UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6566

HARRY SHAROD JAMES-EL,

Petitioner - Appellant,

v.

ERIC A. HOOKS,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Loretta C. Biggs, District Judge. (1:21-cv-00934-LCB-JLW)

Submitted: April 15, 2024 Decided: August 27, 2024

Before RUSHING, Circuit Judge, and KEENAN and FLOYD, Senior Circuit Judges.

Dismissed by unpublished per curiam opinion.

Harry Sharod James-El, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Appendix A

PER CURIAM:

Harry Sharod James-El appeals the district court's order accepting the recommendation of the magistrate judge and dismissing James-El's 28 U.S.C. § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 580 U.S. 100, 115-17 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that James-El has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. 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.

DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HARRY SHAROD JAMES-EL,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:21CV934
	)	
ERIC A. HOOKS,	)	
	)	
Respondent.	)	

ORDER

The Recommendation of the United States Magistrate Judge was filed with the Court in accordance with 28 U.S.C. § 636(b) and, on April 5, 2023, was served on the parties in this action. (ECF Nos. 25, 26.) Petitioner filed Objections to the Magistrate Judge's Recommendation, (*see* ECF No. 27).

The Court has appropriately reviewed the Magistrate Judge's Recommendation and has made a *de novo* determination in accord with the Magistrate Judge's Recommendation. The Court therefore adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that Respondent's Motion to Dismiss, (ECF No. 19), is **GRANTED**, that the Petition, (ECF No. 6), is **DISMISSED.**

A Judgment dismissing this action will be entered contemporaneously with this Order.

This, the 12th day of May2023.

/s/ Loretta C. Biggs
United States District Judge

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HARRY SHAROD JAMES-EL,	)	
	)	
Petitioner,	)	
	)	
v.	)	**1:21CV934**
	)	
ERIC A. HOOKS,	)	
	)	
	)	
Respondent.	)	

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket Entry 6.) Respondent has filed an initial answer (Docket Entry 18), a motion to dismiss (Docket Entry 19), and a brief in support of the motion to dismiss (Docket Entry 20). Petitioner has filed a response (Docket Entry 23) to the motion to dismiss as well as an affidavit. (Docket Entry 24.) This case is now prepared for a ruling.

Background

Petitioner is a prisoner of the State of North Carolina who, on June 10, 2010, was convicted following a jury trial in Mecklenburg County Superior Court of committing first-degree murder and armed robbery when he was under 18 years old. (Docket Entry 20, Ex. 1) He was sentenced to life imprisonment without parole for the murder, and to a concurrent term of a minimum 64, maximum 86 months, for the armed robbery. (*Id.*) *See also e.g.*, *James v. Buffaloe*, No. 3:21-CV-00275-MR, 2022 WL 392328, at *1 (W.D.N.C. Feb. 7, 2022) (explaining procedural history). On June 13, 2019, Petitioner was resentenced for murder, receiving a sentence of life imprisonment with the possibility of parole. (Docket Entry 20, Exs. 2 and 3.)

Appendix C

In this federal habeas action, however, Petitioner challenges only prison disciplinary convictions. (Docket Entry 6.) As a result of the two October 2020 prison disciplinary convictions, Respondent, among other things, revoked 40 days of good-time credits. (Docket Entry 20, Ex. 5 at 3; *Id.*, Ex. 6 at 3.) Petitioner appealed his October 2020 convictions to the Chief Disciplinary Hearing Officer, who upheld both. (Docket Entry 20, Ex. 5 at 1; *Id.*, Ex. 6 at 1.) Petitioner then filed his petition with this Court. (Docket Entry 1.) The Court struck the petition due to its pleading failures, filed the action, and stayed the action for 30 days to allow Petitioner to resubmit a proper § 2254 petition. (Docket Entry 2.) On December 27, 2021, Petitioner filed the instant petition, challenging the disciplinary actions. (Docket Entry 6.)

