

Appendix (A)

**ANTHONY ANDREWS, Petitioner - Appellant, v. WARDEN R. RAMOS, Respondent - Appellee.
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

2023 U.S. App. LEXIS 13113

No. 23-6145

May 26, 2023, Decided

May 23, 2023, Submitted

Notice:

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING
THE CITATION TO UNPUBLISHED OPINIONS.**

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. (5:22-hc-02114-FL). Louise W. Flanagan, District Judge. Andrews v. Ramos, 2023 U.S. Dist. LEXIS 21518, 2023 WL 1822837 (E.D.N.C., Feb. 8, 2023)

Disposition:

AFFIRMED.

Counsel

Anthony Andrews, Appellant, Pro se.

Judges: Before AGEE, WYNN, and QUATTLEBAUM, Circuit Judges.

Opinion

PER CURIAM:

Anthony Andrews, a federal prisoner, appeals the district court's order denying relief on his 28 U.S.C. § 2241 petition in which he challenged the execution of his sentence. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. Andrews v. Ramos, No. 5:22-hc-02114-FL (E.D.N.C. Feb. 8, 2023). We deny the motion to expedite as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: May 26, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6145
(5:22-hc-02114-FL)

ANTHONY ANDREWS

Petitioner - Appellant

v.

WARDEN R. RAMOS

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix (B)

ANTHONY ANDREWS, Petitioner, v. WARDEN R. RAMOS, Respondent.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA,
WESTERN DIVISION
2023 U.S. Dist. LEXIS 21518
NO. 5:22-HC-2114-FL
February 8, 2023, Decided
February 8, 2023, Filed

Editorial Information: Subsequent History

Appeal filed, 02/16/2023

Editorial Information: Prior History

United States v. Dixon, 797 Fed. Appx. 95, 2019 U.S. App. LEXIS 38004 (4th Cir. N.C., Dec. 20, 2019)

Counsel {2023 U.S. Dist. LEXIS 1} Anthony Andrews, Petitioner, Pro se, Butner, NC.

For Warden R. Ramos, Respondent: Holly P. Pratesi, LEAD ATTORNEY, United States Attorney's Office, Raleigh, NC.

Judges: LOUISE W. FLANAGAN, United States District Judge.

Opinion

Opinion by: LOUISE W. FLANAGAN

Opinion

ORDER

This matter is before the court on respondent's motion to dismiss (DE 7) and petitioner's motion to expedite (DE 14). The issues raised have been briefed fully and are ripe for ruling. For the reasons that follow, the motion to dismiss is granted, and the motion to expedite is denied as moot.

BACKGROUND

Petitioner, a federal inmate proceeding pro se, petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner alleges that the Federal Bureau of Prisons abused its discretion by denying his request for home confinement. Respondent moves to dismiss the petition pursuant to Federal Rules of Civil Procedure 12(b)(1) or 12(b)(6), arguing that the court lacks authority to review the FBOP's place of imprisonment decisions.

Petitioner is serving aggregate term of 144 months' imprisonment for a drug offense and related violation of supervised release. (Pet. (DE 1) ¶ 4); United States v. Andrews, No. 7:16-CR-30-D-3 (E.D.N.C. Nov. 15, 2018); United States v. Andrews, No. 7:01-CR-27-M-1 (E.D.N.C. Aug 14, 2019). On July 28, 2021, petitioner requested that the FBOP place him in home confinement pursuant to the Coronavirus Aid, Relief, and Economic{2023 U.S. Dist. LEXIS 2} Security Act ("CARES Act"). (DE 1-1 at 11). The FBOP denied the request because

It was determined [petitioner's] release would pose a danger to the safety of the community. In making this determination, the nature and circumstances of your prior conviction [were] reviewed. In 1988, you [pleaded] guilty to false imprisonment. You falsely imprisoned the victim who sustained injuries.(Id.). Petitioner appealed the decision through the FBOP's administrative remedy program, but the decision was upheld. (Id. at 3, 6, 8-9).

Petitioner argues the FBOP abused its discretion by denying his request for home confinement. According to petitioner, his false imprisonment conviction does not qualify as a crime of violence under governing law, and therefore the FBOP should not have determined that his release would pose a danger to the safety of the community. He requests an order directing the FBOP to reconsider the request for home confinement.

