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**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-3505

Lawrence Martin

Plaintiff - Appellant

v.

Dexter Payne, Director, Arkansas Department of Correction

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:22-cv-01271-KGB)

JUDGMENT

Before COLLOTON, BENTON, and GRASZ, Circuit Judges.

The court has carefully reviewed the original file of the United States District Court and orders that this appeal be dismissed for lack of jurisdiction. Appellant's pending motion are denied as moot.

February 05, 2024

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-3505

Lawrence Martin

Appellant

v.

Dexter Payne, Director, Arkansas Department of Correction

Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:22-cv-01271-KGB)

ORDER

Lawrence Martin's motion for transfer to another correctional facility with affidavit, motion for injunction relief, and motion for judgment of acquittal are hereby ordered taken with the case for consideration by the panel to which this case is submitted for disposition on the merits.

January 03, 2024

Order Entered Under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX [A] 1 OF 4

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAWRENCE EDWARD MARTIN

PETITIONER

v.

Case No. 4:22-cv-01271-KGB

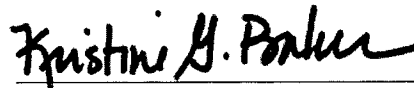
DEXTER PAYNE

RESPONDENT

ORDER

Before the Court is respondent Dexter Payne's motion to substitute counsel of record for respondent (Dkt. No. 52). Mr. Payne represents that Karen Virginia Wallace, counsel of record for the respondent, is no longer employed with the Arkansas Attorney General's office and that Michael Zangari, Assistant Attorney General, has been assigned to represent him (*Id.*, ¶ 1). Mr. Payne requests that Ms. Wallace be relieved from her duties in this matter and that Mr. Zangari be permitted to become counsel of record for Mr. Payne (*Id.*, ¶ 2). For good cause shown, the Court grants the motion and substitutes Mr. Zangari as counsel of record for Mr. Payne in this case (*Id.*).

It is so ordered this 13th day of November, 2023.



Kristine G. Baker
United States District Judge

APPENDIX [B] 1 of 3

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

LAWRENCE EDWARD MARTIN

PETITIONER

v.

Case No. 4:22-cv-01271-KGB-PSH

DEXTER PAYNE

RESPONDENT

ORDER

Before the Court are plaintiff Lawrence Edward Martin's motion for extension of time to appeal (Dkt. No. 47) and motion for certificate of appealability (Dkt. No. 49). The Court construes Mr. Martin's notice of appeal (Dkt. No. 46) as the basis for his motion for certificate of appealability (Dkt. No. 49).

Mr. Martin's notice of appeal states that he seeks to appeal to the Eighth Circuit Court of Appeals an Order issued on June 16, 2023 (*Id.*, at 1). Based on this Court's review of the docket, the only Order entered in this matter on June 16, 2023, is an Order Magistrate Judge Patricia S. Harris entered denying Mr. Martin's motion for status update (Dkt. No. 39). Further, the Court notes that Mr. Martin filed an additional notice in which he states that he "did not consent to a Magistrate Judge to preside over his case" and that, therefore, he believes judgment is immediately appealable (Dkt. No. 50). Based on these filings, the Court understands Mr. Martin's motion for certificate of appealability to be based on Magistrate Judge Harris's June 16, 2023, Order ("June 16, 2023, Order").

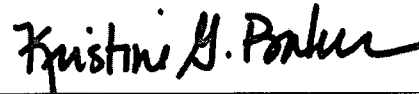
Mr. Martin's notice cites *Allen v. Meyer*, 755 F.3d 866, 867-68 (9th Cir. 2014), in support of the assertion that judgment is immediately appealable when a Magistrate Judge fails to obtain consent from the parties in an action. While Mr. Martin is correct about the law regarding appealability of final judgments made by a Magistrate Judge when the Magistrate Judge does not

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have consent of the parties, Judge Harris's June 16, 2023, Order was not a final judgment in this matter. It was a non-dispositive pretrial Order entered pursuant to 28 U.S.C. § 636(b)(1)(A) and Local Rule 72.1(VII)(A) (Dkt. No. 39).

Magistrate Judges are empowered to hear and determine pretrial motions for status update when designated by a District Court Judge. 28 U.S.C. § 636(b)(1)(A). This Court designated Magistrate Judge Harris to preside over such pretrial matters in this case pursuant to Local Rule 72.1(VII)(A). No final judgment has been entered in this case by the District Court nor have the parties consented to Magistrate Judge jurisdiction. Because there is no final judgment to appeal yet, the Court denies Mr. Martin's motion for extension of time to appeal (Dkt. No. 47) and motion for certificate of appealability (Dkt. No. 49).

