

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DANIEL B. SEWARD,)
)
 Plaintiff)
)
 v.) Civil No. 03-21-B-S
)
 MARK CATON, et al.,)
)
 Defendants)

RECOMMENDED DECISION

Petitioner Daniel Seward seeks to invoke this court’s jurisdiction pursuant to 28 U.S.C. § 2254/§ 2241 in order to obtain habeas corpus relief from his allegedly unlawful detention by the State of Maine. (Docket No.1.) He is asking that this court order his immediate release. Following the State’s expedited response filed March 10, 2003, I now recommend that the court summarily **DISMISS** the petition.

Factual Background

Seward, a state prisoner serving a sentence imposed by the Maine Superior Court, has had a difficult last few months at Downeast Correctional Facility and the Maine State Prison. His contact with this court began on February 5, 2003, when he filed a petition for habeas corpus relief maintaining that officials of the Maine Department of Corrections were unlawfully holding him beyond his projected release date of January 14, 2003. Seward’s release date of January 14, conditionally established on December 9, 2002, had been contingent upon Seward’s continued good behavior. The reason the release had been termed conditional was that Seward had a prior disciplinary board

proceeding resulting in the loss of ten days good time and those ten days had been restored contingent upon good behavior.

Officials at the Downeast Correctional Facility maintain that on January 10, 2003, Seward violated the facility's smoking policy. This violation resulted in the "automatic" and immediate re-computation of his release date to January 24, 2003, because the ten days conditionally restored were again taken away. Additionally the corrections staff began a formal disciplinary proceeding in connection with the January 10 incident. Following a few procedural skirmishes, the disciplinary hearing in connection with the January 10 incident was finally held on January 21, 2003, and the recommended disposition was twenty days loss of good time, all but ten days suspended. Seward's release date became February 3, 2003. This is how matters stood at the time Seward prepared and filed his initial § 2254/§ 2241 petition.

On January 30, 2003, another incident occurred at Downeast, this one relating to medications and an apparent allegation that Seward became involved as an accessory to trafficking in prison contraband (hoarding or stealing medications). On February 1, 2003, another disciplinary hearing was convened and Seward lost an additional forty days of good time, representing the ten days previously suspended plus thirty additional days arising from the January 30 incident. On February 6, 2003, Seward was removed to the Maine State Prison and as of February 19, 2003, he was serving the remainder of the sentence at the maximum security unit. It appears that Seward's current release date is March 15, 2003, and that he will be released on March 14 because March 15 is a Saturday and prisoners are released on business days.

Discussion

In essence Seward maintains that his due process rights under the United States Constitution were violated because the State of Maine did not follow administrative regulations and procedures properly when imposing the various loss of good time sanctions against him. His constitutional claim would necessarily be grounded in the line of cases arising under Wolff v. McDonnell, 418 U.S. 539 (1974) (Nebraska inmates' challenge to the decision of prison officials to revoke good time credits without adequate procedures, concluding that a § 1983 plaintiff could get declaratory relief vis-à-vis procedures but not the restoration of good time credits) and Meacham v. Fano, 427 U.S. 215 (1976) (Massachusetts inmates' challenge to their transfers from medium security prison to a maximum security facility). Those cases, of course, arise under 42 U.S.C. § 1983, not as federal habeas corpus petitions. Wolff v. McDonnell, 418 U.S. at 579 (“[T]he demarcation line between civil rights actions and habeas petitions is not always clear. The Court has already recognized instances where the same constitutional rights might be redressed under either form of relief.”).

It seems clear that if Seward is seeking his immediate or speedier release he must proceed under § 2254 or § 2241 of title 28, most likely the former. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973) (“[W]e hold today that when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.”). Whether Seward seeks the kind of relief provided by the habeas statutes or that provided by the civil rights statute he must exhaust the available remedies. See 28 U.S.C. § 2254(b)(1) (requiring

exhaustion of state remedies prior to bringing an “application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court”); 42 U.S.C. § 1997e(a) (requiring exhaustion of available administrative remedies by prisoners confined in a correctional facility for all actions “respecting prison conditions under section 1983”); Preiser, 411 U.S. at 491- 92 (“The rule of exhaustion in federal habeas corpus actions is rooted in considerations of federal-state comity. ... It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.”); Dickerson v. Louisiana, 816 F.2d 220, 225 (5th Cir. 1987) (“Despite the absence of an exhaustion requirement in the statutory language of section 2241(c)(3), a body of case law has developed holding that although section 2241 establishes jurisdiction in the federal courts to consider pre-trial habeas corpus petitions, federal courts should abstain from the exercise of that jurisdiction if the issues raised in the petition may be resolved either by trial on the merits in the state court or by other state procedures available to the petitioner.”).

With one possible theoretical exception relating to the initial restoration of good time credits in January, 2003, the State concedes that there is no state post-conviction process pursuant to 15 M.R.S.A. § 2121, et. seq. and the Maine Rules of Criminal Procedure available to Seward. Further the State concedes that Seward remains in custody at this juncture and therefore his petition is not moot. However, the State does argue, without citation to any authority, that Seward has procedurally defaulted his claim under state law because he failed to file a petition for review of final agency action under Rule 80C of the Maine Rules of Civil Procedure and 5 M.R.S.A. § 11002(3) within 30

days of the final administrative decision. There is authority that indicates that this would be the necessary path for exhaustion of Seward's claims. See Fleming v. Comm'r Dep't Corr., 2002 ME 74, ¶¶ 9-12, 795 A.2d 692,695-96.

Upon reading Fleming, I agree with the State's assessment that Rule 80C and 5 M.R.S.A. § 11002(3) provide the vehicles for state judicial review of Seward's claim. However, whether or not Seward is procedurally defaulted from bringing such a petition is entirely a matter of state law and would have to be determined by the state courts in the first instance. I have no reason to doubt the State Solicitor's representation that in all probability the state courts would not now entertain his petition. If there is adjudication by the state court that Seward's claim is procedurally defaulted under state law, and Seward then returned to this court, the determination would then become whether or not that procedural default was an independent and adequate state court ground precluding federal habeas review. See Lee v. Kemna, 534 U.S. 362, 375 (2002); Moore v. Ponte, 186 F.3d 26, 31 (1st Cir.1999); see also O'Sullivan v. Boerckel, 526 U.S. 838, 853-854 (1999)(Stevens, J. dissenting) ("If we allowed state prisoners to obtain federal review simply by letting the time run on adequate and accessible state remedies and then rushing into the federal system, the comity interests that animate the exhaustion rule could easily be thwarted.").

What is clear on this record is that the State court has not had any opportunity to consider Seward's claims of a constitutional deprivation. While Seward may no longer be eligible for state relief, that situation has been created by his own inaction in failing to give the State the opportunity to consider his claim. The exhaustion rule's integrity would be eviscerated were this court to do anything other than summarily dismiss this

petition because Seward has not attempted to exhaust his remedies. Accordingly I recommend that the court **DISMISS** this petition.

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 of 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.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated March 13, 2003.

ADMIN, HABEAS

**U.S. District Court
District of Maine (Bangor)
CIVIL DOCKET FOR CASE #: 1:03-cv-00021-GZS
Internal Use Only**

SEWARD v. CATON, et al
Assigned to: Judge GEORGE Z. SINGAL
Referred to: MAG. JUDGE MARGARET J.
KRAVCHUK
Demand: \$0
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 28:2254 Petition for Writ of Habeas Corpus
(State)

Date Filed: 02/05/03
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Plaintiff

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Defendant

MARK CATON

SCOTT JONES