

Westlaw

263 Fed.Appx. 664

263 Fed.Appx. 664, 2008 WL 313177 (C.A.10 (Utah))

(Not Selected for publication in the Federal Reporter)

(Cite as: 263 Fed.Appx. 664, 2008 WL 313177 (C.A.10 (Utah)))

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Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Tenth Circuit Rule 32.1. (Find CTA10 Rule 32.1)

United States Court of Appeals, Tenth Circuit.  
William Henry SHERRATT, Petitioner-Appellant,  
v.

Clint FRIEL, Warden, Respondent-Appellee.  
No. 07-4155.

Feb. 4, 2008.

**Background:** State prisoner filed petition for writ of habeas corpus. The United States District Court for the District of Utah, Paul G. Cassell, J., 2007 WL 1795720, denied petition. Prisoner filed pro se application for certificate of appealability (COA).

**Holding:** The Court of Appeals held that prisoner was required to proceed in a § 1983 action, rather than in a habeas petition, to the extent he claimed that his conditions of confinement were unconstitutional. COA denied.

1983 action, rather than in a habeas petition, to the extent he claimed that his conditions of confinement were unconstitutional. 28 U.S.C.A. § 2254; 42 U.S.C.A. § 1983.

\*664 William Henry Sherratt, Draper, UT, pro se.

Before KELLY, ANDERSON, and MURPHY, Circuit Judges.

## ORDER

\*\*1 This matter is before the court on William H. Sherratt's pro se request for a certificate of appealability ("COA"). Sherratt seeks a COA so he can appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition.<sup>FN1</sup> 28 U.S.C. § 2253(c)(1)(A)\*665 (providing no appeal may be taken from a "final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court," unless the petitioner first obtains a COA). Because Sherratt has not "made a substantial showing of the denial of a constitutional right," this court **denies** his request for a COA and **dismisses** this appeal. *Id.* § 2253(c)(2).

## West Headnotes

### Habeas Corpus 197 ↻ 362.1

197 Habeas Corpus

1971 In General

1971(D) Federal Court Review of Petitions by State Prisoners

1971(D)4 Sufficiency of Presentation of Issue or Utilization of State Remedy

197k362 Particular Remedies or Proceedings

197k362.1 k. In General. Most

Cited Cases

Pro se state prisoner was required to proceed in a §

<sup>FN1</sup>. It must be noted that the exact nature of Sherratt's petition is less than clear. Because Sherratt does not challenge any aspect of his conviction or sentence, but instead directs his habeas-type claims to prison disciplinary proceedings, it would appear Sherratt's petition should properly be construed, if a habeas petition at all, as a 28 U.S.C. § 2241 petition. *Cf. Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir.2000); *Brown v. Smith*, 828 F.2d 1493, 1494-95 (10th Cir.1987). This court need not trouble itself in this case with the distinction between § 2241 and § 2254 petitions, however, because each of the reasons identified by the district court for

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denying Sherratt's petition is equally applicable whether the instant petition is considered a § 2254 or § 2241 petition. See *Rael v. Williams*, 223 F.3d 1153, 1154 (10th Cir.2000) (holding that conditions-of-confinement claims must be brought in 42 U.S.C. § 1983 civil rights complaint rather than in § 2241 petition); *May v. Workman*, 339 F.3d 1236, 1237 (10th Cir.2003) (holding that the one-year statute of limitations set out in 28 U.S.C. § 2244(d) applies to § 2241 petitions). Furthermore, Sherratt must obtain a COA to proceed on appeal whether his petition is construed as arising under § 2241 or § 2254. *Montez*, 208 F.3d at 867.