Petitioner's Claims

Petitioner argues that (1) he was racially discriminated against because a notary in the prison refused to notarize his documents, which he alleges among other things violated his First Amendment right to free exercise of religion (Docket Entry 6 Ground One); (2) taking documents and books from his locker constituted cruel and unusual punishment, interfered with his right to access the courts, violated his right to freedom of speech, and deprived him of his right to equal protection (Docket Entry 6, Ground Two); and (3) he was written up three times and charged $10 for each writeup for "pursuing to Declare and Proclaim [his] Nationality and Correct my Appellation," resulting in losing good-time credits, increasing his custody level points, and not receiving minimum custody. (Docket Entry 6, Ground Three.) Petitioner requests relief in the form of, among others, millions of dollars in compensatory and punitive damages from multiple prison officials in their individual and official capacities, declaratory relief, injunctive relief in the form of returning his materials, crediting the $30

assessed as a result of the convictions, and promotion to minimum custody. (Docket Entry 6 at 15, 16, 24.) As explained in greater detail below, these grounds should all be dismissed.

Discussion

Federal habeas corpus relief is available only for challenges to the "fact or duration" of an individual's "physical imprisonment." *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Except as otherwise discussed below, all of Petitioner's claims and sub-claims are challenges to his conditions of confinement, not to his convictions or the length of his sentence. Consequently, they are not cognizable in a federal habeas petition. *Id.* ("[W]hen 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."). If Petitioner seeks to challenge his conditions of confinement, he may do so (if at all) in a civil rights action pursuant to 42 U.S.C. § 1983. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) ("Habeas corpus proceedings are the proper mechanism for a prisoner to challenge the legality or duration of confinement. A civil rights action, in contrast, is the proper method of challenging conditions of . . . confinement.") (citations and quotations omitted). Therefore, Petitioner's attempts to assert § 1983 claims in this federal habeas proceeding should be dismissed.[1]

[1] Petitioner requests that the Court "construe this petition as a 1983 petition," if it concludes that his claims are not cognizable in a habeas proceeding. (Docket Entry 23 at 2.) However, a § 1983 petition must be on the proper § 1983 forms and must also accompanied by the applicable $402.00 filing fee, or an application to proceed *in forma pauperis*. The request is therefore denied.

Nevertheless, in ground three, Petitioner does challenge the loss of his good time credits, which is not a claim challenging the conditions of his confinement.[2] The problem with this claim; however, is that the reinstatement of Petitioner's good time credits would not reduce the length of his sentence.[3] In North Carolina, sentence reduction credits do not shorten the length of a life sentence. *Jones v. Keller*, 698 S.E.2d 49 (N.C. 2010); *Bartlett v. Perry*, No. 5:14-HC-2046-F, 2015 WL 4910144, at *2 (E.D.N.C. Aug. 17, 2015). Nor does an inmate sentenced to life imprisonment in North Carolina have a liberty interest in sentence reduction credits. *Waddell v. Dep't of Correction*, 680 F.3d 384, 395 (4th Cir. 2012). Likewise, a prisoner has no protected liberty interest in the grant of parole.[4] Consequently, even if Petitioner were

[2] In ground three, Petitioner also seeks to challenge the increase in his custody level points as well as the fact that he did not receive minimal level custody. Nevertheless, absent an allegation of a quantum change in custody (which is not present in this case), challenges to custody classification are not cognizable in a federal habeas petition. This is because the petitioner does not challenge the basic fact or duration of his imprisonment, which is the essence of habeas, when challenging his custody level. *See Chall Rodriguez v. Streeval,* No. 7:20CV373, 2020 WL 3840424, at *2 & n3 (W.D. Va. July 8, 2020); *Oden v. Wilson*, No. 3:17CV286, 2018 WL 359478, at *5 (E.D. Va. Jan. 10, 2018).

[3] Petitioner was sentenced under Structured Sentencing and is serving a life sentence that requires him to serve a minimum twenty-five years in prison before parole eligibility (Docket Entry 20, Ex. 3). *See* N.C.G.S. § 15A-1340.19A. *See Escamilla v. Outlaw*, 335 Fed. App'x. 382, 384-85 (5th Cir. 2009) (holding that prisoner was not entitled to have good-time credits subtracted from his parole date, because parole date was discretionary, not a sentence or term of incarceration).

[4] *See Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 10-11 (1979) ("That the state holds out the *possibility* of parole provides no more than a mere hope that the benefit will be obtained . . . To that extent the general interest asserted here is no more substantial than the inmate's hope that he will not be transferred to another prison, a hope which is not protected by due process.") (citation omitted); *see also Jago v. Van Curen*, 454 U.S. 14, 18 (1981) (mutually explicit understanding that inmate would be paroled does not create liberty interest); *Gaston v. Taylor*, 946 F.2d 340, 344 (4th Cir. 1991) (because the decision whether to grant parole is discretionary, "a prisoner cannot claim entitlement and therefore a liberty interest in the parole release"); *Kuplen v. Perry*, No. 1:14CV78, 2014 WL 1347768, at *1 (M.D.N.C. Apr. 4, 2014) ("to the extent that Petitioner may have concerns that the disciplinary conviction could affect his opportunity for parole, this also states no claim for relief because parole is discretionary in North Carolina"), *report and recommendation adopted*, No. 1:14CV78, 2014 WL 2442085 (M.D.N.C. May 30, 2014) *appeal dismissed*, 608 F. App'x 148 (4th Cir. 2015).

to prevail in the current action on his good time credits claim, it would not reduce the length of his life sentence. As a result, Petitioner's good time credits claim is not cognizable in this proceeding[5] and is subject to dismissal.[6]

Finally, in his response Petitioner may be attempting to raise a new claim asserting a violation of the Ex Post Facto Clause. (Docket Entry 23 at 3-4.) "Under Rule 15(a) leave to amend shall be given freely, absent bad faith, undue prejudice to the opposing party, or futility of amendment." *United States v. Pittman*, 209 F.3d 314, 317 (4th Cir. 2000). However, here, it would be futile to permit Petitioner to raise this claim, because he fails to assert or demonstrate an increase in his punishment. *See Garner v. Jones*, 529 U.S. 244, 249 (2000) ("One function of the *Ex Post Facto* Clause is to bar enactments which, by retroactive operation, increase the punishment for a crime after its commission."). Instead, in support, Petitioner contends that his "prison sentence was over when all the contracts expired on Nov. 18, 2021." (Docket

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[5] *See, e.g.*, *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005) (concluding that federal habeas relief improper "where success in the action *would not necessarily* spell immediate or speedier release for the prisoner"); *Gantt-El v. Brandon*, No. 1:11-CV-264, 2012 WL 3095330, at *3 (M.D.N.C. July 30, 2012) (concluding that petitioner's claims were non-cognizable on federal habeas review where they "do[ ] not affect the fact or duration of his confinement"); *Eley v. Lewis*, No. 5:10-HC-2001-FL, 2011 WL 677284, at *2 (E.D.N.C. Feb. 15, 2011) ("[L]oss of good-time credit [from] disciplinary conviction does not affect the duration of his confinement. Thus, he may not challenge his disciplinary proceeding in a federal habeas corpus petition.").

[6] *See also Hammer v. Pearson*, No. 7:14–cv–00313, 2015 WL 467536, at *1 (W.D.Va. Feb. 3, 2015) ("[I]nmates do not have a protected liberty interest in earning a specific rate of good conduct time. The effect of a classification change on the ability to earn good-time credit is too speculative to constitute a deprivation of a protected liberty interest. . . . Furthermore, an inmate does not have a constitutional right to be placed in a specific security classification, and custodial classifications, like segregation, do not create a major disruption in a prisoner's environment. Moreover, Petitioner does not establish that his brief confinement in segregation exceeded a sentence in such an extreme way as to give rise to due process protections of the Fourteenth Amendment. Lastly, a claim that prison officials have not followed their own policies or procedures does not amount to a constitutional violation . . . . For all these reasons, Petitioner's claims are non-cognizable on federal habeas review.") (citations omitted).

Entry 23 at 3.) But Petitioner is being held in state prison pursuant to a criminal judgment for murder and robbery and not because of a "contract." To the extent that Petitioner is trying to amend his Petition to add a new claim, the request is denied as frivolous. Petitioner's contention is vague, conclusory, and unsupported and fails for this reason alone. *See Nickerson v. Lee*, 971 F.2d 1125, 1136 (4th Cir. 1992), *abrog'n on other grounds recog'd, Yeatts v. Angelone*, 166 F.3d 255 (4th Cir. 1999). For all these reasons, Petitioner's petition should be dismissed.

IT IS THEREFORE RECOMMENDED that Respondent's motion to dismiss (Docket Entry 19) be **GRANTED**, that the Petition (Docket Entry 6) be **DISMISSED**, and that Judgment be entered dismissing this action.

