

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

JASON W. CLARK,
Petitioner,

v.

WARDEN S. HIJAR,
Respondent.

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Cause No. EP-24-CV-212-DB

MEMORANDUM OPINION AND ORDER

Petitioner Jason W. Clark, federal prisoner number 92463-509, challenges the execution of his sentence through a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2241. Pet'r's Pet., ECF No. 1. He asks the Court to intervene on his behalf and order Respondent Warden S. Hijar to change his status from "narco-terrorist" and award him the First Step Act (FSA) Time Credits (FTCs) toward his pre-release custody he believes he is due. *Id.* at 6–7. His petition is denied for the following reason.

BACKGROUND

Clark is a 42-year-old federal prisoner confined at the La Tuna Federal Correctional Institution in Anthony, Texas, which is within the jurisdiction of this Court. *See* www.bop.gov/inmateloc (search for Reg. No. 92463-509, last visited Oct. 9, 2023). His projected release date is August 18, 2029. *Id.*

Clark pleaded guilty to possession with intent to distribute fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). *See United States v. Clark*, 1:22-CR-00374-KWR (D. N.M.), J. Crim. Case, ECF No. 63. He was sentenced to 87 months' imprisonment followed by three years' supervised release. *Id.* He also agreed to forfeit 18 rifles and pistols. *Id.*, Consent Preliminary Order of Forfeiture, ECS No. 58.

In his § 2241 petition Clark asserts that the Bureau of Prisons (BOP) has mischaracterized him as a "narco-terrorist," which he believes made him ineligible for FTCs. Pet'r's Pet., ECF No.

1 at 6. He maintains that the BOP has denied him his due process rights by keeping him in prison longer than the Constitution and laws allow. *Id.* He suggests that the BOP is subjecting him to cruel and unusual punishment—again by keeping him in prison longer than the Constitution and laws allow. *Id.* at 7. He asks that the Court intervene on his behalf and order Hijar to (1) change his status from “narco-terrorist” to FSA time-earning status, and (2) award him the FTCs that he believes he is due. *Id.*

STANDARD OF REVIEW

A prisoner may attack “the manner in which his sentence is carried out or the prison authorities’ determination of its duration” through a petition for a writ of habeas corpus under 28 U.S.C. § 2241. *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000) (citations omitted). To prevail, a prisoner must show he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c).

When a court receives a § 2241 petition, it accepts the allegations as true during its initial screening. 28 U.S.C. § 2243; *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007). It also evaluates a petition presented by a *pro se* petitioner under a more lenient standard than it applies to a petition submitted by counsel. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). But it must still find “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 556.

Upon completing the initial screening, a court must “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

ANALYSIS

Clark asserts the BOP erred in denying him FSA time credits. Pet’r’s Pet., ECF No. 1 at 6.

Id. at 7. He asks the Court to order Hijar to (1) change his status to FSA time-earning, and (2) award him the FSA time credits that he believes he is due. *Id.*

The FSA permits *qualifying* inmates to apply earned FTCs towards prerelease community-based placement in a Residential Reentry Center (RRC) or home confinement. 18 U.S.C. § 3624(g)(2); 28 C.F.R. § 523.44(b)–(c). But it specifically *disqualifies* inmates with fentanyl distribution convictions under 21 U.S.C. § 841(b)(1) from earning FTCs. *See* 18 U.S.C. § 3632(d)(4)(D)(lxvi); *see also* 28 C.F.R. § 523.41(d)(2) (“If the inmate is serving a term of imprisonment for an offense specified in 18 U.S.C. § 3632(d)(4)(D), the inmate is not eligible to earn FSA Time Credits”).

Clark pleaded guilty to possession with intent to distribute fentanyl in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). *See United States v. Clark*, 1:22-CR-00374-KWR. (D. N.M.), J. Crim. Case, ECF No. 63. Consequently, Clark is not eligible to earn FTCs because he is serving an 87-month sentence imposed after his conviction for a fentanyl distribution offense under 21 U.S.C. § 841(b)(1). 18 U.S.C. § 3632(d)(4)(D)(lxvi). Furthermore, Clark “does not have a constitutional right to be released before the expiration of [his] valid sentence.” *Wottlin v. Fleming*, 136 F.3d 1032, 1037 (5th Cir. 1998).

CONCLUSION AND ORDER

Accordingly, it appears from Clark’s petition that he is not in custody in violation of the Constitution or laws or treaties of the United States and that as a matter of law he is not entitled to § 2241 relief. Therefore, the Court enters the following orders:

IT IS ORDERED that Petitioner Jason Clark’s “Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241” (ECF No. 1) is **DENIED** and his cause is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that all pending motions, if any, are **DENIED** as moot.

IT IS FINALLY ORDERED that the District Clerk shall **CLOSE** this case.

SIGNED this 9th day of October 2024.


DAVID BRIONES
SENIOR UNITED STATES DISTRICT JUDGE

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FINAL JUDGMENT

In accordance with the Memorandum Opinion and Order signed on this date, the Court enters its Final Judgment, pursuant to Federal Rule of Civil Procedure 58, as follows:

IT IS ORDERED that Petitioner Jason Clark's "Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241" (ECF No. 1) is **DENIED** and his cause is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that all pending motions, if any, are **DENIED** as moot.

IT IS FINALLY ORDERED that the District Clerk shall **CLOSE** this case.

SIGNED this 9th day of October 2024.


DAVID BRIONES
SENIOR UNITED STATES DISTRICT JUDGE

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