

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

March 28, 2024

Before

Frank H. Easterbrook, Circuit Judge
Ilana Diamond Rover, Circuit Judge
Michael Y. Scudder, Circuit Judge

No. 24-1196

JERRY A. SMITH,
Petitioner - Appellant,
v.
JOHN GALIPEAU,
Respondent - Appellee.

Appeal from the United
States District Court for
the Northern District of Indiana,
South Bend Division.

No. 3:23-cv-00677-TLS-JPK

Theresa L. Springmann,
District Judge.

O R D E R

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Rule 4(a) of the Federal Rule of Appellate Procedure requires that a notice of appeal in a civil case be filed in the district court within 30 days of the entry of the judgment or order appealed. In this case judgment was entered on August 8, 2023, and the notice of appeal was filed on February 7, 2024, about five months late. The district court has not granted an extension of the appeal period, *see* Rule 4(a)(5), and this court is not empowered to do so, *see* Fed. R. App. P. 26(b).

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

JERRY A. SMITH,

Petitioner,

v.

WARDEN, Westville Correctional Facility,

Respondent.

CAUSE NO.: 3:23-CV-677-TLS-JPK

ORDER

Jerry A. Smith, a prisoner without a lawyer, filed a habeas corpus petition challenging the disciplinary decision [Ex. A, ECF No. 1-1] at the Westville Correctional Facility in which a disciplinary hearing officer (DHO) found him guilty of disorderly conduct in violation of Indiana Department of Correction Offense 236. Following a hearing, he was sanctioned with the loss of ninety days earned credit time and a demotion in credit class, but these sanctions were suspended and have^o not been imposed. Ex. A. Pursuant to Rule 4 of the Rules Governing Section 2254 Proceedings, the Court must dismiss the petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

“[A] habeas corpus petition must attack the fact or duration of one’s sentence; if it does not, it does not state a proper basis for relief under § 2254.” *Washington v. Smith*, 564 F.3d 1350, 1351 (7th Cir. 2009) (citation omitted). The Plaintiff’s sanctions included the loss of earned credit time and a demotion in credit class, but these sanctions were suspended and have not been imposed, so the disciplinary proceedings have not increased the duration of his sentence. Because the Plaintiff’s claims do not relate to the fact or duration of his sentence, the Court cannot grant him habeas relief.

If the Plaintiff wants to appeal this decision, he does not need a certificate of appealability because he is challenging a prison disciplinary proceeding. *See Evans v. Circuit Court*, 569 F.3d 665, 666 (7th Cir. 2009). However, he may not proceed in forma pauperis on appeal because the Court finds pursuant to 28 U.S.C. § 1915(a)(3) that an appeal in this case could not be taken in good faith.

For these reasons, the court:

- (1) DENIES the habeas corpus petition [ECF No. 1];
- (2) DIRECTS the Clerk of Court to enter judgment and close this case; and
- (3) DENIES Plaintiff Jerry A. Smith leave to proceed in forma pauperis on appeal.

SO ORDERED on August 8, 2023.

s/ Theresa L. Springmann

JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT