BLD-217 NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1350

DANIEL WERT,
Appellant

v.

WARDEN ALLENWOOD USP

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 1-18-cv-00963)
Chief District Judge: Christopher C. Conner

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
June 20, 2019

Before: AMBRO, KRAUSE and PORTER, Circuit Judges

(Opinion filed: July 10, 2019)

OPINION*

PER CURIAM

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appellant Daniel Wert appeals from an order of the District Court dismissing his petition for writ of habeas corpus, 28 U.S.C. § 2241, for lack of jurisdiction. For the reasons that follow, we will summarily affirm.

Haines v. Kerner; construe as Bivens action

Wert, a federal prisoner, filed a § 2241 petition for writ of habeas corpus, challenging the sanctions he received for a Code 112 violation (Use Of Any Narcotic, Marijuana, Drugs, Alcohol, Intoxicants, Or Related Paraphernalia, Not Prescribed For The Individual By Medical Staff) on the ground that he was deprived of his right to present a full defense to the charges. The incident report issued to Wert states that officials at USP Allenwood received a report from Pharmatech Laboratories, which indicated that Wert's urine sample – collected on July 19, 2017 – tested positive for Buprenorphine (Suboxone); and that a review of his medical records showed that he had not been prescribed that medication (which, we note, is used to treat an opioid addiction). Wert appeared before the Unit Disciplinary Committee and stated: "I've never done that before in my life." The Unit Disciplinary Committee referred the charge to a Disciplinary Hearing Officer ("DHO"), recommending that, if found guilty, the sanctions against Wert include the loss of 40 days of good conduct time.

At his disciplinary hearing on August 7, 2017, Wert waived his right to a staff representative, and his right to present witnesses. He gave this statement: "I don't do drugs." Wert was found guilty of violating Code 112 based on the weight of following evidence: the Pharmatech Laboratories toxicology report; a Chain of Custody Form

signed by Wert indicating that the urine sample which allegedly tested positive for Buprenorphine (Suboxone) was the same urine sample he had provided; and a memorandum from a prison health official stating that Wert had not been prescribed this drug or any drug that would cause this result. The report states: "The DHO believed the information provided by the staff member involved in this case, as they derived no known benefit by providing false information." The DHO imposed the following sanctions: Disciplinary Segregation – 30 days; Loss of Telephone Privileges – 8 months; and Loss of Visitation – 8 months.

Wert timely appealed the misconduct and sanctions at the Regional level, contending that he had never used Buprenorphine (Suboxone) "in [his] entire life," that he had not been provided with a copy of the Pharmatech Laboratories toxicology report on which the DHO had relied; and that the "level the DHO said I tested positive for is not high enough to justify a positive saturation level conviction." Wert asked that his urine sample be retested, alleging "[p]ossible cross-contamination due to prison negligence;" and that the officer who administered the urinalysis "did not change his gloves prior to handling [Wert's] cup." On September 25, 2017, the Regional Director denied Wert's appeal, concluding that there "were no due process concerns or deviations from policy;" that the decision of the DHO was based on the greater weight of the evidence; and that the sanctions imposed were not disproportionate to the misconduct.

Wert then appealed at the national level. He raised the same arguments, and requested retesting of the urine sample and copies of all pertinent lab reports. While that appeal was pending, Warden L.J. Oddo approved Wert's request to have an independent drug test conducted (at Wert's expense), and a hair follicle specimen was collected from Wert by ExperTox Laboratories on December 11, 2017. In a decision dated December 20, 2017, the National Inmate Appeals Administrator denied Wert's appeal, concurring with the response provided by the Regional Director. The next day, on December 21, 2017, the test results pertaining to Wert's hair follicle were "transmitted" (according to the report itself), and the results for the presence of Buprenorphine, as certified by a physician, were "Negative."[1]