COURT'S DISCUSSION

Pursuant to § 2241, a federal court may issue a writ of habeas corpus to a federal prisoner if the prisoner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3). "[A]ttacks on the execution of a [federal] sentence{2023 U.S. Dist. LEXIS 3} are properly raised in a § 2241 petition." In re Vial, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997) (en banc). A federal prisoner challenges the execution of his sentence when he contests the "administrative rules, decisions, and procedures applied to his sentence." In re Wright, 826 F.3d 774, 777 (4th Cir. 2016).

Although § 2241 permits challenges to the execution of a federal sentence,¹ Congress has directed that the FBOP's designation of an inmate's place of imprisonment is not subject to judicial review. Specifically, 18 U.S.C. § 3621(b) provides that the FBOP has exclusive authority to determine an inmate's place of imprisonment, including home confinement, and that, "notwithstanding any other provision of law, a designation of a place of imprisonment . . . is not reviewable by any court." See also 18 U.S.C. § 3624(c) (providing the FBOP with discretionary authority to place certain prisoners in home confinement but noting "nothing in [§ 3624(c)] shall be construed to limit or restrict the authority of the [FBOP Director] under section 3621"); United States v. Caudle, 740 F. App'x 364, 364-65 (4th Cir. 2018); United States v. Saunders, 986 F.3d 1076, 1078 (7th Cir. 2021); Holt v. Warden, No. CV 0:22-158-RMG-PJG, 2022 U.S. Dist. LEXIS 50082, 2022 WL 837526, at *2 (D.S.C. Feb. 23, 2022) (collecting cases for the proposition that "[t]he [FBOP's] authority as to where to house inmates is completely discretionary and not subject to judicial review"). The CARES Act also did not alter § 3621(b) or otherwise provide a mechanism for the court to review the FBOP's placement decisions. See Pub. L. No. 116-136, § 12003(b)(2), 134 Stat. 281, 516 (providing authority{2023 U.S. Dist. LEXIS 4} to the FBOP director to lengthen the maximum amount of time for which a federal prisoner may be transferred to home confinement). Accordingly, the court lacks authority to review the FBOP's placement decision in this case, and petitioner's motion to dismiss must be granted.

Petitioner also cannot show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Federal inmates do not have a constitutional or federal statutory right to placement in home confinement. See 18 U.S.C. § 3621(b); Meachum v. Fano, 427 U.S. 215, 224-25, 96 S. Ct. 2532, 49 L. Ed. 2d 451 (1976) (no constitutional right to placement in a particular correctional facility or custody level); cf. Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1, 7, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979) ("There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.").

Even assuming, however, that the court has authority to review the FBOP's denial of home

confinement for abuse of discretion, the court finds no such abuse on this record. Petitioner does not challenge the criteria under which he was evaluated for home confinement or suggest that the FBOP should have applied a different standard to his request. The FBOP reviewed the request under then United States Attorney General William Barr's memorandum regarding expanding the use of home confinement during the early stages of the COVID-19 pandemic. (See DE 1-1 at 8); see also Hallinan v. Scarantino, 466 F. Supp. 3d 587, 599-600 (2020) (quoting and describing the memorandum). Pursuant to these standards, the FBOP evaluates "the totality of circumstances for each individual inmate" which includes, as relevant here, the inmate's prior convictions and "assessment of the danger posed by the inmate to the community." (DE 1-1 at 8). And as noted above, the FBOP denied home confinement in petitioner's case based on the underlying facts of his prior conviction for false imprisonment, in which he injured the victim. (Id. at 11). The FBOP determined that petitioner's conduct during the offense established his release would "pose a danger to the safety of the community." (Id.).

Petitioner argues that his conviction for false imprisonment is not a crime of violence under United States v. Flores-Granados, 783 F.3d 487 (4th Cir. 2015). That case, however, addresses whether a North Carolina conviction for second-degree kidnapping is a crime of violence under United States Sentencing Guidelines § 2L1.2(b)(1)(A)(ii). Flores-Granados, 783 F.3d at 488. And because the court used the "categorical approach" to conduct this analysis, it did not consider the underlying facts of the defendant's conviction. See id. at 490.