It is so ordered this 13th day of November, 2023.



Kristine G. Baker
United States District Judge

APPENDIX [B] 3 of 3

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAWRENCE EDWARD MARTIN

PETITIONER

v.

NO. 4:22-cv-01271-KGB-PSH

DEXTER PAYNE

RESPONDENT

ORDER

Petitioner Lawrence Edward Martin ("Martin") has filed a document that has been construed as a motion for status update. See Docket Entry 37. In the motion, he asks about the status of this case. He also asks that several other things occur, including that a writ be issued to arrest several people. The motion is denied.

Martin is reminded that he has up to, and including, July 14, 2023, to notify the Court of his desire to convert this case from one pursuant to 28 U.S.C. 2254 to one pursuant to 42 U.S.C. 1983. He shall make his desire known by filing a simple statement of his consent. If he elects to convert this case to one pursuant to 42 U.S.C. 1983, he should be aware that he

must comply with the filing fee requirements for prisoner cases. In the event he fails to notify the Court by July 14, 2023, of his desire to convert this case to one pursuant to 42 U.S.C. 1983, the Court will recommend that this case be dismissed.

IT IS SO ORDERED this 16th day of June, 2023.



UNITED STATES MAGISTRATE JUDGE

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9.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAWRENCE EDWARD MARTIN

PETITIONER

v.

Case No. 4:22-cv-01271-KGB-PSH

DEXTER PAYNE

RESPONDENT

ORDER

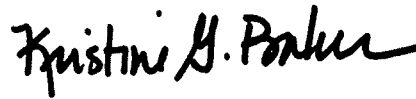
Before the Court are Findings and Recommendation (“Recommendation”) submitted by United States Magistrate Judge Patricia S. Harris regarding petitioner Lawrence Edward Martin’s requests for injunctive relief (Dkt. No. 13). Mr. Martin filed objections to the Recommendation (Dkt. No. 17). After a careful consideration of the Recommendation and all objections, and after a *de novo* review of the record, the Court adopts the Recommendation as the Court’s findings of fact and conclusions of law in all respects (Dkt. No. 13).

In the Recommendation, Judge Harris construed the filings Mr. Martin submitted, along with his amended petition for *writ of habeas corpus* (Dkt. No. 7), as a motion for direct judgment (Dkt. No. 5), a motion for injunction (Dkt. No. 9), and a motion for injunction and transfer (Dkt. No. 10). Judge Harris concluded that Mr. Martin in his motions requested preliminary relief from the Court to transfer him to another unit within the Arkansas Division of Correction (Dkt. No. 13, at 3). Judge Harris noted that the record in this case is minimal and that granting Mr. Martin the relief he seeks in his motions “would be tantamount to an outright victory in this case.” (Dkt. No. 13, at 4). Judge Harris therefore concluded that injunctive relief was not warranted (*Id.*). Mr. Martin takes issue with Judge Harris’s determination (Dkt. No. 17). In his objections, Mr. Martin restates generally the same allegations as set forth in his motions for injunctive relief (*Id.*). Upon a *de novo* review of the record, including the Recommendation, the Court finds that Mr. Martin’s

objections break no new ground and fail to rebut Judge Harris' findings. Injunctive relief is not warranted at this time.

The Court adopts the Recommendation (Dkt. No. 13). Accordingly, Mr. Martin's motion for direct judgment (Dkt. No. 5), motion for injunction (Dkt. No. 9), and motion for injunction and transfer (Dkt. No. 10) are denied without prejudice. The Court certifies, pursuant to 28 U.S.C. § 1915(a), that an *in forma pauperis* appeal taken from this Order would not be taken in good faith.

It is so ordered this 18th day of July, 2023.



Kristine G. Baker
United States District Judge

APPENDIX [C] 2 of 2

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAWRENCE EDWARD MARTIN

PETITIONER

v.

Case No. 4:22-cv-01271-KGB-PSH

DEXTER PAYNE

RESPONDENT

ORDER

Before the Court are Findings and Recommendation (“Recommendation”) submitted by United States Magistrate Judge Patricia S. Harris regarding petitioner Lawrence Edward Martin’s motion for a permanent injunction (Dkt. No. 30). Mr. Martin filed objections to the Recommendation (Dkt. No. 31). After a careful consideration of the Recommendation and all objections, and after a *de novo* review of the record, the Court adopts the Recommendation as the Court’s findings of fact and conclusions of law in all respects (Dkt. No. 30).