/s/ Joe L. Webster
United States Magistrate Judge

April 5, 2023
Durham, North Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HARRY SHAROD JAMES-EL,	)	
	)	
Petitioner,	)	
	)	
v.	)	**1:21CV934**
	)	
ERIC A. HOOKS,	)	
	)	
Respondent.	)	

ORDER REQUIRING ANSWER FROM RESPONDENT

Petitioner, a prisoner of the State of North Carolina, submitted a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody, which the Court struck because of its pleading failures. (Docket Entries 1-2.) Petitioner then filed a motion to amend his petition (Docket Entry 3), a "Motion Challenging Subject-Matter Jurisdiction, and Request this Court to Transfer this Habeas Corpus to The Lawful Article III Common Law Court" (Docket Entry 4) and supporting supplement (Docket Entry 7), a new petition under 28 U.S.C. § 2254 for writ of habeas corpus (Docket Entry 6), a motion challenging his filing fee (Docket Entry 9), a motion for the appointment of counsel (Docket Entry 10), and an application to proceed *in forma pauperis* (Docket Entry 13). Petitioner's motions are resolved as follows:

First, Petitioner's motion to amend (Docket Entry 3) and request to proceed *in forma pauperis* (Docket Entry 13) are both granted.[1] Second, Petitioner's "Motion Challenging Subject-Matter Jurisdiction, and Request this Court to Transfer this Habeas Corpus to The

[1] In reliance upon the representations set forth in the request, it appears that Petitioner is unable to pay the $5.00 filing fee for this action.

Appendix D

Lawful Article III Common Law Court" (Docket Entry 4) will be stricken from the record as it is not a proper motion. Petitioner filed his petition in this Court and therefore submitted to its jurisdiction, which he cannot now challenge. Also, the court that Petitioner seeks to have his petition transferred to (an "Article III Common Law Court") does not exist. If Petitioner does not wish to proceed in this Court in this action, he may voluntarily dismiss his petition.

Third, Petitioner's motion challenging his filing fee (Docket Entry 9) is denied as moot, in light of the grant of his application to proceed *in forma pauperis*. Last, Petitioner's motion for the appointment of counsel (Docket Entry 10) is denied. In considering this request, the Court notes first that there is no constitutional right to appointed counsel in a habeas case. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (holding that "the right to appointed counsel extends to the first appeal of right, and no further"); *United States v. Williamson*, 706 F.3d 405, 416 (4th Cir. 2013) ("[A] petitioner has no Sixth Amendment right to counsel in order to mount a collateral challenge to his conviction."); *Hunt v. Nuth*, 57 F.3d 1327, 1340 (4th Cir. 1995) (noting that a petitioner "had no constitutional right to an attorney during his federal habeas proceeding"). Under 28 U.S.C. § 2254 and 18 U.S.C. § 3006A, the Court, in its discretion, may appoint counsel if it "determines that the interests of justice so require." 18 U.S.C. § 3006A(a)(2). Appointment of counsel is also required if discovery is otherwise authorized and counsel is needed for effective discovery or where an evidentiary hearing is to be held. *See* Rules 6(a) and 8(c) of the Rules Governing Section 2254 Proceedings in the United States District Courts. Having reviewed Petitioner's request for counsel and the record in this matter, the Court does not find that appointment of counsel is required by the interests of justice or otherwise. Therefore, Petitioner's request for counsel will be denied. Should the

Court later determine that discovery or an evidentiary hearing is necessary, or that the interests of justice otherwise require, the Court will appoint counsel at that time.

IT IS THEREFORE ORDERED that Petitioner's request to proceed *in forma pauperis* (Docket Entry 13) and motion to amend (Docket Entry 3) be **GRANTED**, that Petitioner's "Motion Challenging Subject-Matter Jurisdiction, and Request this Court to Transfer this Habeas Corpus to The Lawful Article III Common Law Court" (Docket Entry 4) and supporting supplement (Docket Entry 7) be **STRICKEN** from the record, that Petitioner's motion for the appointment of counsel (Docket Entry 10) be **DENIED**, and that Petitioner's motion opposing the filing fee (Docket Entry 9) be **DENIED** as moot.

IT IS FURTHER ORDRED that Respondent shall file an answer with this Court, pursuant to Rules 4 and 5, Rules Governing Section 2254 Cases, within 40 days of the issue of this Order.

This the 29th day of June, 2022.

Joe L. Webster
United States Magistrate Judge

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