As noted by the district court, Sherratt captioned his filing as a "conditions of confinement habeas corpus petition." In the filing, Sherratt complains generally about disciplinary proceedings, mailings, retaliation over filed grievances, dealings with contract attorneys, housing transfers, denials of privileges and programming, access to legal materials, health endangerment, and the possibility that his refusal to admit his guilt during sex offender programming would lead to a longer period of incarceration. Some of these challenges might properly be raised in a habeas petition, while others must be raised in a § 1983 civil rights complaint. To further complicate matters, Sherratt sought not only immediate release from confinement (a habeas remedy), but also declaratory relief, injunctive relief, and monetary damages (civil rights remedies).

In resolving Sherratt's petition, the district court first noted that to the extent Sherratt was attacking as unconstitutional his conditions of confinement, he was required to proceed in a 42 U.S.C. § 1983 action. See *Rael v. Williams*, 223 F.3d 1153, 1154 (10th Cir.2000) (holding that conditions-of-confinement claims must be brought in 42 U.S.C. § 1983 civil rights complaint rather than in habeas petition). To the extent, however, that Sherratt was raising claims properly cognizable in a

habeas petition (whether a § 2241 or § 2254 petition), the district court concluded, *inter alia*, that any such claims were barred by the limitations period set out in 28 U.S.C. § 2244(d). Accordingly, the district court denied Sherratt's petition.

To be entitled to a COA, Sherratt must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make the requisite showing, he must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003) (quotations omitted). In evaluating whether Sherratt has satisfied his burden, this court undertakes "a preliminary, though not definitive, consideration of the [legal] framework" applicable to each of his claims. *Id.* at 338, 123 S.Ct. 1029. Although Sherratt need not demonstrate his appeal will succeed to be entitled to a COA, he must "prove something more than the absence of frivolity or the existence of mere good faith." *Id.*

**\*\*2** Having undertaken a rigorous review of Sherratt's application for a COA and appellate filings, the district court's order, and the entire record before this court pursuant to the framework set out by the Supreme Court in *Miller-El*, this court concludes Sherratt is not entitled to a COA. The district court's resolution of Sherratt's petition is not reasonably subject to debate and the issues Sherratt seeks to raise on appeal are not adequate to deserve further proceedings. Accordingly, **\*666** this court **DENIES** Sherratt's request for a COA, **DENIES** his request for in forma pauperis, and **DISMISSES** this appeal.

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16 Fed.Appx. 916

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United States Court of Appeals, Tenth Circuit.  
Heriberto HUERTA, Petitioner-Appellant,  
v.

Kathleen HAWK-SAWYER, Director, United States Bureau of Prisons; John M. Hurley, Warden, United States Penitentiary, Administrative Maximum Facility, Florence, Colorado, Respondents-Appellees.  
No. 00-1255.

Aug. 9, 2001.

Federal prisoner filed petition for writ of habeas corpus challenging his transfer and his segregated confinement. The United States District Court for the District of Colorado denied petition, and prisoner appealed. The Court of Appeals, Henry, Circuit Judge, held that habeas statute was improper vehicle for prisoner's grievances.

Affirmed.

West Headnotes

### Habeas Corpus 197 513

197 Habeas Corpus

197II Grounds for Relief; Illegality of Restraint  
197II(B) Particular Defects and Authority for Detention in General

197k512 Nature and Place of Confinement  
197k513 k. Limitations and Conditions; Treatment and Discipline. Most Cited Cases

### Habeas Corpus 197 514

197 Habeas Corpus

197II Grounds for Relief; Illegality of Restraint  
197II(B) Particular Defects and Authority for Detention in General

197k512 Nature and Place of Confinement  
197k514 k. Place of Confinement; Transfer. Most Cited Cases

Federal prisoner's allegations that his transfer and his segregated confinement were unconstitutional amounted to challenge to conditions of his confinement, rather than execution of his sentence, and thus, federal habeas statute was improper vehicle for prisoner's grievances, absent allegation that action, even if successful, would result in any direct change in duration of his confinement 28 U.S.C.A. § 2241.

\*916 Before HENRY, BRISCOE, and MURPHY, Circuit Judges.

### ORDER AND JUDGMENT <sup>FN\*</sup>

FN\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*917 HENRY, Circuit Judge.