The Court writes to address Mr. Martin’s objections (Dkt. No. 31). In his objections, Mr. Martin maintains his request for a permanent injunction related to his conditions of confinement (*Id.*). Mr. Martin in his objections does not address Judge Harris’s determination that the type of relief Mr. Martin requests is not cognizable in a habeas proceeding. Upon a *de novo* review of the record, Mr. Martin’s objections fail to rebut Judge Harris’s Recommendation.

The Court adopts the Recommendation (Dkt. No. 30). Accordingly, Mr. Martin’s motion for a permanent injunction is denied (Dkt. No. 22). The Court certifies, pursuant to 28 U.S.C. § 1915(a), that an *in forma pauperis* appeal taken from this Order would not be taken in good faith.

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12.

It is so ordered this 18th day of July, 2023.

Kristine G. Baker

Kristine G. Baker
United States District Judge

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13.

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAWRENCE EDWARD MARTIN

PETITIONER

v.

NO. 4:22-cv-01271-KGB-PSH

DEXTER PAYNE

RESPONDENT

ORDER

Petitioner Lawrence Edward Martin ("Martin") began this case on December 27, 2022, by filing what the Clerk of the Court construed as a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. Martin joined the submission with the pending motion for leave to proceed in forma pauperis. The Court has now reviewed the petition as required by Rule 4 of the Rules Governing Section 2254 Cases In The United States District Courts. Because it might help narrow the issues in this case, and bring about a more expeditious resolution, Martin will be ordered to file an amended petition. No action will be taken at this time on his motion for leave to proceed in forma pauperis.

APPENDIX

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[D] 14.

A brief summary of Martin's twenty-seven page petition is extremely difficult. It appears that he is challenging disciplinarys he received on November 8, 2022, and November 12, 2022, because of procedural irregularities in the disciplinary process. For instance, he maintains that the evidence to support one or both disciplinarys was not tested by a licensed toxicologist. It also appears that Martin is challenging the manner in which his sentence for a November 15, 2022, disciplinary was administered. For instance, he maintains he was sentenced for the disciplinary to a barrack where his life was placed in danger.

It is not impossible that the Court has mis-construed Martin's petition. The Court would therefore benefit from an amended petition, one in which Martin refrains from citing legal authority, clearly and separately identifies his claims, briefly sets forth the facts supporting each claim, and clarifies the relief he seeks. Accordingly, the Court orders the following:

1) The Clerk of the Court is directed to send Martin the standard forms for filing a petition pursuant to 28 U.S.C. 2254.

2) Martin is ordered to complete the standard 28 U.S.C. 2254 forms. In doing so, he shall refrain from citing legal authority, clearly and separately identify his claims, briefly set forth the facts supporting each claim, and clarify the relief he seeks.

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2 of 3
[REDACTED]

3) Martin is given up to, and including, February 6, 2023, to complete the forms and file them with the Clerk of the Court as an amended petition.

4) The Clerk of the Court is directed to send Martin the standard forms for filing a motion for leave to proceed in forma pauperis.

5) No action will be taken at this time on Martin's motion for leave to proceed in forma pauperis, and service of process will not be ordered.

6) In the event Martin fails to comply with the terms of this Order by February 6, 2023, the Court will recommend that this case be dismissed without prejudice.¹

IT IS SO ORDERED this 4th day of January, 2023.



UNITED STATES MAGISTRATE JUDGE

¹ Martin is notified of his obligation to comply with the Federal Rules of Civil Procedure as well as the Local Rules for the United States District Court for the Eastern District of Arkansas. Specifically, he is directed to Local Rule 5.5(c)(2), which provides the following:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a pro se plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding pro se shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAWRENCE EDWARD MARTIN

PETITIONER

v.

NO. 4:22-cv-01271-KGB-PSH

DEXTER PAYNE

RESPONDENT

ORDER

The record reflects that on November 8, 2022, petitioner Lawrence Edward Martin ("Martin"), an inmate in the Arkansas Division of Correction's East Arkansas Regional Unit, signed for legal mail that he was expecting. See Docket Entry 24, Exhibit 1. Because the mail looked suspicious, prison officials tested it for contraband. After the mail tested positive for methamphetamine, he was charged with violating rule 2-5, unauthorized use of mail/phone; rule 09-3, possession/introduce drugs; and rule 15-3, purchase of authorized articles. He was convicted of the rule violations, and his punishment included a reduction in class and a period of punitive isolation.