On May 8, 2018, Wert filed his § 2241 petition in the United States District Court for the Middle District of Pennsylvania, alleging a violation of his procedural due process rights in connection with the Code 112 misconduct and sanctions imposed. Wert alleged that he is actually innocent of the misconduct based on the ExperTox Laboratories toxicology report, and thus, to avoid a miscarriage of justice, his sanctions should be vacated and the misconduct expunged from his prison records. In addition, Wert noted in the § 2241 petition that he attempted to reopen administrative proceedings based on the ExperTox Laboratories report. He asserted that he sent a copy of the exculpatory lab

[1] Wert asserted that a hair follicle will show the presence of the subject drug for up to six months. The following note appears under the Test Comment section of the ExperTox Laboratories toxicology report: "Underarm hair tested (Up to 6 month timeframe)".

report to National Inmate Appeals on January 17, 2018. He further asserted that he spoke to Warden Oddo about the exonerating hair follicle report, and Warden Oddo advised him to contact the Regional Director. He asserted that he filed an additional appeal with the Northeast Regional Office, in which he argued that he was actually innocent of the misconduct based on the ExperTox Laboratories toxicology report, but that the appeal was denied on March 11, 2018 based "on a timeliness issue."

The respondent, Warden Oddo, answered Wert's § 2241 petition, arguing that it should be dismissed for lack of subject matter jurisdiction because the petition did not challenge either the fact or length of Wert's sentence or confinement. The District Court agreed, and, in an order entered on January 11, 2019, dismissed Wert's § 2241 petition.

Wert appeals. We have jurisdiction pursuant to 28 U.S.C. § 1291. Our Clerk granted Wert leave to appeal in forma pauperis and advised him that the appeal was subject to summary dismissal under 28 U.S.C. § 1915(e)(2)(B) or summary action under Third Cir. LAR 27.4 and I.O.P. 10.6. Wert was invited to submit argument in support of the appeal; he has not done so.

We will summarily affirm the order of the District Court dismissing Wert's § 2241 habeas petition because no substantial question is presented by the appeal, Third Circuit LAR 27.4 and I.O.P. 10.6. A federal prisoner's procedural due process challenge to a disciplinary action that results in the loss of good conduct time is properly brought under 28 U.S.C. § 2241, because the action could affect the duration of the prisoner's sentence.

Actual Innocence

See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973) (challenge that affects fact or duration of confinement must be brought in habeas petition). Where the fact or duration of confinement is implicated, certain procedural due process protections, including the right to present exculpatory evidence, apply. See Howard v. U.S. Bureau of Prisons, 487 F.3d 808, 812 (10th Cir. 2007) (citing Wolff v. McDonnell, 418 U.S. 539, 556 (1974); Superintendent, Massachusetts Correctional Inst. v. Hill, 472 U.S. 445, 454 (1985)).[2]

Wert's due process challenge, however, is not properly brought under § 2241 because it did not involve the loss of good conduct time. The DHO did not sanction Wert to any loss of good conduct time as result of the Code 112 violation. Because Wert was not sanctioned with the loss of good conduct time, the outcome of his habeas corpus petition does not affect the length or duration of his confinement in prison and, thus, does not trigger procedural due process protections. Wert has cited no legal authority for his argument that a prisoner's "actual innocence" of the misconduct constitutes an exception to the threshold habeas requirement of the loss of good conduct time, and we are aware of none.

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[2] In Howard, the prisoner, who had been sanctioned with the loss of good conduct time, argued that a videotape documenting an altercation would exonerate him, but the DHO refused to produce and review the videotape, in part, on the ground that prison staff are legally obligated to tell the truth and introducing any possible videotape evidence would thus not be exculpatory. Because critical facts relating to the prisoner's defense may have been recorded on the videotape, the Tenth Circuit Court of Appeals held that the DHO's refusal to produce and review the videotape violated the prisoner's procedural due process rights, referring to the agency's argument that prison staff are legally obligated to tell the truth as "Orwellian." 487 F.3d at 814.

