speedier releases from their confinement, based solely upon a challenge to the fact or

duration of their imprisonment, may do so only by way of a writ of habeas corpus. *Id.* at 500; *Wolff v. McDonnell*, 418 U.S. 539, 554 (1974). The Court further pointed out that habeas corpus relief is not an available remedy for challenges to the conditions of a prisoner's confinement if the challenge is unrelated to the fact or length of the prisoner's custody. *Wolff*, 418 U.S. at 554; *Preiser*, 411 U.S. at 489-99.

In this case, the petitioner is neither challenging the fact of her confinement nor the length of her incarceration, but rather her placement at Charleston instead of the halfway house. Petition at 5. Indeed, she asserts in her ground for habeas relief that because “[p]rison confinement is far more restrictive than the halfway house,” she is entitled to protect her liberty interest in a transfer. *Id.* In light of this and the Supreme Court's decision in *Preiser*, the petitioner's claim for relief here must be asserted, if at all, as a civil rights claim pursuant to 42 U.S.C. § 1983 and not as a petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Furthermore, this case is distinguishable from *Brennan v. Cunningham*, 813 F.2d 1 (1st Cir. 1987). In that case, a prisoner participating in a work release program in a halfway house was sent back to prison because he was considered a safety threat to the local community. *Id.* at 3-4. Following his return to prison, the prisoner sought, through a habeas petition, to be reinstated in the work release program at the halfway house and to be granted a parole hearing following his successful completion of the program. *Id.* at 3. The government challenged the appropriateness of the prisoner's use of the federal habeas corpus process. *Id.* at 4. The First Circuit rejected the government's argument concluding that the prisoner's claim was “properly viewed” as a challenge to the fact or length of his confinement because the work release program at the halfway house was “closely connected” to the prisoner's impending release. *Id.* Specifically, the First Circuit found that

only those inmates who were within eight months of parole were considered for admission to the work release program at the halfway house. *Id.* Consequently, the “intimate connection between the halfway house program and [a prisoner’s] ultimate parole” made the prisoner’s challenge to his transfer a claim based upon the length of this confinement, and not merely an objection to its conditions. *Id.* at 4-5.

Here, unlike *Brennan*, there is no evidence that admission into the halfway house program in Portland was contingent upon the petitioner’s eligibility for parole. Moreover, the petitioner has not advanced such an argument in her petition, and there is no evidence in the record to support such a conclusion. Indeed, by her own assertion the petitioner claims only to have been denied her “liberty interest” in confinement in the halfway house as opposed to confinement in prison because “[p]rison confinement is far more restrictive than the halfway house”). Petition at 5.

For these reasons, the petitioner’s present habeas petition falls squarely within *Preiser* and, accordingly, must be denied. *See also Pischke v. Litscher*, 178 F.3d 497, 499-500 (7th Cir.) (habeas corpus petition cannot be used merely to challenge prisoner’s location of custody), *cert. denied*, 120 S. Ct. 380 (1999). Of course, as indicated earlier, the petitioner may choose to assert her place-of-confinement claim pursuant to 42 U.S.C. § 1983. *See, e.g., Dominique v. Weld*, 73 F.3d 1156, 1156-57 (1st Cir. 1996) (claim that prisoner possessed liberty interest in work release program brought pursuant to 42 U.S.C. § 1983); *Parenti v. Ponte*, 727 F.2d 21, 22 (1st Cir. 1984) (prisoner brought claim pursuant to 42 U.S.C. § 1983 for violation of due process as a result of transfer to prison’s segregation unit without hearing).

III. Conclusion

Accordingly, I recommend that the petition for a writ of habeas corpus be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 16th day of March, 2000.

David M. Cohen
United States Magistrate Judge

CURRIE v. CORRECTIONS, ME COMM Filed: 01/11/00 Assigned to: JUDGE D. BROCK HORNBY Demand: \$0,000 Nature of Suit: 530 Lead Docket: None Jurisdiction: Federal Question Dkt# in other court: None Cause: 28:2254 Petition for Writ of Habeas Corpus (State) THERESA CURRIE THERESA CURRIE plaintiff [COR LD NTC pse] [PRO SE] MAINE CORRECTIONAL CENTER P.O. BOX 250 SOUTH WINDHAM, ME 04082 v. CORRECTIONS, ME COMM CHARLES K. LEADBETTER defendant 289-3661 [COR LD NTC] ASSISTANT ATTORNEY GENERAL STATE HOUSE STATION 6 AUGUSTA, ME 04333 626-8800