APPENDIX [E] 1 of 10

On November 12, 2022, Martin again signed for legal mail that he was expecting. See Docket Entry 24, Exhibit 2. The mail looked suspicious, and it tested positive for contraband. He was drug tested the following day, and the results were positive for methamphetamine. He was charged with violating rule 2-5, unauthorized use of mail/phone; rule 09-3, possession/introduce drugs; and rule 15-3, purchase of authorized articles. He was convicted of the rule violations, and his punishment included a second period of punitive isolation.

On November 15, 2022, Martin was ordered to move to another barrack. See Docket Entry 24, Exhibit 3. He refused to do so because he was scared. He was charged with violating rule 12-4, refusing a direct verbal order, and rule 03-5, out of place of assignment. He was convicted of the rule violations, and his punishment included commissary, telephone, and visitation restrictions.

Martin began this case by filing what was construed as a petition pursuant to 28 U.S.C. 2254. Liberally construing his subsequently filed amended petition, he advanced the following claims:

1) The inmate disciplinary manual was violated when the charging officer did not sign the November 8, 2022, and November 12, 2022, disciplinaries. See Docket Entry 7 at CM/ECF 5.

2) The inmate disciplinary manual was violated when the warden failed to timely respond to Martin's appeal of the November 8, 2022, November 12, 2022, and November 15, 2022, disciplinaries. See Docket Entry 7 at CM/ECF 5.

3) The inmate drug testing policy was violated in several respects, one of which was that his urine sample was not tested by a licensed toxicologist. See Docket Entry 7 at CM/ECF 7.

4) Given the procedural irregularities in the three disciplinary proceedings, Martin was subjected to false arrest/illegal detention. See Docket Entry 7 at CM/ECF 8.

5) His life is constantly in danger because one guard is required to supervise eight of the barracks. See Docket Entry 7 at CM/ECF 10.

Martin asked that he be awarded injunctive relief and relief that included the following: he be transferred to another facility, he be compensated for the time he spent in punitive isolation, the three disciplinaries be reversed, his class I-C status be restored, and he be credited for \$150.00 at the commissary.

Respondent Dexter Payne ("Payne") filed a response to the petition. In the response, Payne maintained, in part, that the petition should be dismissed because Martin's claims are not cognizable in a proceeding pursuant to 28 U.S.C. 2254. Payne so maintained because Martin's claims do not challenge the fact or duration of his confinement. Payne supported his contention by noting the following:

... [Martin's] reduction in class status is a condition of confinement to which any due-process challenge must be raised under 42 U.S.C. 1983. ... [His] loss of commissary, phone, and visitation privileges also does not give rise to any liberty interest. ... He did not suffer a loss of earned good time, as he is confined for life without parole. ...

See Docket Entry 24 at CM/ECF 4-5. Payne alternatively maintained that Martin's claims are meritless because he was afforded all of the process he was due under Wolff v. McDonnell, 418 U.S. 539 (1974).¹

The case at bar is not unlike Crockett v. Kelley, No. 5:18-cv-00210-JM-JTR, 2019 WL 1590947 (E.D. Ark. 2019), report and recommendation adopted, No. 5:18-cv-00210-JM, 2019 WL 1590588 (E.D. Ark. 2019). There, Crockett was serving a life sentence and came to be convicted of a disciplinary. His punishment for the disciplinary included the loss of good-time credits. He challenged the disciplinary by filing a petition pursuant to 28 U.S.C. 2254. In the petition, he maintained, in part, that the disciplinary proceeding failed to comport with the requirements of due process. United States District Judge James M. Moody, Jr., dismissed the petition, doing so on the recommendation of United States Magistrate Judge J. Thomas Ray. Judge Moody's reasons for doing so included the following:

¹ Martin later filed a reply, as well as a supplemental reply. In the submissions, he advanced many of the same assertions he made in his amended petition.