To be clear, had the DHO followed the recommendation of the Unit Disciplinary Committee and sanctioned Wert to a loss of good conduct time (in any amount), the threshold requirement would be met and we could consider the novel question presented by Wert's petition, namely, whether the procedural due process requirements applicable under Wolff include the opportunity to have exculpatory evidence considered where the Warden himself approved independent testing but the results of the testing were not received until one day after the National Inmate Appeals Administrator rendered his adverse decision. For better or worse (from his perspective), Wert was not sanctioned with the loss of good conduct time and thus he cannot maintain this habeas corpus action.

Shulp v. Delo

here is NO Procedural bar for Actual Innocence Claim

For the foregoing reasons, we will affirm the order of the District Court dismissing Wert's § 2241 petition for writ of habeas corpus.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: July 10, 2019

DJF:TSJ:jmh

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DANIEL WERT,	:	**No. 1:CV-18-0963**
Petitioner	:	
	:	
v.	:	**(Conner, J.)**
	:	
WARDEN ODDO,	:	
Respondent	:	**Filed Electronically**

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Respondent Warden Oddo responds to the petition for writ of habeas corpus filed under 28 U.S.C. § 2241 by Petitioner Daniel Wert. The Court should dismiss Wert's habeas petition for lack of subject matter jurisdiction, because the petition does not challenge either the fact or length of Wert's sentence or confinement.

I. Procedural History

Wert is an inmate incarcerated at the United States Penitentiary in White Deer, Pennsylvania (USP Allenwood). (Doc. 1, Pet. at 1 of 17.) Wert's habeas petition, filed May 8, 2018, challenges disciplinary proceedings relating to an incident report that cites Wert for use of drugs not prescribed to him. (Id. at 3, 11, 12, 15, and 17 of 17.) Wert complains that he was unable to adequately defend himself before the DHO without a copy of the lab report used to find he committed the offense and that he had a lab test of his own performed that will "exonerate [him] of all wrong-doing.

(Id. at 15, 16 of 17.) As relief, Wert requests the Court issue an order directing "the BOP to vacate the DHO sanctions and to expunge the incident report and all related information from Petitioner's inmate file." (Id. at 17.)

On May 16, 2018, the Court issued an Order directing Respondent to answer the allegations of the petition within twenty-one days. (Doc. 3, Order.)

II. Factual Background

On July 19, 2017, Wert received an incident report after he submitted a urine sample that tested positive for Buprenorphine (Suboxone). (Doc. 1-1, Exhibits to Pet., at 1 of 20.) Wert was charged with use of any narcotic, marijuana, drugs, alcohol, intoxicants, or related paraphernalia not prescribed for the individual by medical staff. (Id.) The incident report was delivered to Wert on August 1, 2017. (Id.)

The next day, Wert appeared before the Unit Disciplinary Committee (UDC) regarding Incident Report 3016652. (Id.) Wert commented, "I've never done that before in my life." (Id.) The UDC Chairman referred the case to the DHO for further hearing with a recommendation that, "if found to have committed the prohibited acts. . . [Wert receive] 40 days DIS GCT, 60 days D/S, and 60 days loss of commissary." (Id.) Wert was advised of his rights before the DHO, waived his right to a staff representative, and waived his right to call witnesses. (Id., at 2 of

20.)

Wert appeared before the DHO on August 7, 2017 and denied the charges stating: "I don't do drugs." (Id.) Upon consideration of the evidence – including a lab report showing a positive urine result - the DHO found that Wert committed the prohibited act and sanctioned him to 30 days of disciplinary segregation, and loss of phone, visiting, and contact visiting for eight months. (Id. at 3 of 20.) Wert did not lose any good conduct time. (Id.)

III. Question Presented

Whether the Court should dismiss Wert's habeas petition for lack of subject matter jurisdiction because the petition does not challenge either the fact or length of Wert's sentence or confinement?