By contrast, the FBOP was tasked{2023 U.S. Dist. LEXIS 6} with determining whether petitioner's prior conviction established he would "pose a danger to the safety of the community" under the "totality of circumstances for each individual inmate." (DE 1-1 at 8, 11). Unlike the situation in Flores-Granados, this standard allows the FBOP to consider the facts underlying petitioner's conviction, which include a false imprisonment causing injury to the victim. (See id. at 8, 11). Accordingly, the question of whether petitioner's false imprisonment conviction qualifies as a crime of violence under Flores-Granados is irrelevant to the FBOP's determination. The FBOP therefore did not abuse its discretion in denying home confinement.

For the first time in his response to the motion to dismiss, petitioner argues that his prior conviction is not a "serious violent felony" under 21 U.S.C. § 802(58). But whether petitioner's prior conviction qualifies as a serious violent felony under this provision is irrelevant for the same reasons set forth above: the FBOP was not limited to considering "serious violent felonies" when evaluating petitioner's request for home confinement. (See DE 1-1 at 8). Petitioner also relies on FBOP Program Statement 5410.01, which addresses award of time credits under the First{2023 U.S. Dist. LEXIS 7} Step Act. FBOP, Program Statement 5410.01, available at https://www.bop.gov/policy/progstat/5410_01.pdf. This program statement does not discuss the criteria for evaluating requests for home confinement under the CARES Act, and so it is also irrelevant to petitioner's claims. Finally, the fact that petitioner allegedly is eligible for earning time credits under the First Step Act because he does not have a disqualifying violent felony does not change this analysis. As explained above, the criteria for deciding home confinement requests are not limited to whether petitioner has a prior conviction for a violent felony. (See DE 1-1 at 8).

In sum, the court lacks jurisdiction to review the FBOP's decision denying petitioner's request for home confinement. See 18 U.S.C. § 3621(b). In the alternative, the FBOP did not abuse its discretion when it denied petitioner's request.

CONCLUSION

Based on the foregoing, respondent's motion to dismiss (DE 7) is GRANTED, and petitioner's motion to expedite (DE 14) is DENIED as moot. Petitioner's claim is dismissed without prejudice. A

certificate of appealability is DENIED. The clerk is DIRECTED to close this case.

SO ORDERED, this the 8th day of February, 2023.

/s/ Louise(2023 U.S. Dist. LEXIS 8) W. Flanagan

LOUISE W. FLANAGAN

United States District Judge

Footnotes

1

The United States Court of Appeals for the Fifth Circuit has held that claims challenging the FBOP's home confinement decisions are not cognizable habeas claims under § 2241 because success on the claim would not "automatically entitle [the petitioner] to accelerated release." See Melot v. Bergami, 970 F.3d 596, 599 (5th Cir. 2020). Instead, in that circuit, such claims must be brought as a civil rights action. Id. The question of whether federal inmates can challenge home confinement decisions under § 2241 has not been resolved in this circuit. See Farabee v. Clarke, 967 F.3d 380, 394-95 (4th Cir. 2020). Here, the court will assume without deciding that § 2241 is the proper procedural vehicle for the claim. See Hicks v. Ferreyra, 965 F.3d 302, 310 (4th Cir. 2020) (failure to plead a cognizable cause of action does not affect the court's subject matter jurisdiction).

Appendix (c)

BUTBS 540*23 *
PAGE 001 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 07-07-2023

* 07-07-2023
* 07:31:20

REGNO...: 15965-056 NAME: ANDREWS, ANTHONY

FBI NO.....: 355348FA5 DATE OF BIRTH: 08-16-1965 AGE: 57
ARS1.....: BUT/A-DES
UNIT.....: 6 SCP QUARTERS.....: F05-011L
DETAINERS.....: NO NOTIFICATIONS: NO

FSA ELIGIBILITY STATUS IS: ELIGIBLE

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.