A prisoner may maintain a procedural due process challenge to a prison disciplinary proceeding only if he is deemed to have a liberty interest sufficient to trigger the protections of the Fourteenth Amendment. Sandin v. Conner, 515 U.S. 472, 485-86 (1995); Phillips v. Norris, 320 F.3d 844, 847 (8th Cir. 2002). Liberty interests arising from state law are limited to “freedom from restraint” which “impose[s] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life,” or to actions which “inevitably affect the duration of [a prisoner’s] sentence.” Sandin v. Connor, 515 U.S. 472, 484, 487 (1995).

In a habeas action, “[i]f the prisoner is not challenging the validity of his conviction or the length of his detention, such as loss of good time, then a writ of habeas corpus is not the proper remedy.” Kruger v. Erickson, 77 F.3d 1071, 1073 (8th Cir. 1996) (per curiam) (citing Preiser v. Rodriguez, 411 U.S. 475, 499 (1983)) (emphasis added); see also Spencer v. Haynes, 774 F.3d 467, 469-70 (8th Cir. 2014) (citing and applying Kruger). Thus, for Crockett’s claims arising from the disciplinary proceeding to implicate a “liberty interest” capable of making them actionable under 2254, he must establish that the loss of 500 days of good-time credit served to lengthen his sentence. As the Court noted in Sandin, the “Due Process Clause itself does not create a liberty interest in credit for good behavior.” Id. at 477. Instead, a court must look to the specific state statute in question to determine whether a liberty interest in good-time credit has been created by the state. Id.

Arkansas statutory law establishing good-time credit “plainly states ‘[m]eritorious good time will not be applied to reduce the length of a sentence,’” but instead impacts an inmate’s “transfer eligibility date.” McKinnon v. Norris, 366 Ark. 404, 408, 231 S.W.3d 725, 729 (Ark. 2006) (quoting Ark. Code Ann. 12-29-201(d) and (e)(1)) (emphasis added). In McKinnon, the Arkansas Supreme Court rejected the state habeas petitioner’s claim that his prison sentence had been extended unlawfully because, following a prison disciplinary, his good-time credits were forfeited and his ability to earn future credits was

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eliminated. According to the Court, “Arkansas has not created a liberty interest in good time under the constitutional analysis in Wolff v. McDonnell,” (emphasis added). Id. at 408-409, 231 S.W.3d at 730.

The Court's legal conclusion in McKinnon is not binding on federal courts. However, courts in the Eastern District of Arkansas have reached the same conclusion under federal law. As United States Magistrate Judge Beth Deere reasoned in a Recommendation adopted by United States District Judge Leon Holmes:

Instead of reducing the term of a prisoner's sentence, Arkansas's good-time statute reduces the time until the inmate is eligible for transfer, i.e., consideration of parole. Persechini v. Callaway, 651 F.3d 802, 808 (8th Cir. 2011).

There is clearly a difference between being in the free world under supervision (parole) and being confined in a prison 24-hours a day, seven days a week, even though in both circumstances the inmate is serving his or her sentence. This stark difference is recognized by an inmate's liberty interest in the revocation of parole. But the Supreme Court has long noted the distinction between parole release and parole revocation. Greenholtz v. Inmates of the Neb. Penal and Corr. Complex, 442 U.S. 1, 99 S.Ct. 2100 (1979). The crucial difference is “between being deprived of a liberty one has, as in parole, and being denied a conditional liberty that one desires.” Id. at 9. Under Arkansas law, good-conduct time reduces the length of time until an inmate is eligible for parole, but it does not reduce the length of the sentence itself. See Ark. Code Ann. 16-93-614 and Ark. Code Ann. 12-29-201(d).

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[REDACTED]

In sum, Mr. Roberts has a liberty interest in release at the expiration of his sentence; he does not have a liberty interest in the possibility of a conditional release prior to the expiration of his sentence. See Swarthout v. Cooke, 131 S. Ct. 859, 862 (2011) (the federal constitution does not confer a right to be conditionally released before the expiration of a valid sentence).


Roberts v. Hobbs, Case No. 5:14-cv-00044-JLH-BD, 2014 WL 1345341, 2-3 (E.D. Ark. April 4, 2014), certificate of appealability denied, Case No. 14-1930 (8th Cir. Aug. 12, 2014). Thus, the Court concludes that the legal analysis in Roberts and McKinnon are persuasive and squarely support the denial of Crockett's claims.