IV. Argument

This Court lacks subject matter jurisdiction over Wert's petition for writ of habeas corpus because the petition does not challenge either the fact or length of Wert's sentence or confinement. A writ of habeas corpus is a challenge to the execution of a federal sentence on the ground that the sentence is being executed "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The basic fact or duration of imprisonment is the "essence of habeas." Preiser v. Rodriguez, 411 U.S. 475-484, 498-99 (1973).

The Third Circuit has held that Section 2241 "confers habeas jurisdiction to hear the petition of a federal prisoner who is challenging not the validity but the execution of his sentence." Woodall v. Fed. Bureau of Prisons, 432 F.3d 235, 241 (3d Cir. 2005) (citing Coady v. Vaughn, 251 F.3d 480, 485 (3d Cir. 2001)). "When examining whether Preiser and its progeny require a claim to be brought under habeas, unless the claim would fall within the 'core of habeas' and require sooner release if resolved in the plaintiff's favor, a prison confinement action . . . is properly brought [pursuant to a civil rights action]." Leamer v. Fauver, 288 F.3d 532, 544 (3d Cir. 2002). "Thus, where a prisoner wishes to constitutionally challenge some aspect of the conditions of his confinement unrelated to the fact or duration of his detention, courts have repeatedly held that the writ of habeas corpus is not the proper vehicle for bringing this legal challenge." Landor v. Bledsoe, No. 1:12-CV-1331, 2012 WL 6011588, *12 (M.D. Pa., Nov. 6, 2012) (copy attached).

Wert challenges the sanctions imposed against him by the DHO after being found guilty using a drug that was not prescribed to him. (Doc. 1, Pet.) However, the DHO did not sanction Wert any loss of good conduct time as result of the incident report. (Doc. 1-1, Exhibits to Pet. at 3 of 20.) Because Wert was not sanctioned with loss of good conduct time, the outcome of his habeas petition does not affect the length or duration of his confinement in prison and, thus, does not trigger due-

process protection. See Alexander v. Ebbert, 2015 WL 1784627, slip op. at 2 (M.D. Pa. Apr. 20, 2015) ("Prisoners are entitled to due-process protection only when the disciplinary action results in the loss of good conduct time or when a penalty imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.") (quotations and citations omitted) (copy attached).

As a result, this Court should dismiss Wert's claims, which cannot be raised in a habeas petition because they do not challenge either the fact or length of his sentence or confinement. Alexander v. Ebbert, 2015 WL 1784627, slip op. at 2 (M.D. Pa. Apr. 20, 2015) (dismissing inmate habeas petition where the disciplinary record confirmed inmate did not lose any good conduct time) (copy attached); see also Levi v. Holt, 192 F. App'x. 158, 160 (3d Cir. 2006) (loss of various privileges "cannot be challenged under § 2241 because in no manner do they affect the fact or length of [an inmate's] sentence or confinement") (copy attached) (citing Leamer, 288 F.3d at 540-42); see also White v. Ebbert, 2016 WL 3027447, slip op. at 1 (M.D. Pa. May 26, 2016) (disciplinary segregation and loss of privileges had no impact on the fact or length of sentence or confinement) (copy attached). This Court lacks jurisdiction over Wert's habeas corpus petition, and should dismiss the petition.

V. Conclusion

This Court should dismiss Wert's habeas petition with a certification that any appeal would be frivolous, lacking in probable cause, and not taken in good faith.

Respectfully submitted,

DAVID J. FREED
United States Attorney

s/ Timothy Judge
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Dated: June 5, 2018

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Test Results

Date Results Transmitted: 2017-12-21 12:33 PM
Transmitted By: BW
Participant/Donor: DANIEL WERT
SSN/EID: 209190818
CCF/Specimen ID: A257230
Specimen Type: HAIR
Company: NATIONAL DRUG SCREENING
Location: NATIONAL DRUG SCREENING
Lab Account Number: 8091632

Reason for Test: OTHER
Date Specimen Collected: 2017-12-11
Laboratory: Expertox
Collection Site: UNKNOWN COLLECTION SITE
Collection Site Phone: 8775857366
Program: NONDOT
Date MRO Received CCF Copy 2:
Date Test Verified by MRO: 2017-12-21

Test Results

Panel - BUPRENORPHINE HAIR CONFIRMATION HFC9013

Drug	Results
Buprenorphine	NEGATIVE

MY DETERMINATION/VERIFICATION IS: **NEGATIVE**

Certified Medical Review Officer

David Nahin M.D.