\*\*1 After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R.App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Heriberto Huerta appeals the district court's dismissal of his Petition for Writ of Habeas Corpus, which he brought pursuant to 28 U.S.C. § 2241. Mr.

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Huerta is serving a life sentence for conspiracy and distribution of controlled substances, and is presently being held in administrative segregation at the maximum security prison in Florence, Colorado. Because we conclude that § 2241 is the improper vehicle for Mr. Huerta's grievances, we affirm the district court.

Mr. Huerta's § 2241 action argues that both his transfer to Florence and his segregated confinement were unconstitutional. In dismissing the action, the district court ruled that it amounted to a challenge to the conditions of Mr. Huerta's confinement, rather than the execution of his sentence. It stated that although Mr. Huerta contended "that it is not the denial of ... privileges, but the [allegedly unconstitutional] manner in which they were denied" for which he was seeking relief, "it is apparent that the granting of his petition would simply alter the current conditions of his confinement and have no effect on his sentence." Dist. Ct. Order, filed May 10, 2000 [hereinafter referred to as "Dist. Ct. Order"] at 2. Citing *McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 811 (10th Cir.1997), the court ruled that "it is clear that this type of relief may not be granted through a § 2241 petition." Dist. Ct. Order at 2.

On appeal, Mr. Huerta maintains that "[c]learly habeas corpus relief is available for attacking constitutional questions of how a sentence is being served." Aplt's Br. at 24. In support of this proposition, he cites *In Re: Medley*, 134 U.S. 160, 10 S.Ct. 384, 33 L.Ed. 835 (1890), and *Hutto v. Finney*, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978). Neither case is persuasive on this point. *Hutto* does suggest that conditions of confinement may be unconstitutional, but it was based on a 42 U.S.C. § 1983 civil rights action, and makes no mention of habeas petitions. As for *Medley*, Mr. Huerta cites no particular language within that century-old case. This may be because the *Medley* Court made only one statement that seems relevant to Mr. Huerta's argument, and that statement tells us that "under the writ of habeas corpus we cannot do anything else

than discharge the prisoner from the wrongful confinement in the penitentiary under the statute of Colorado invalid as to this case." *Medley*, 134 U.S. at 173, 10 S.Ct. 384.

It is true that a § 2241 action may sometimes "challenge some matters that occur at prison, such as deprivation of good-time credits and other prison disciplinary matters." *McIntosh*, 115 F.3d at 811. It is also true that in *Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973), the Supreme Court reserved judgment on the question of whether challenges to prison conditions may be brought under § 2241. However, this circuit has declared that § 2241 is to be used in cases challenging the fact or duration of federal custody, and not in cases merely challenging prison conditions. See *McIntosh*, 115 F.3d at 812. Here, Mr. Huerta's own habeas petition states that his action is a challenge to the conditions \*918 of his confinement, not the ultimate fact that he is confined. Petition for Writ of Habeas Corpus at 2.<sup>FN1</sup> Moreover, Mr. Huerta is serving a life sentence. He has made no allegation that his action, even if successful, would result in any direct change in the duration of his confinement.

FN1. We acknowledge that in *Montez v. McKinna*, 208 F.3d 862 (10th Cir.2000), we held that an attack "on where [the petitioner's] sentence will be served ... seems to fit ... under the rubric of § 2241." *Id.* at 865. In a sense, Mr. Huerta's cause of action is a challenge to where his sentence will be served, as he asks for a transfer to a "true general population unit of an approved correctional facility." Petition for Writ of Habeas Corpus at 30 (emphasis omitted). But *Montez* is distinguishable from this case; in *Montez*, the petitioner alleged that the State of Wyoming could not constitutionally confine him in a privately run prison in Colorado. He did not argue, as Mr. Huerta does, that he was being treated in an unconstitutional manner in

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the course of an otherwise lawful confinement.