HOME DETENTION ELIGIBILITY DATE....: 01-17-2025

FINAL STATUTORY RELEASE FOR INMATE.: 07-17-2026 VIA GCT REL
WITH APPLIED FSA CREDITS.: 365 DAYS
THE INMATE IS PROJECTED FOR RELEASE: 07-17-2025 VIA FSA REL

-----CURRENT JUDGMENT/WARRANT NO: 040 -----

COURT OF JURISDICTION.....: NORTH CAROLINA, EASTERN DISTRICT
DOCKET NUMBER.....: 7:16-CR-30-3-D
JUDGE.....: DEVER
DATE SENTENCED/PROBATION IMPOSED: 11-15-2018
DATE COMMITTED.....: 06-28-2019
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION....: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE.....: 391 21:846 SEC 841-851 ATTEMPT
OFF/CHG: 21:846, 21:841(B) (1) (C) CONSPIRACY TO MANUFACTURE, DISTRIBUTE,
DISPENSE, AND POSSESS WITH INTENT TO DISTRIBUTE A QUANTITY OF
ENDOCET, METHADONE, OXYCODONE, OXYCONTIN, AND OXYMORPHONE

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 132 MONTHS
TERM OF SUPERVISION.....: 3 YEARS
DATE OF OFFENSE.....: 03-16-2016

G0002 MORE PAGES TO FOLLOW . . .

BUTBS 540*23 *
PAGE 002 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 07-07-2023

* 07-07-2023
* 07:31:20

REGNO...: 15965-056 NAME: ANDREWS, ANTHONY

-----CURRENT JUDGMENT/WARRANT NO: 050 -----

COURT OF JURISDICTION.....: NORTH CAROLINA, EASTERN DISTRICT
DOCKET NUMBER.....: 7:01-CR-27-1B0
JUDGE.....: BOYLE
DATE SENTENCED/PROBATION IMPOSED: 11-05-2001
DATE SUPERVISION REVOKED.....: 08-09-2019
TYPE OF SUPERVISION REVOKED.....: REG
DATE COMMITTED.....: 09-20-2019
HOW COMMITTED.....: COMMIT OF SUPERVISED REL VIOL
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	\$100.00	\$00.00	\$9,700.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE....: 409 21:841 & 846 SEC 841-851
OFF/CHG: 21:841(A)91) DISTRIBUTION OF COCAINE BASE (CRACK)

SENTENCE PROCEDURE.....: SUPERVISED RELEASE VIOLATION PLRA
SENTENCE IMPOSED/TIME TO SERVE.: 12 MONTHS
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER....: CS 040/010/040
DATE OF OFFENSE.....: 11-01-2000

G0002 MORE PAGES TO FOLLOW . . .

BUTBS 540*23 *
PAGE 003 OF 003 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 07-07-2023

* 07-07-2023
* 07:31:20

REGNO...: 15965-056 NAME: ANDREWS, ANTHONY

-----CURRENT COMPUTATION NO: 040 -----

COMPUTATION 040 WAS LAST UPDATED ON 09-10-2019 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 09-11-2019 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 040: 040 010, 050 010

DATE COMPUTATION BEGAN.....: 11-15-2018
AGGREGATED SENTENCE PROCEDURE...: AGGREGATE GROUP 800 PLRA
TOTAL TERM IN EFFECT.....: 144 MONTHS
TOTAL TERM IN EFFECT CONVERTED...: 12 YEARS
AGGREGATED TERM OF SUPERVISION...: 3 YEARS
EARLIEST DATE OF OFFENSE.....: 11-01-2000

JAIL CREDIT.....	FROM DATE	THRU DATE
	04-26-2016	11-14-2018

TOTAL PRIOR CREDIT TIME.....: 933
TOTAL INOPERATIVE TIME.....: 0
TOTAL GCT EARNED AND PROJECTED...: 648
TOTAL GCT EARNED.....: 378
STATUTORY RELEASE DATE PROJECTED: 07-17-2026
ELDERLY OFFENDER TWO THIRDS DATE: 04-26-2024
EXPIRATION FULL TERM DATE.....: 04-25-2028
TIME SERVED.....: 7 YEARS 2 MONTHS 12 DAYS
PERCENTAGE OF FULL TERM SERVED...: 59.9
PERCENT OF STATUTORY TERM SERVED: 70.3

PROJECTED SATISFACTION DATE.....: 07-17-2025
PROJECTED SATISFACTION METHOD...: FSA REL
WITH FSA CREDITS INCLUDED....: 365

REMARKS.....: 07-17-19:COMP ENTRD/CASE NO 7:01CR27-1 HAS BEEN APPEALED C/SIG
09-10-19:CS COMP ENTRD/SJW 050 C/SIG.

G0000 TRANSACTION SUCCESSFULLY COMPLETED