Signature D. Nahin MD

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Melbourne, FL 32901
Phone: (321) 622-9959
Contact:

First Name: Daniel
Last Name: Wert
ID: 209-19-0818

Test Name: Buprenorphine
Profile: HFC9013
Media: Hair
Reason: Other

Specid: A257230
Acc #: 173470040
Collected: 12/11/2017 9:53 AM
Received: 12/13/2017 12:18 PM
Released: 12/20/2017 6:24 PM
Status: Complete

Drug/Test	Lab Result	Confirm Value	Screen Cutoff	Confirm Cutoff	Confirm Type
BUPRENORPHINE	Non-Detected		NA	10 pg/mg	LCMSMS

Test Comment:

Underarm hair tested (Up to 6 month timeframe)

Screen analysis by ELISA

The preceding result has been reviewed and is certified to be as reported. T.Quill (Certifying Scientist)

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DANIEL WERT,	:	**CIVIL NO. 1:18-CV-963**
	:	
Petitioner	:	**(Chief Judge Conner)**
	:	
v.	:	
	:	
WARDEN ODDO,	:	
	:	
Respondent	:	

MEMORANDUM

Presently pending before the court is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (Doc. 1), filed by petitioner Daniel Wert ("Wert"), an inmate confined at the United States Penitentiary, Allenwood, Pennsylvania ("USP-Allenwood"). Wert contends that his due process rights were violated in the context of a disciplinary hearing held at USP-Allenwood. For the reasons set forth below, the court will dismiss the habeas petition.

I. Background

On July 19, 2017, the health services department collected a urine sample from Wert and provided the sample to Phamatech Laboratories for testing. (Doc. 1 at 11; Doc. 1-1 at 1, Incident Report; Doc. 1-1 at 7). On August 1, 2017, the prison received a report from Phamatech Laboratories which indicated that Wert's urine sample tested positive for Buprenorphine (Suboxone). (Id.) Medical department staff reviewed Wert's medical records and determined that he was not on any prescribed medication that would cause a positive reading for Buprenorphine

(Suboxone). (Id.) As a result, on August 1, 2017, Wert was charged in Incident Report Number 3016652, with use of any narcotic, marijuana, drugs, alcohol, intoxicants, or related paraphernalia not prescribed for the individual by medical staff, a Code 112 violation. (Doc. 1 at 11; Doc. 1-1, Ex. 1, Incident Report; Doc. 1-1, Ex. 2, Discipline Hearing Officer Report). The incident report was delivered to Wert on August 1, 2017. (Id.)

On August 2, 2017, Wert appeared before the Unit Disciplinary Committee ("UDC"). (Doc. 1-1 at 1, Incident Report). Wert was advised of his rights, indicated that he understood his rights, and commented, "I've never done that before in my life." (Id.) Due to the seriousness of the offense, the UDC referred the matter to the Discipline Hearing Officer ("DHO") with a recommendation that sanctions be imposed. (Id.)

On August 7, 2017, Wert appeared before the Discipline Hearing Officer. (Doc. 1-1 at 2-4, Discipline Hearing Officer Report). During the August 7, 2017 hearing, the DHO confirmed that Wert received advanced written notice of the charges on August 1, 2017. (Id.) Wert was again advised of his rights before the DHO, waived his right to a staff representative, did not present any evidence, and did not request to call any witnesses. (Id.) Upon questioning by the DHO, Wert denied the charges and stated that he "doesn't do drugs." (Doc. 1-1 at 3, DHO Report). After consideration of the evidence, including the lab report showing a positive urine result, the DHO found that Wert committed the prohibited act of use of any narcotic, marijuana, drugs, alcohol, intoxicants, or related paraphernalia not prescribed for the individual by medical staff. (Id.) The DHO sanctioned Wert to

thirty (30) days of disciplinary segregation, and loss of phone, visitation, and contact visitation privileges for eight (8) months. (Id.) Wert did not lose any good conduct time as a result of the misconduct. (Id.) Additionally, the result of the hearing did not affect the release date of the life sentence Wert is currently serving. See Federal Bureau of Prisons Inmate Locator, https://www.bop.gov/inmateloc/.