Finally, Crockett's claims also fail for another reason: he is serving a life sentence. Under Arkansas law, "[i]nmates sentenced to life imprisonment shall not receive meritorious good time calculated on their sentences unless the sentence is commuted to a term of years by executive clemency," at which time the inmate "shall be eligible to receive meritorious good time." Ark. Code Ann. 12-29-201 (emphasis added); see also Hobbs v. Turner, 2014 Ark. 19, at 7, 431 S.W.3d 283, 287) ("Generally, in Arkansas, life means life" and parole is not a possibility.). Thus, unless Crockett's sentence is commuted by executive clemency, the amount of accrued good-time credits can have no possible impact on the length of his sentence. Crockett makes no showing that he is a likely candidate for executive clemency, which is rarely granted. Accordingly, Crockett has no "liberty interest" in the loss of good-time credits.

Because Crockett has failed to show that the loss of good-time credits will have any impact on the length of his sentence, his claim should be denied.

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See Id. at 2019 WL 1590947, 2-4 (emphasis in original) (footnotes omitted).
See also Rodriguez v. Kelley, No. 5:19-cv-00077-KGB-JTK, 2019 WL 8403589 (E.D. Ark. 2019), report and recommendation adopted, 5:19-cv-00077-KGB, 2020 WL 1845230 (E.D. Ark. 2020).

Martin's claims do not involve the validity of his conviction or the length of his detention.² Although habeas corpus relief may be available for loss of good-time credits, such relief is not available here because he does not have a liberty interest in the possibility of his conditional release prior to the expiration of his sentence. To the extent he lost good-time credits as a result of the three disciplinaries, and it is not clear that he did, the loss of the credits did not lengthen his sentence. Moreover, Martin is serving a sentence of life imprisonment without the possibility of parole. Unless his sentence is commuted, and he has made no showing that it might be, the amount of accrued good-time credits has no impact on the length of his sentence. The Court finds that the claims at bar are indeed conditions-of-confinement claims and outside the scope of 28 U.S.C. 2254. A writ of habeas corpus is not the proper remedy here. 

² Claims relating to reduction in class, assignment to punitive isolation, and commissary, telephone, and visitation restrictions are conditions-of-confinement claims. See Croston v. Payne, No. 4:22-cv-00616-LPR-JJV, 2022 WL 18106996 (Aug. 23, 2022), report and recommendation adopted, No. 4:22-cv-00616-LPR, 2023 WL 23806 (Jan. 3, 2023).

What, then, should happen next? In Spencer v. Haynes, 774 F.3d 467 (8th Cir. 2014), the United States Court of Appeals for the Eighth Circuit held that, where a petitioner has improperly raised “potentially viable” conditions-of-confinement claims in a habeas corpus proceeding, the Court should “recharacterize the claim[s] into the correct procedural vehicle” instead of dismissing the case for lack of jurisdiction. See Gordon v. Cain, No. 2:17-cv-00114-KGB-JTK, 2018 WL 8786163, 2, (E.D. Ark. July 30, 2018), report and recommendation adopted, No. 2:17-cv-00114-KGB, 2019 WL 3059849 (E.D. Ark. July 11, 2019) (quoting Spencer v. Haynes, 774 F.3d at 471). Before recharacterizing the claims, though, the Court should obtain the petitioner’s consent.

The Court finds that Martin has raised “potentially viable” conditions-of-confinement claims, which can only be raised in a complaint pursuant to 42 U.S.C. 1983. In accordance with Spencer v. Haynes, the Court orders the following:

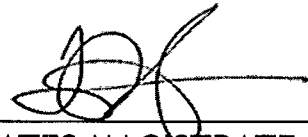
1) Martin is given up to, and including, July 14, 2023, to notify the Court of his desire to convert this case from one pursuant to 28 U.S.C. 2254 to one pursuant to 42 U.S.C. 1983. He shall make his desire known by filing a simple statement of his consent.



2) If Martin elects to convert this case to one pursuant to 42 U.S.C. 1983, he should be aware that he must comply with the filing fee requirements for prisoner cases, which require a \$402 filing fee. If he obtains permission to proceed in forma pauperis, he need only pay a \$350 filing fee, and it may be paid in installments.³

3) In the event Martin fails to notify the Court by July 14, 2023, of his desire to convert this case to one pursuant to 42 U.S.C. 1983, the Court will recommend that this case be dismissed.

IT IS SO ORDERED this 13th day of June, 2023.



UNITED STATES MAGISTRATE JUDGE

³ Martin began this case by filing the five dollar filing fee required for petitions pursuant to 28 U.S.C. 2254. See Docket Entry 18.

**Additional material
from this filing is
available in the
Clerk's Office.**