**\*\*2** For the foregoing reasons, we agree with the magistrate judge that the correct vehicle for Mr. Huerta's complaint is a civil rights action under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). Report and Recommendation of United States Magistrate Judge, filed Mar. 16, 2000, at 6. Accordingly, we AFFIRM the district court's dismissal of this § 2241 petition.

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United States Court of Appeals, Tenth Circuit.  
Madyun ABDULHASEEB, also known as Jerry L.  
Thomas, Petitioner-Appellant,  
v.

Ron WARD; Sam Calbone, Respondents-Appellees.

No. 05-6054.

March 27, 2006.

**Background:** State prisoner filed petition for writ of habeas corpus, challenging sanction imposed following prison disciplinary proceeding. The United States District Court for the Western District of Oklahoma denied petition in part and dismissed it in part, and prisoner, acting pro se, sought certificate of appealability.

**Holdings:** The Court of Appeals, Terrence L. O'Brien, Circuit Judge, held that:

- (1) prisoner was required to bring claims challenging conditions of confinement by way of action under § 1983;
- (2) prisoner had no due process right to receive copy of posting in prison law library restricting use of typewriters to legal work only;
- (3) prisoner had no due process right to assistance from staff representative during prison disciplinary process;
- (4) prisoner received all process due in prison disciplinary proceedings;
- (5) unsupported allegations of hearing officer partiality were insufficient to establish due process violation; and
- (6) uncontested evidence was sufficient to support

imposition of discipline.

Certificate of appealability denied; appeal dismissed.

## West Headnotes

### [1] Habeas Corpus 197 ↪ 362.1

197 Habeas Corpus

197I In General

197I(D) Federal Court Review of Petitions by State Prisoners

197I(D)4 Sufficiency of Presentation of Issue or Utilization of State Remedy

197k362 Particular Remedies or Proceedings

197k362.1 k. In General. Most

Cited Cases

State prisoner was required to bring claims challenging his allegedly improper placement and confinement in restricted housing unit pending investigation of prison disciplinary charge by way of action under § 1983, and not by way of petition for writ of habeas corpus, where such claims challenged conditions of prisoner's confinement rather than fact of his conviction or duration of his sentence. 28 U.S.C.A. § 2241; 42 U.S.C.A. § 1983.

### [2] Constitutional Law 92 ↪ 4824

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)11 Imprisonment and Incidents Thereof

92k4824 k. Discipline and Classification. Most Cited Cases  
(Formerly 92k272(2))

### Prisons 310 ↪ 13(8)

310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

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310k13(8) k. Notice and Hearing; Summary Proceedings. Most Cited Cases  
 State prisoner had no due process right to receive copy of posting in prison law library restricting use of typewriters to legal work only, which posting served as basis for disciplinary charge against him. U.S.C.A. Const.Amend. 14.

### [3] Constitutional Law 92 🔑4824

92 Constitutional Law  
 92XXVII Due Process  
 92XXVII(H) Criminal Law  
 92XXVII(H)11 Imprisonment and Incidents Thereof  
 92k4824 k. Discipline and Classification. Most Cited Cases  
 (Formerly 92k272(2))

#### Prisons 310 🔑13(9)

310 Prisons  
 310k13 Custody and Control of Prisoners  
 310k13(7) Requisites of Proceedings  
 310k13(9) k. Counsel and Witnesses. Most Cited Cases  
 State prisoner had no due process right to assistance from staff representative during prison disciplinary process, absent any indication that prisoner was illiterate, where issues presented in disciplinary proceeding were not complex. U.S.C.A. Const.Amend. 14.

### [4] Constitutional Law 92 🔑4824

92 Constitutional Law  
 92XXVII Due Process  
 92XXVII(H) Criminal Law  
 92XXVII(H)11 Imprisonment and Incidents Thereof  
 92k4824 k. Discipline and Classification. Most Cited Cases  
 (Formerly 92k272(2))

#### Prisons 310 🔑13(7.1)

310 Prisons

310k13 Custody and Control of Prisoners  
 310k13(7) Requisites of Proceedings  
 310k13(7.1) k. In General. Most Cited Cases

#### Prisons 310 🔑13(8)

310 Prisons  
 310k13 Custody and Control of Prisoners  
 310k13(7) Requisites of Proceedings  
 310k13(8) k. Notice and Hearing; Summary Proceedings. Most Cited Cases  
 State prisoner received all process due in prison disciplinary proceedings, where prisoner was given advanced written notice of charge against him, informed investigator that he did not wish to call witnesses or submit documentary evidence, and received written statement from hearing officer as to evidence relied upon and reasons for disciplinary action. U.S.C.A. Const.Amend. 14.

### [5] Constitutional Law 92 🔑4824

92 Constitutional Law  
 92XXVII Due Process  
 92XXVII(H) Criminal Law  
 92XXVII(H)11 Imprisonment and Incidents Thereof  
 92k4824 k. Discipline and Classification. Most Cited Cases  
 (Formerly 92k272(2))

#### Prisons 310 🔑13(6)

310 Prisons  
 310k13 Custody and Control of Prisoners  
 310k13(6) k. Disciplinary, Classification, and Grievance Proceedings; Composition of Tribunal. Most Cited Cases  
 State prisoner's unsupported allegations of partiality in prison disciplinary proceedings were insufficient to establish violation of prisoner's constitutional right to due process of law, in absence of any indication that any bias deprived prisoner of meaningful opportunity to be heard or resulted in imposition of discipline for improper purpose. U.S.C.A.

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Const.Amend. 14.

## [6] Prisons 310 ➡ 13(7.1)

### 310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(7.1) k. In General. Most Cited

#### Cases

Uncontested evidence that state prisoner used prison law library typewriters to compose personal letters and poems to former prison employee was sufficient to support imposition of discipline, where credibility of prisoner's assertion that he had permission to use typewriters for educational and personal purposes was matter for resolution by trier of fact.

**\*659** Nancy Elizabeth Connally, Diane L. Slayton, Asst. Attorney Gen., Oklahoma City, OK, for Respondents-Appellees.

Before KELLY, O'BRIEN, and TYMKOVICH, Circuit Judges.

### ORDER DENYING CERTIFICATE OF APPEALABILITY AND DISMISSING APPEAL

TERRENCE L. O'BRIEN, Circuit Judge.

**\*1** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R.App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Madyun Abdulhaseeb (also known as Jerry Thomas) requests a certificate of appealability (COA) seeking review of the district court's denial of his 28 U.S.C. § 2241 petition for writ of habeas corpus.<sup>FN1</sup> There being no basis for an appeal, we deny COA and dismiss.<sup>FN2</sup>

FN1. Abdulhaseeb filed his petition on a generic form entitled "PETITION FOR A

WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY." The magistrate judge referred to the petition as one arising under § 2241. However, in its order adopting the magistrate's report and recommendation, the district court referred to the petition as one arising under 28 U.S.C. § 2254. Because Abdulhaseeb's petition challenges his prison disciplinary proceedings, the magistrate correctly referred to the petition as a § 2241 petition. *See McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 811 (10th Cir.1997) (stating petitions under § 2241 are used to attack the execution of a sentence, including the deprivation of good-time credits and other prison disciplinary matters); *Brown v. Smith*, 828 F.2d 1493, 1495 (10th Cir.1987) ("If [the petitioner] can show that his due process rights were violated in the subject disciplinary proceedings, then § 2241 would be the appropriate remedy to use to restore his good time credits.").

FN2. Because Abdulhaseeb appears *pro se*, we construe his pleadings liberally. *Ledbetter v. City of Topeka, Kan.*, 318 F.3d 1183, 1187 (10th Cir.2003).

**\*660** Abdulhaseeb was charged with the improper use of a prison typewriter when prison officials discovered he had sent typed poems to a former female employee of the prison. He was afforded a hearing in the prison and was found to have committed the violation as charged. As a result sanctions were imposed; he received thirty days in administrative segregation and lost 180 days of earned credit. Both his institutional and departmental appeals were denied. On September 13, 2004, Abdulhaseeb filed a *pro se* § 2241 petition in the United States District Court for the Western District of Oklahoma alleging fourteen grounds for relief. The matter was referred to a magistrate judge pursuant to 28 U.S.C. § 636. The Oklahoma Attorney General was directed to respond to Abdulhaseeb's peti-



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tion, which it did via a motion to dismiss for failure to exhaust administrative remedies.

On November 29, 2004, the magistrate issued a report and recommendation. She concluded Abdulhaseeb's petition contained both exhausted and unexhausted claims. Although normally such mixed petitions should be dismissed without prejudice to refiling, the magistrate concluded dismissal was not required because all of the claims, with the exception of Counts 1, 2, and 14, could be denied on the merits. As to Counts 1, 2, and 14, the magistrate concluded that because they related to the conditions of confinement, as opposed to the fact or duration of confinement, they should be brought pursuant to 42 U.S.C. § 1983 after Abdulhaseeb exhausted his administrative remedies. Consequently, the magistrate recommended those claims be dismissed without prejudice to refiling.

On December 13, 2004, Abdulhaseeb filed objections to the magistrate's report and recommendation. On January 19, 2005, the district court adopted the magistrate's report and recommendation; judgment was entered accordingly. On February 14, 2005, Abdulhaseeb filed a notice of intent to appeal, which the district court construed as a request for a COA and denied. On appeal, Abdulhaseeb renews his request for a COA.

#### Discussion

Because he is a state prisoner, before Abdulhaseeb may appeal in a § 2241 case, he must obtain a COA. 28 U.S.C. § 2253(c)(1)(A); *Montez v. McKinna*, 208 F.3d 862, 867-69 (10th Cir.2000). A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Abdulhaseeb must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146

L.Ed.2d 542 (2000) (quotations omitted). After a thorough review of the record, Abdulhaseeb's brief, and the relevant authority, we affirm the district court's disposition of the § 2241 petition.

#### A. Counts 1, 2, 14

**\*\*2** [1] Counts 1, 2 and 14 pertained to Abdulhaseeb's alleged improper placement and confinement in a restricted housing unit pending the investigation of his charge. Because these counts relate to the conditions of Abdulhaseeb's confinement, rather than the fact or length of his confinement, they are improperly brought pursuant to 28 U.S.C. § 2241 and should be brought under 42 U.S.C. § 1983. *Nelson v. Campbell*, 541 U.S. 637, 643, 124 S.Ct. 2117, 158 L.Ed.2d 924 (2004) (stating **\*661** constitutional claims that merely challenge the conditions of a prisoner's confinement as opposed to the fact of his conviction or the duration of his sentence fall outside the "core" of habeas corpus and may be brought pursuant to § 1983).<sup>FN3</sup> Consequently, the district court properly dismissed these claims without prejudice to refiling after Abdulhaseeb has exhausted his administrative remedies.

FN3. See also *Boyce v. Ashcroft*, 251 F.3d 911, 914 (10th Cir.2001) ("[P]risoners who want to challenge their convictions, sentences or administrative actions which revoke good-time credits, or who want to invoke other sentence-shortening procedures, must petition for a writ of habeas corpus. Prisoners who raise constitutional challenges to other prison decisions-including transfers to administrative segregation, exclusion from prison programs, or suspension of privileges, e.g. conditions of confinement, must proceed under Section 1983 or *Bivens*." (citation omitted), *vacated as moot*, 268 F.3d 953 (10th Cir.2001).

#### B. Counts 3-13

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Counts 3-13 all alleged violations of Abdulhaseeb's due process rights prior to or during his disciplinary proceedings. Due process requires procedural protections before a prison inmate can be deprived of a protected liberty interest in earned good time credits. *Mitchell v. Maynard*, 80 F.3d 1433, 1444 (10th Cir.1996). However, because prison disciplinary proceedings "take place in a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so," the full panoply of rights due a defendant at a criminal trial do not apply. *Wolff v. McDonnell*, 418 U.S. 539, 556, 561, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). To satisfy due process in a prison disciplinary proceeding under *Wolff*, "the inmate must receive: (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense, and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action." *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).

[2][3] In this case the magistrate conducted a thorough analysis (which the district court adopted) as to why Counts 3-13 could not be sustained and we agree with that analysis. Under *Wolff*, Abdulhaseeb had no right to receive a copy of the posting in the law library stating "TYPEWRITERS ARE TO BE USED FOR LEGAL WORK ONLY!" (Count 3). (R. Doc. 1, Attachment Page 2 (quotations omitted).) It was sufficient that Abdulhaseeb was aware that such posting served as the basis for the charge and that the factfinder relied upon it as evidence of his guilt. He also had no right to assistance from a staff representative during the disciplinary process (Count 8). There is no indication that Abdulhaseeb is illiterate and the issues were not complex. *Wolff*, 418 U.S. at 570, 94 S.Ct. 2963.

[4] We also reject Abdulhaseeb's claims that prison officials violated his due process rights by failing to

(1) complete a "Witness Discretionary Action" form, (2) provide him a copy of the "Review of Evidence" form, (3) supply him with a detailed description of the offense, in particular, who "tipped" the reporting officer to the fact that he had sent a letter to a former employee, (4) conduct an independent investigation to discover exculpatory and mitigating evidence on his behalf, and (5) timely review his institutional appeal (Counts 5-7, 9, 12). The attachments to Abdulhaseeb's § 2241 petition demonstrate \*662 Abdulhaseeb received all the process he was due, *i.e.*, he was given advanced written notice of the charge against him, he informed the investigator that he did not wish to call witnesses or submit documentary evidence, and he received a written statement from the hearing officer as to the evidence relied upon and the reasons for the disciplinary action.

\*3 [5] Additionally, Abdulhaseeb's allegations of impartiality are without merit (Counts 10-11, 13). Although inmates have a due process right to an impartial decisionmaker in the prison disciplinary context, review of due process challenges based on impartiality is limited to whether such bias prevented the inmate from a meaningful opportunity to be heard and whether discipline was imposed for an improper purpose. *Mitchell*, 80 F.3d at 1446. Abdulhaseeb fails to indicate how any of his allegations of impartiality denied him a meaningful opportunity to be heard or resulted in discipline being imposed for an improper purpose.

[6] Lastly, we reject Abdulhaseeb's argument that there was insufficient evidence supporting his conviction. Abdulhaseeb has never denied that he sent typed letters and poems to the former employee. Although he states he had permission from the programs director and library tech to use the typewriters in the law library for educational and personal matters, he never attempted to call these individuals as witnesses. Rather, he merely informed the hearing officer he had such permission. Obviously, the hearing officer found his testimony incredible and we will not re-weigh that assessment.

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*Hill*, 472 U.S. at 455, 105 S.Ct. 2768. Additionally, the evidence he presents for the first time in his § 2241 petition only demonstrates he had permission to use the typewriters for educational purposes, not for personal correspondence. Accordingly, we conclude there is more than “some evidence” in the record supporting the hearing officer’s decision that Abdulhaseeb improperly used the prison’s typewriters. *Id.* at 454, 105 S.Ct. 2768.

Abdulhaseeb’s request for a COA is **DENIED** and the appeal is **DISMISSED**. Abdulhaseeb filed with this Court a request to proceed *in forma pauperis* (*ifp*) for this appeal. He was granted permission to proceed *ifp* in the district court. Since the district court did not certify in writing that the appeal was not taken in good faith (28 U.S.C. § 1915(a)(3)) his *ifp* status continues in this court without further order. *See* FED. R.APP. P. 24(a)(3). Accordingly, his *ifp* request is denied as moot.

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