In the instant habeas petition, Wert claims that he was unable to adequately defend himself before the DHO, he is actually innocent of the charge, and he underwent an independent lab test that would "exonerate [him] of all wrong-doing." (Doc. 1 at 15, 16; Doc. 11). For relief, Wert seeks expungement of the incident report and all related information in his inmate file, and restoration of all privileges lost in connection with the misconduct. (Doc. 1 at 9).

II. Discussion

Liberty interests protected by the Fifth Amendment may arise either from the Due Process Clause itself or from statutory law. Torres v. Fauver, 292 F.3d 141 (3d Cir. 2002). It is well-settled that "[p]rison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." Wolff v. McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Nevertheless, the Supreme Court found that there can be a liberty interest at stake in disciplinary proceedings in which an inmate loses good conduct time. Id. To invoke the Due Process Clause, a petitioner must first identify a liberty interest that has been violated. Wilkinson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 2384, 162 L.Ed.2d 174 (2005). Prisoners are entitled to due process protection only when the disciplinary action results in the loss of good conduct time or when a

penalty "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995).

Wert fails to set forth a cognizable due process claim as the disciplinary sanctions he received do not implicate any liberty interests that are protected by the Due Process Clause. See Leamer v. Fauver, 288 F.3d 532, 542 (3d Cir. 2002) (affirming dismissal of habeas petition where disciplinary sanctions did not result in the loss of good conduct time). Wert does not allege that he lost any good-time credits and the record confirms that he did not lose any good conduct time. Rather, Wert's disciplinary infractions resulted only in temporary placement in disciplinary segregation, and temporary loss of various privileges. These sanctions do not implicate protected liberty interests as they did not result in any atypical or significant hardships in relation to the ordinary incidents of prison life. See, e.g., Ky. Dep't of Corr. v. Thompson, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989) (holding that prisoners do not have a constitutionally protected interest in prison visitation); Robinson v. Norwood, 535 F. App'x 81, 83 (3d Cir. 2013) (placement in administrative segregation for days or months at a time does not implicate a protected liberty interest); Gonzelez v. Zickenfoose, 2014 WL 257850, at *2 (M.D. Pa. 2014) (the temporary loss of commissary, visitation and email privileges do not "implicate a protected liberty interest as they do not result in any

atypical or significant hardships in relation to the ordinary incidents of prison life"). Because the sanctions imposed did not include a loss of good conduct time, and, therefore, had no impact on the fact or length of Wert's sentence or confinement, and did not impose an atypical and significant hardship on him, the petition is subject to dismissal. See Leamer, 288 F.3d at 540-42; Castillo v. FBOP FCI Fort Dix, 221 F. App'x 172 (3d Cir. 2007).

III. Conclusion

Based on the foregoing, the court will dismiss the petition for writ of habeas corpus. An appropriate order will issue.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

Dated: January 11, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DANIEL WERT,	:	**CIVIL NO. 1:18-CV-963**
	:	
Petitioner	:	**(Chief Judge Conner)**
	:	
v.	:	
	:	
WARDEN ODDO,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 11th day of January, 2019, upon consideration of the petition for writ of habeas corpus (Doc. 1), and in accordance with the court's memorandum of the same date, it is hereby ORDERED that:

1. The petition for writ of habeas corpus (Doc. 1) is DISMISSED.
2. The motion (Doc. 12) to expedite is DISMISSED.
3. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania